

IN THE HIGH COURT OF COURT SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Review No: 1105/2006

In the review between:

THE STATE

and

ELIZABETH SEPHUKA

CORAM: H.M. MUSI J *et* KRUGER J

JUDGMENT BY: H.M. MUSI J

DELIVERED ON: 14 DECEMBER 2006

[1] This is an automatic review emanating from the magistrate's court at Bultfontein. The accused, Ms Elizabeth Sephuka, featured as accused no. 2 in the trial. She was convicted of dealing in dagga in contravention of the provisions of section 4(b) of Act 140 of 1992 and sentenced to a fine of R12 000,00 or 36 (thirty six) months imprisonment.

[2] When the matter first came before me on 2 October 2006 I addressed a

query to the magistrate in the following terms:

“Is the sentence of an option of a fine only imposed on Elizabeth Sephuka in accordance with the law?”

In his response, the magistrate concedes that direct imprisonment, whether partly or wholly suspended, should have been part of the sentence imposed and that the sentence as it stands, is incompetent.

See in this regard **S v MOSOLOTSANE** [1993 \(1\) SACR 502](#) (O).

[3] The magistrate suggested that we either remit the matter to him or substitute an appropriate sentence. I think that it is in the interest of justice that the accused be brought before court and be heard before a new sentence is imposed. It may well be that the magistrate is persuaded to reduce the fine imposed in view thereof that an additional punishment in the form of a suspended prison term will probably be imposed.

[4] In the premises, the sentence imposed is set aside and the matter is remitted to the magistrate to impose a competent sentence.

H.M. MUSI, J

I concur.

1. KRUGER, J