

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

Review Case No.: 900/2005

In the case between:

THE STATE

and

TSIETSI JAMES MOLAHLEHI

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

JUDGEMENT: H.M. MUSI J

DELIVERED ON: 1 SEPTEMBER 2005

[1] On the 11/12/2003 the magistrate's court at Excelsior issued an interim protection order in terms of Section 5(2) of the Domestic Violence Act 116 of 1998 in terms of which the accused was ordered *inter alia* not to assault the complainant, Jane Tsietsi Molahlehi. Such a protection order was confirmed on 11/05/2004. Subsequently and on 15th September 2004 the accused was convicted of having

assaulted the complainant in contravention of the protection order aforesaid. He was sentenced as follows:

“R300 or 30 days imprisonment which is wholly suspended for 3 years on condition that the accused is not convicted of assault during the period of suspension or any contravention of the Domestic Violence Act 116/1998.”

- [2] Quite clearly the condition of suspension, namely that the accused should not be convicted of assault during the period of suspension, is incompetent as the accused was not convicted of assault but rather of contravening the provisions of Section 17(a) of the Domestic Violence Act. This error was picked-up during a routine inspection of the case records of the magistrate's court concerned and the matter was thus referred to this court for review in terms of Section 304(4) of the Criminal Procedure Act.

- [3] In the result, the sentence imposed is set aside and replaced with the following:

R300 or 30 days imprisonment which is wholly suspended for 3 years on condition that the accused is not convicted of contravention of Section 17(a) of the Domestic Violence Act 116/1998 or contravention of any of the provisions of such Act. The sentence shall be deemed to have been imposed on 15 September 2004.

H. M. MUSI, J

I concur.

S. EBRAHIM, J

/em