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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

LIMPOPO DIVISION, POLOKWANE

CASE NO: A26/2023

(1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

G.C MULLER

DATE: 16/3/26 SIGNATURE.....

In the matter between:

DIRECTOR OF PUBLIC PROSECUTION, LIMPOPO

APPELLANT

and

MORRIS MAKHUELE

RESPONDENT

JUDGMENT

MULLER J:

[1] The Director of Public Prosecutions was granted leave to appeal against the sentence imposed by the regional court on petition in terms of section 310A of the CPA.¹

[2] The respondent² was charged with the following offences:

- (a) contravening section 3 of the Firearms Control Act³ in that he accused was in unlawful possession of a 243 Winchester caliber Sako L579 bolt action rifle without a license to possess the said firearm;
- (b) contravening section 4(1)(f)(iv) of the Act in that the accused was in unlawful possession of a 243 Winchester caliber Sako L579 bolt action rifle, the serial numbers of which having been removed without the written permission of the registrar;
- (c) contravening section 90 of the Act in that the accused was in unlawful possession of 8 x 243 caliber cartridges without being the holder of a license to possess a firearm capable of discharging that ammunition; and
- (d) contravening section 3(1) of the Dangerous Weapons Act⁴ in that the accused was in possession of a knife and an axe under circumstances which may raise a reasonable suspicion that he intends using the weapons for an unlawful purpose.

[3] The accused, who was legally represented, pleaded guilty to all counts and handed in a statement in terms of section 112(2) of the CPA. The accused confirmed in his statement that he was stopped on the R40 road near Hoedspruit whilst driving a Datsun motor

¹ Act 51 of 1977 (Hereinafter called the CPA).

² Hereinafter called the accused.

³ Act 60 of 2000. (hereinafter called the Act).

⁴ Act 15 of 2013.

vehicle. His vehicle was searched. A Winchester 245 caliber firearm with its serial number removed together with ammunition as well as a knife and axe were discovered inside the bumper of his motor vehicle where he has hidden them. He admitted that he is not a holder of a license to possess the firearm and that the serial number of the firearm had been removed without the necessary permission. He also admitted that his possession of a knife and an axe under the circumstances raised a reasonable suspicion that he intended using the weapons for an unlawful purpose.

[4] A ballistic report was handed in by consent confirming that the said firearm which was equipped with a telescope is capable of firing a projectile. The serial number which had been removed was, however, established to be "5[...]" by means of an electro acid aging process.

[5] The accused was convicted on all the charges based on the facts set out in his section 112(2) statement.

[6] When the appeal served before Kganyago J et Pillay AJ on 29 November 2024 the parties were requested to file supplementary heads of argument on the question whether there was a duplication of convictions although the appeal was against sentence only.

[7] The parties were notified on 9 February 2026 that they must prepare argument, *ex abundanti cautela*, on the possibility that the sentence may be increased. Legal Aid South Africa who is on record on behalf of the accused filed a notice on 17 February 2026 explaining that since receipt of the notice of set down and the notice that the sentence may be increased, all efforts to trace the accused had been unsuccessful. Mr Nonyane, who appeared on behalf of the accused argued that the appeal cannot proceed because the

appellant cannot be traced and also because it is impossible to get instructions from him in view of the notice that the sentence may be increased. There is no merit in the contention. Legal Aid has been on record as his legal representative and proper notice of the appeal had been given. The fact that the accused cannot be traced has no bearing on the propriety of the appeal before us.

[8] The appellant in the supplementary heads of argument argued that there is no duplication of convictions. It is asserted that the primary function of the rule is aimed at fairness and common sense to prevent that an accused person be punished twice for the same offence but that the offences differ in that evidence required to prove each of the offences differ.⁵

[9] Section 3 of the Act provides:

“(1) No person may possess a firearm unless he or she holds for that firearm—

(a) a license, permit or authorisation issued in terms of this Act; or

(b) a license, permit, authorisation or registration certificate contemplated in item 1, 2, 3, 4, 4A or 5 of Schedule 1.”

[10] Section 4(1)(f)(iv) of the Act provides that:

“The following firearms and devices are prohibited firearms and may not be possessed or licensed in terms of this Act, except as provided for in section 17, 18(5), 19 and 20(1)(b):

...

(f) any firearm –

⁵ *R v Khuzwayo* 1960 (1) SA 360 (A) 344B-C.

...

(iv) the serial number or any other identifying mark of which has been changed or removed without the written permission of the registrar.”⁶

[11] An offence is committed under section 3, if the person in possession of the firearm is not licensed to possess same. It matters not that it may very well be licensed to someone else.

[12] A prohibited firearm may not be licensed. Proof that the accused was in possession of a prohibited firearm is also proof that the accused was in unlawful possession an unlicensed firearm. Removal of the serial number without written permission rendered the firearm incapable of being licensed and possession of the firearm unlawful. The appellant should have been convicted of contravening section 4(1)(f)(iv) of the Act. A duplication of convictions occurred.

[13] We now turn to the sentence imposed. The regional magistrate took all the counts together for purpose of sentence. The sentence imposed reads as follows:

“The accused is sentenced to pay R10 000.00 or 5 years imprisonment which is wholly suspended for a period of 5 years on condition that accused [is] not convicted again of any offence in contravention of the Firearms Control Act 60 of 2000 or the Dangerous Weapons Act 15 of 2013.”

“The accused is declared unfit to possess a firearm in terms of section 103 of Act 60 of 2000.”

[14] The suspended portion of the sentence, on a proper reading thereof, may still be enforced if the accused is convicted of any offence under the Firearms Control Act, Act 60 of 2000 or Dangerous Weapons Act, Act 15 of 2013, after the expiration of the 5 years

⁶ Hereinafter called “prohibited firearm”.

period of suspension.⁷ An accused person must be in no doubt what specific conduct is prohibited and for what period. The court in *R v Cloete*⁸ stipulated that:

“...it does seem that two principles at least should be observed in the imposition of the conditions. The first is that the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of a suspended sentence. It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it. The second is that the condition be stated with such precision that the convicted person may understand the ambit of the condition.”

[15] The reference to “any offence” is too vague and generalized to have a close relationship to, or association with, the particular offences of which the accused was convicted.

[16] The accused is a 36 year old first offender. He is married with 4 minor children. He is the sole breadwinner and employed as security officer earning R6800 per month. He supports his sickly parents. He was arrested in the Hoedspruit area which is adjacent to the Kruger National Park. The unlawful killing of game for financial gain, especially protected game, are notoriously well known and prevalent in that area. No explanation was given by the accused for him, being a security guard from Louis Trichardt, to have been in the unlawful possession of a prohibited firearm, a knife and an axe hidden in the bumper of his vehicle in Hoedspruit.

[17] Having a firearm with the serial number removed in his possession leaves little doubt that it was obtained unlawfully with the intention to commit crime. It is also a well-known

⁷ The conditions of the suspended sentence should have read that: “...imprisonment which is wholly suspended for a period of 5 years on condition that accused is not convicted again of any offence in contravention of the Firearms Control Act 60 of 2000 or the Dangerous Weapons Act 15 of 2013 **committed during the period of suspension.**”

⁸ 1950 (4) SA 191 (ELD) 192F-H.

fact that serious crimes are committed with firearms unlawfully obtained. As a security officer, the accused knows better. The offences are considered to be serious with long terms of imprisonment prescribed by the legislator. It was held in *S v Anderson*:⁹

“A court of appeal will not alter a determination arrived at by the exercise of a discretionary power merely because it would have exercised that discretion differently. There must be more than that. The court of appeal after careful consideration of all the relevant circumstances as to the nature of the offence committed and the person of the accused, will determine what it thinks the proper sentence ought to be, and if the difference between that sentence actually imposed is so great that the inference can be made that the trial court acted unreasonably, and therefore improperly, the court of appeal will alter the sentence. If there is not that degree of difference the sentence will not be interfered with.”

[18] The imposition of a fine and a wholly suspended sentence diminished the seriousness of the offences committed under the Act and the deterrent effect of a custodial sentence in respect of all the offences. Apart from the aforesaid criticism against the formulation of the suspended sentence imposed, a totally suspended sentence is shockingly inappropriate. The difference between the sentence imposed and the sentence ought to have been imposed is great that the inference is drawn that the trial court acted unreasonably, and therefore improperly. This court is therefore entitled to impose a sentence that the court below should have imposed. A globular sentence for the different offences should be avoided. A sentence, in respect of each offence should, as point of departure, have been imposed. The offences, when all the circumstances are considered, called for custodial sentences.

⁹ 1964 (3) SA 494 (A) 495G-H.

ORDER:

1. The conviction in respect of count 1 is set aside.
2. The convictions in respect of count 2, 3, and 4 are confirmed.
3. The appeal against the sentence imposed is upheld.
4. The sentence is set aside and is replaced with the following:
 - 4.1 "Count 2. 5 years imprisonment.
 - 4.2 Count 3. 1 year imprisonment.
 - 4.3 Count 4. 6 months imprisonment.
 - 4.4 The sentence imposed in respect of count 4 will run concurrently with the sentence imposed on count 3."

G.C MULLER

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

I, concur

M. BRESLER

ACTING JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

APPRANCES:

FOR THE APPELLANT : ADV D SEBELEBELE

INSTRUCTED BY : NDPP, POLOKWANE

FOR THE RESPONDENT : MR D.J NONYANE

INSTRUCTED BY : LEGAL AID SA, POLOKWANE

DATE HEARD : 06 MARCH 2026

DATE DELIVERED : 16 MARCH 2026

POLOKWANE HIGH COURT