

**IN THE HIGH COURT OF SOUTH AFRICA
WITWATERSRAND LOCAL DIVISION**

**HIGH COURT REFERENCE NUMBER: 99/0117 STATE v. DLAMINI,
BRADLEY AND OTHERS**

MAGISTRATE'S REFERENCE : 99/214/5 STATE v. DLAMINI
98/4673/5 STATE v. G.H. MTIRARA
98/4917/5 STATE v. N. MORRIS
98/5200/5 STATE v. S. THLABI
99/283/5 STATE v. P. S. DLAMINI
98/5537/5 STATE v. MAKAYA
98/5754/5 STATE v. J. B. NZAMA

REVIEW JUDGEMENT

WILLIS J:

In all these cases, with the exception of S v Nzama, the accused tendered pleas of guilty. I am satisfied that the conviction of Nzama was correctly made. All the convictions were in accordance with justice.

The same magistrate, Mr E. B. Shimange, imposed sentences in each case.

All these cases were submitted for special review by the Senior Magistrate, Ms A Gradner. She is of the view that the sentences were vague and defective. The sentencing magistrate was invited to comment but did not do so.

Mr A. P. de Vries, Director of Public Prosecutions, Witwatersrand Local Division asked two advocates on his staff to consider the matter and make recommendations. They have concurred in the view that the sentences are vague and defective and have recommended that the convictions be confirmed but the sentences be set aside and other sentences be imposed in lieu thereof.

Mr de Vries confirms that he is essentially in agreement with the views expressed by the two advocates concerned.

I am also in agreement.

In the circumstances, I make the following order:

(1) In each of the above cases, the convictions are confirmed.

(2) The sentences are set aside and the following substituted in lieu of the sentence imposed by the learned magistrate:

(i) **State v Bradley Dlamini and Simon Moemedi**

“ Each of the accused is sentenced as follows:

A fine of R1 000 or twelve months imprisonment, half of which is suspended for a period of three (3) years on condition that the accused is not convicted of theft, or attempted theft, committed during the period of suspension. ”

(ii) **State v Gcinumuzi Hector Mtirara**

“ A fine of R4 000 or two years imprisonment, half of which is suspended for period of three (3) years on condition that the accused is not convicted of any contravention of section 122(1) or 122 (2) of Act 29 of 1989, committed during the period of suspension. ”

(iii) **State v Xolani Makaya**

“ A fine of R4 000 or two years imprisonment, half of which is suspended for a period of three (3) years on condition that the accused is not convicted of theft or attempted theft, committed during the period of suspension. ”

(iv) **State v Nwadibia Morris**

“ One month imprisonment, which is wholly suspended for a period of three (3) years, on condition that the accused is not convicted of theft or attempted theft or of contravening section 36 of Act 62 of 1955 (unexplained possession of goods suspected to be stolen), committed during the period of suspension.”

(v) **State v Stephen Tlabi**

“ A fine of R2 000 or two (2) years imprisonment, half of which is suspended for a period of three (3) years, on condition that the accused is not convicted of contravening section 82 of Act 129 of 1993, committed during the period of suspension. ”

(vi) **State v Pumlanj Sydney Dlamini**

“ A fine of R500 or three (3) months imprisonment, the whole of which is suspended for a period of three (3) years, on condition that the accused is not convicted of theft or attempted theft, committed during the period of suspension. ”

(vii) **State v Justice Bongowathi Nzama**

“ A fine of R500 or five (5) months imprisonment, the whole of which is suspended for a period of three (3) years, on condition that the accused is not convicted of assault with intent to do grievous bodily harm or assault (common), committed during the period of suspension. ”

DATED AT JOHANNESBURG THIS 1ST DAY OF OCTOBER, 1999

N.P. WILLIS

VAN OOSTEN J

I agree.

DATED AT JOHANNESBURG THIS DAY OF OCTOBER , 1999

F.H.D. VAN OOSTEN