

A220/2006

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IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

DATE: 27/2/06

NOT REPORTABLE

Magistrate
LULEKANI

Case no: 484/2005
High court ref no: 116

THE STATE v SPRINKAAN SETSOALE

REVIEW JUDGMENT

MYNHARDT, J

The accused was charged with a contravention of section 38(1) of Act 7 of 2003 of the Limpopo Province ("the Act"). It was alleged that he, on 19 August 2005, and at Letaba Ranch, wrongfully hunted "game" namely two warthogs without a permit. He was convicted of the charge by the magistrate of Lulekani who sentenced him to a fine of R4 800,00 or twenty four months imprisonment.

When the matter came before me on review I queried the conviction on the basis that warthogs are not listed in any of the schedules to the Act.

The magistrate responded to my query by submitting that the accused was charged with having hunted "wild and alien animals" in contravention of the aforesaid Act. According to the magistrate "game" means, according to the dictionary, "a hunted animal". He therefore concluded that a warthog "is a game". The accused could possibly also have been charged with a contravention of section 38(1)(b)(iv) of the Act according to the magistrate, because he hunted "a wild or alien animal" by making use of a dog.

Section 38(1)(a) of the Act outlaws the hunting, without a permit, of "specially protected wild animals, protected wild animals, game or non-indigenous wild animals" with, broadly speaking, fire-arms. The accused did not use fire-arms.

Section 38(1)(b) of the Act prescribes the hunting or catching, without a permit, of "a wild or alien animal" with, or by using, *inter alia*, a dog. There were dogs in the company of the accused and his friends when they were confronted by the game rangers.

The question is, essentially, whether a warthog is "game" as was alleged in the charge-sheet.

The word "game" is defined in section 1 of the Act as meaning "any living or dead wild animal referred to in Schedule 4". That schedule to the Act does not include warthogs.

The word "wild animal" is defined in section 1 of the Act as "a specially protected wild animal, a protected wild animal, game, a non-indigenous wild animal referred to in Schedule 6, any other vertebrate ... belonging to a species which is not a recognised domestic species and the natural habitat of which is either temporarily or permanently in the Republic, or the carcass ... of any of the animals ..." aforementioned.

If one has regard to the definitions of each of these classes of "wild animal" one is referred, time and again, to the one or the other of the schedules to the Act. In none of those schedules are warthogs listed.

The office of the Director of Public Prosecutions, Transvaal, ("the Director") has requested me to set the conviction and sentence aside because the Act does not include or consider a warthog as "game" for the purposes of the Act. I agree with that submission.

The following order is made: The conviction and sentence are set aside.

S J MYNHARDT
JUDGE OF THE HIGH COURT

I agree

B R DU PLESSIS
JUDGE OF THE HIGH COURT