

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 21/05/2007

UNREPORTABLE

Magistrate
MALAMULELE
Case No: 40/2007
High Court Ref No: 673

THE STATE V MIHLOTI WINNIE GALA
REVIEW JUDGMENT

VAN DER MERWE, J

The accused, Mr Khazamela Eric Mathebula was convicted in the magistrate's court Malamulele of the offence of possession of 100 grams of dagga and was sentenced to a fine of R3 000.00 or eighteen months imprisonment.

When the matter came on review the honourable reviewing judge asked the Director of Public Prosecutions for his views on the sentence. The learned judge did not refer the matter to the magistrate for his comments first.

As will be seen later herein that omission was to the benefit of the accused.

The accused, Mr Mathebula, pleaded guilty. His co-accused, Me Gala pleaded not guilty and a separation of trials was ordered.

A very helpful memorandum was received from Advocate Wait and Advocate Senoge.

In the memorandum it was indicated that the accused pleaded

guilty which is indicative of remorse. It is also clear that the accused is not permanently employed and is a first offender.

It is submitted by the advocates that the court *a quo* did not inquire into the accused's financial means to establish whether he could pay a fine and thus enable him to stay out of jail. A further valid argument is raised by the advocates in the sense that the fine is not commensurate with the alternative punishment imposed by the court *a quo*.

It is therefore suggested that the sentence be set aside and that the substituted sentence be suspended. I am in agreement with the submission. For that very reason the matter need not to be referred to the court *a quo*.

Steps were taken to secure the accused's release as soon as possible.

The conviction is confirmed. The sentence is set aside and the following is substituted therefore:

“R1 500.00 or nine months imprisonment, wholly suspended for one year on condition that the accused is not convicted of possession of an undesirable dependence producing substance in contravention of section 4(b) of Act 140 of 1992, committed during the period of suspension.”

W J VAN DER MERWE
JUDGE OF THE HIGH COURT

I agree

J ELS
JUDGE OF THE HIGH COURT