

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

22/01/2015

Review Number: A 774/2014

(1)	REPORTABLE: YES / <input checked="" type="radio"/> NO
(2)	OF INTEREST TO OTHER JUDGES: YES / <input checked="" type="radio"/> NO
(3)	REVISED.

In the matter between:

THE STATE

and

WILLENGTON CHAKOMA

REVIEW JUDGMENT

KUBUSHI, J

- [1] The accused was convicted in the magistrate's court, Piet Retief, of the offence of contravening s 2 (1) of the Counterfeit Goods Act 37 of 1997: Counterfeit goods: Prohibited acts/conduct. He was sentenced 'to pay a fine of R24 000 (Twenty Four Thousand Rand) or in default of payment to undergo 48 (forty eight) months imprisonment. In terms of s 35 (2) of the Criminal Procedure Act 51 of 1977 the counterfeit CD's are declared forfeited to the State for destruction. In terms of s 103 of the Firearms Control Act 60 of 2000 the accused is declared unfit to possess a firearm.'
- [2] The penalty clause in terms of s 19 of the Counterfeit Goods Act 37 of 1997 specifically states that imprisonment period in respect of the above mentioned offence may not exceed three years. It is on this basis that this matter was referred on special review by the chief magistrate with a request that the proceedings be set aside since they were not in accordance with justice.
- [3] The matter was further referred to the National Director of Public Prosecutions (NDPP) by the reviewing judge for their comment. The NDPP does not agree with the recommendation by the chief magistrate in that the error does not constitute a miscarriage of justice. The NDPP suggests, as such, that the sentence be set aside and replaced with an appropriate sentence which is R24 000 or three years imprisonment. I am in agreement with the NDPP's recommendation.
- [4] Review proceedings are in essence only a consideration of whether real and substantial justice had been done rather than whether every provision of strict law has been complied with. As it has been said, the function of a review court is to determine whether the proceedings in the lower court were in accordance with justice. The mere fact that some procedural detail may have been overlooked or imperfectly complied with by the trial court does not necessarily entail the consequence that a failure of justice occurred.¹

¹ S v Hlongwa (7326/2001)

- [5] It is, thus, my view that the proceedings in this instance are in accordance with justice. The imperfection in the sentence does not entail the consequences that a failure of justice occurred. The mistake by the trial court in imposing imprisonment for 48 months instead of three years constitutes only an irregularity which can be cured by correcting the sentence. And, except for the mistake the sentence itself is appropriate and should be upheld.
- [6] As this is a technical oversight it is unnecessary to remit this matter to the trial court and instead this court is better positioned to correct such error and reword the sentence appropriately.
- [7] In the circumstances I consider that the following order should issue:

7.1 The conviction is confirmed.

7.2 The sentence imposed on 29 July 2014 is hereby set aside and substituted with the following:

"A fine of Twenty Four Thousand Rand (R24 000) or in default of payment to undergo three (3) years imprisonment.

In terms of section 35(2) of Act 51 of 1977 the counterfeit discs are declared forfeit to the state to be destroyed.

In terms of section 103 of Act 60 of 2000 the accused is declared unfit to possess a firearm."

I concur (and it is so ordered).



E.M. KUBUSHI, J



A.M.L. PHATUDI, J