

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

A286/16.

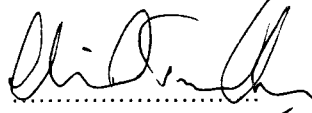
9/5/16.

CASE NO: R75/16

In the matter between:

THE STATE

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
<u>05/05/16</u> DATE		 SIGNATURE

RICHARD NDLOVU

Accused

---

JUDGMENT

---

Tuchten J:

- 1 This matter was submitted for special review by the chief magistrate at Mbombela (Nelspruit). The accused, who was unrepresented, pleaded guilty in the magistrate's court at Mbombela under case no.2595/2015 to a charge, of contravening s 4(b) of the Drugs and Drug Trafficking Act, 140 of 1992. It was alleged that the accused possessed 0,24gm of dagga. The accused was convicted on a plea of guilty and sentenced to 6 months imprisonment, suspended for a period of 18 months on certain conditions.

2       Unfortunately, the proceedings were affected, due to the presiding magistrate's inexperience, by a number of irregularities: the sentence exceeded the court's jurisdiction; it was not established that the plea of guilty was tendered voluntarily; and the rights of the accused regarding appeal and the process of review were not explained to the accused.

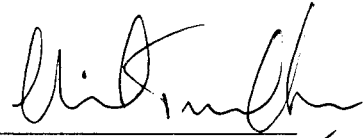
3       The chief magistrate asks that the sentence be set aside and replaced with an appropriate sentence. However, in light of the irregularities, particularly in relation to the tendered plea, I consider that the proper course would be to set aside the entire proceedings and remit them to the court below to start the proceedings afresh before another magistrate.

4       As the facts are clear and the order I intend making is in favour of the accused, I consider it unnecessary to obtain the views of the Director of Public Prosecutions before I dispose of the matter.

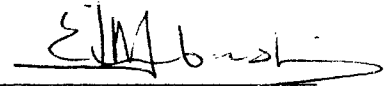
5       I accordingly make the following order:

1       The proceedings in Mbombela case no 2595/2015, S v Richard Ndlovu, are hereby set aside.

- 2 The case is remitted to the Mbombela magistrate's court for trial afresh. The trial must serve before a magistrate other than the magistrate who heard the proceedings which have been set aside pursuant to paragraph 1 of this order.



NB Tuchten  
Judge of the High Court  
5 May 2016



EM Kubushi  
Judge of the High Court  
5 May 2016