

IN THE COURT OF APPEAL OF BOTSWANA  
HELD AT LOBATSE

CRIMINAL APPEAL NO. 9 OF 1994  
HIGH COURT CRIMINAL APPEAL NO [F] 23/93

In the matter between:

SELELO SAME MARAPE

Appellant

vs.

THE STATE

Respondent

Mr. S.S. Mlaudzi for the Appellant  
Mr. C. Gulubane for the Respondent

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## J U D G M E N T

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CORAM: A.N.E. AMISSAH J.P.  
W.H.R. SCHREINER J.A.  
LORD D. BRAND J.A.

LORD BRAND J.A.;

The appellant in this case Same Selelo S. Marape, who was charged along with her daughter in the Selebi Phikwe Administrative District being persons not licensed, authorised under section 3[1] [4] of the Habit Forming Drugs Act, Cap 63:04 had unlawfully in their possession dagga weighing 15kg. After trial the learned Magistrate convicted the appellant of possession of a considerable quantity of dagga. The appellant is a proprietor of the property known as the township, which consists of a number of rooms which she lets out at times. At the end of the day the learned Magistrate convicted her of possession of dagga found in all the rooms which were searched and in which dagga was found. In addition to the dagga found in the rooms which were let out, she was convicted of the dagga found in the hand bag. It is now considered that no satisfactory

evidence for possession of the dagga which was found in the rooms which were let out exists and, according to her, the conviction for the dagga found in the hand bag alone can stand.

In the circumstances the learned Magistrate sentenced the appellant to 2 years' imprisonment which had the effect of activating the previously imposed sentence. As we are restricting the conviction to possession of dagga found in the hand bag, it follows that the appellant now stands to be sentenced on the dagga found in the hand bag alone. It follows that the sentence of 2 years' imposed by the learned Magistrate should be quashed and in substitution therefor we will impose a sentence of 1 year' imprisonment of which 6 months should be suspended for 3 years.

DELIVERED IN OPEN COURT AT LOBATSE THIS 5TH DAY OF JULY, 1994.

*D. Brand*

LORD D. BRAND  
JUDGE OF APPEAL

*A.N.E. Amisae*

A.N.E. AMISSAE  
JUDGE PRESIDENT

I agree

*W.H.R. Schreiner*

W.H.R. SCHREINER  
JUDGE OF APPEAL

I agree