

**FORM A**  
**FILING SHEET FOR EASTERN CAPE JUDGMENT**

ECJ NO: 045/2004

PARTIES: **NENE SAZI VS THE STATE**

REFERENCE NUMBERS -

- Registrar: CA&R 222/04

DATE HEARD: 24 NOVEMBER 2004

DATE DELIVERED: 25 NOVEMBER 2004

JUDGE(S): Pickering and Leach JJ

LEGAL REPRESENTATIVES -

*Appearances:*

- for the Appellant(s): A De Jager
- for the Respondent(s): N Cengani

*Instructing attorneys:*

- Applicant(s)/Appellant(s): LEGAL AID BOARD
- Respondent(s): DPP

CASE INFORMATION -

- *Nature of proceedings* : CRIMINAL APPEAL

**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION)**

**CASE NO: CA & R 222/04**

In the matter between

**NENE SAZI**

**Appellant**

**vs**

**THE STATE**

**Respondent**

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**JUDGMENT**

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**PICKERING J:**

Appellant was charged in the magistrate's court, East London, with the theft of one pair of pants and one skirt valued collectively at R460,00. Despite her plea of not guilty she was convicted as charged and sentenced to undergo 5 months imprisonment. She now appeals against sentence only.

The evidence of one Susan Jones, the manager of Sungirl shop in Vincent Park was to the effect that on 27 October 2003 appellant was found with the two articles of clothing in a bag which she was carrying. She was about to walk out of the shop without paying for the items when she was confronted. She then furnished to the manager a false explanation to the effect that she had purchased the articles the previous Saturday. She was unable, however, to produce any proof of payment therefor.

In her evidence appellant falsely denied that the articles of clothing had been found in her bag.

In mitigation of sentence appellant stated that she was a single mother of two children aged 8 and 6 years respectively. She herself is a first offender aged 31 years. She is apparently self employed as a hawker. The magistrate took these facts into account as well the fact that the two articles of clothing had been recovered. He stated, however, that shop lifting was rife in East London and it had a negative impact on the economic situation. He accordingly sentenced appellant to a direct term of imprisonment of 5 months.

It does appear not from the magistrate's reasons for sentence that he gave any consideration whatsoever to the imposition of a fine or any non-custodial sentence upon appellant.

It is trite that there is no rule which entitles a first offender, in the case of a less serious offence, to a suspended sentence, and which deprives the court of its discretion in the imposition of sentence, merely because he or she is a person with no previous convictions. Furthermore, an appeal court cannot interfere with a sentence imposed by a trial court unless the trial court's discretion was not exercised judicially, that is to say unless the sentence is vitiated by irregularity or misdirection or is so severe that no reasonable court could have imposed it. It has also been held that an over-emphasis of the gravity of the offence at the expense of factors personal to the accused constitutes a misdirection.

Having regard to the principles set out above and having regard in particular to the fact that appellant was a first offender at the age of 31 years of two small children and that the value of the articles stolen by her was only R460,00 I am of the view that the magistrate over-emphasised the gravity of the offence committed by appellant without balancing that consideration properly against the personal circumstances of appellant. In S v Mani, Review case no 2200401323, E.C.D., Jones J stated as follows:

*“The offence was shoplifting. Its prevalence is indeed one of the circumstances to be considered in the imposition of sentence. But it does not override the fundamental principle that to be just the sentences of the courts must fit the crime and the criminal, and must be in the interests of society.”*

In my view, in all the circumstances of this case, appellant should have been afforded the option of a fine. Indeed, Miss Cengani, who appeared for the State at the hearing of the appeal, conceded that the sentence imposed by the magistrate was shockingly inappropriate. I intend to couple that fine with a wholly suspended term of imprisonment which, hopefully, should act as a deterrent to appellant in future.

Accordingly the appeal against sentence succeeds. The sentence imposed by the magistrate is set aside and substituted by the following sentence:

A fine of R500 or 2 months imprisonment. In addition thereto accused is sentenced to a further term of imprisonment of 3 months the whole of which is suspended for 5 years on condition that accused is not convicted of theft or attempted theft committed during the period of suspension.

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**J.D. PICKERING**  
**JUDGE OF THE HIGH COURT**

I agree,

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**L.E. LEACH**  
**JUDGE OF THE HIGH COURT**