

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

**REVIEW REF NO.:214372**

In the matter between

**THE STATE**

**And**

**MDUMISENI DANISO**

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**JUDGMENT**

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**NHLANGULELA, J.:**

[1] Convicted as charged with possession of dagga the magistrate of Herschell, sitting in Sterkspruit, imposed a sentence of four years imprisonment, of which half was suspended for five years on certain conditions. Further, the magistrate made the order as follows :

“ Accused is declared unfit to possess a firearm in terms of  
s103 (1) [of Act 60 of 2000].”

[2] When the matter came before this court on automatic review Ndengezi, AJ raised a query in the following terms :

- “ 1. Accused pleaded guilty to possession of dagga and was found guilty accordingly on his plea of guilty.
2. Accused was declared unfit to possess a firearm. Why was this done since he was not charged with possession or use of a firearm?.”

To this query the magistrate replied :

“ It is indeed correct that accused was not charged with possession or use of a firearm. The accused in this case was charged of dealing in drugs, alternatively possession of dagga. He was then convicted on the alternative count after questioned (sic) in terms of Section 112 (1) (b) of CPA. He was sentenced to undergo (4) four years imprisonment half of which was suspended for (5) five years on usual appropriate conditions. I made a mistake when I declared him unfit to possess a firearm in terms of Section 103 (1) of the firearm control Act 60/2000. The conviction on the alternative count of possession

of dagga does not place the matter within the purview of the provisions of Section 103 (1) (k). it is an offence involving dealing in drugs which falls within the ambit of Section 103 (1) (k). This error is highly regretted and noted for the future.”

[3] I find that the conviction for possession of dagga is in accordance with justice. As indicated by Ndengezi, AJ in the query, it cannot be said that the sentence is in order. That much has also been conceded by the magistrate.

[4] With regard to the imposed sentence the magistrate clearly misapplied the provisions of s 103 (1) of the Firearms Control Act 60 of 2000 because the accused was not convicted of a crime of dealing in dagga as envisaged in s 103 (1) (k) of Act 60 of 2000. A court convicting a person of possession of dagga is not vested with power under s 103 of Act 60 of 2000 to declare such person unfit to possess a firearm. In that event it was not competent for the magistrate in this case to make the order declaring the accused unfit to possess a firearm. Such an order falls to be set aside.

[5] In the result the following order shall issue :

1. The conviction is confirmed.
2. The sentence is set aside in its entirety and replaced with the following sentence; ante-dated to 04/08/2008:

“ To undergo four (4) years imprisonment, of which half is suspended for five (5) years on condition that the accused is not convicted of possession of dagga committed during the period of suspension.”

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Z. M. NHLANGULELA

JUDGE OF THE HIGH COURT

I agree : PAKADE, J

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L. P. PAKADE

JUDGE OF THE HIGH COURT