

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Review No. : 179/2014

In the review between:-

THE STATE

versus

SELEKE MOHOLO

Accused 1

DAVID MOLALE

Accused 2

CORAM:

RAMPAI, AJP *et* JORDAAN, J

JUDGMENT BY:

JORDAAN, J

DELIVERED ON:

9 OCTOBER 2014

- [1] In this matter the two accused were charged with possession of suspected stolen property in contravention of section 36 of Act 62 of 1955. They were not legally represented and pleaded guilty after which they were convicted and sentenced to a fine of R1 000,00 or 2 (two) months imprisonment wholly suspended for a period of three years on condition that they are not convicted of contravention of Act 62 of 1955 committed during the period of suspension. The senior magistrate of Welkom referred this matter to court for a special review in terms of section 304(4) of the Criminal Procedure Act, No 51 of 1977.

- [2] The learned magistrate remarks that the record of the proceedings appears to be unavailable and could not be found despite various attempts to obtain the original or copies of the record. He was also not able to obtain a reconstruction of the court proceedings.
- [3] The magistrate then remarks that it is not clear whether the conviction was brought forward by applying section 112(1)(a) or 112(1)(b) of the Criminal Procedure Act, 51 of 1977 and also remarks that the suspension condition is vague, wide and non-specific to the prejudice of the accused.
- [4] All that is available concerning the record is the J15 in which it appears that the accused pleaded guilty and were convicted accordingly.
- [5] Since it appears that the record is not available, it is impossible to find whether the record is in order and whether the accused were properly convicted and sentenced. As regard the sentence, it is of course clear that the suspending conditions is too wide and cannot be sustained in the form that it was given by the trial magistrate.
- [6] In view of the above it is clear that it is unknown and cannot be ascertained whether the accused did have a fair trial or not.
- [7] In the result the conviction and sentences in regard to both accused have to be set aside.

- [8] In conclusion the convictions and sentences of both accused are set aside.

A.F. JORDAAN, J

I concur.

M.H. RAMPAL, AJP

/spietense