

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

REFERENCE NUMBER: JHS 2002/0004

Magistrates ref. no: C1439/2001 (KEMPTON PARK)

High Court Review No:1481/2001

Magistrate's Serial No:101/2001

DATE:01/02/2002

THE STATE

versus

TEMBELANI THEOPHILUS MABONA

Accused

REVIEW JUDGMENT

WILLIS J:

This case was originally referred to my brother Heher J on 6th December, 2001 for special review in terms of Section 304 (4) of the Criminal Procedure Act No. 51 of 1977, as amended. He is currently acting in the Supreme Court of Appeal.

The accused, 33 years old, was charged in the Kempton Park Magistrate's Court with contravening Section 22 of the Aviation Act No. 72 of 1962. (Unlawfully handling

baggage at an airport without the permission of the owner.) He pleaded guilty and was duly questioned in terms of section 112 of the Criminal Procedure Act No. 51 of 1977, as amended.

He was found guilty as charged, his plea of guilty having been accepted in terms of Section 112 (1) (a) of the Criminal Procedure Act. I am satisfied that the accused was fairly and correctly convicted.

The learned magistrate sentenced the accused to three months' imprisonment wholly suspended for three years on condition that he was not convicted on a charge of contravening Regulation 139.01.31 promulgated in terms of Section 22 of the Aviation Act.

Thereafter, the sentence was identified as having been incompetent as it did not provide for the option of a fine.

Heher J sought the views of the Director of Public Prosecutions who has drawn it to our attention that in terms of Government Notice R1410 in *Government Gazette* 19435 of 30th October, 1998 a fine of up to R1500 may be imposed for this offence.

The learned magistrate has recommended that the sentence be amended to read:

“**Fined R1500** or three months imprisonment, wholly suspended for three years on condition that the accused is not convicted of contravening Regulation 139.01.31(2)(j) promulgated in terms of Section 22 of the Aviation Act.”

The Director of Public Prosecutions supports the amended sentence proposed by the learned magistrate.

I am pleased to agree with the views of both the learned magistrate and the Director of Public Prosecutions in this matter.

The following order is made:

(1) The conviction is confirmed;

(2) The sentence is altered to read:

“ The accused is sentenced by his being given the option of paying a fine of R1500 (one thousand, five hundred rand) or serving three months’ imprisonment, which sentence is wholly suspended for three years on condition that the accused is not convicted of contravening Regulation 139.01.31(2)(j) promulgated in terms of Section 22 of the Aviation Act.”

DATED AT JOHANNESBURG THIS 1st DAY OF FEBRUARY, 2002.

**N.P. WILLIS
JUDGE OF THE HIGH COURT**

I agree.

M.M. JOFFE
JUDGE OF THE HIGH COURT