

CA NO.: 46/2004

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(BOPHUTHATSWANA PROVINCIAL DIVISION)**

In the matter between:

**THE STATE**

**VS**

**MOLEFI JACOB MODISE**

**REVIEW**

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**JUDGMENT**

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**HENDRICKS J:**

The accused was convicted in the Magistrate Court Mogwase on a charge of housebreaking with intent to steal and theft flowing from his guilty plea. He was sentenced to R6000-00 or 8 months imprisonment which is wholly suspended for a period of 5 years on condition that he is not again convicted of housebreaking with intent to steal and theft committed during the period of suspension.

This matter first came on review before my sister Leeuw J who queried why such an excessive sentence was imposed on the accused.

In mitigation of sentence the accused stated that he is unemployed and he will therefore not be in a position to pay a fine. It is clear from the evidence that all the goods were recovered and the complainant did not suffer any loss.

The Learned Magistrate furthermore wanted to keep the accused out of prison but at the same time deter not only the accused but also other would-be offenders, that is why he imposed such a severe sentence.

I am of the view that the sentence imposed is excessive, harsh and totally out of proportion with the crime committed. I am of the view that although the sentence imposed is wholly suspended, it may adversely affect the accused in the future. The term of suspension is also very long.

In the result, I am of the view that the sentence imposed should be set aside and substituted with a more appropriate sentence.

Therefore it is ordered:-

1. That the conviction of the accused is confirmed.

2. That the sentence imposed is set aside and substituted with the following:-

“R2000-00 or three months imprisonment which is wholly suspended for three years on condition that the accused is not convicted of housebreaking with intent to steal and theft committed during the period of suspension”.

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**R.D. HENDRICKS**

**JUDGE OF THE HIGH COURT**

I agree

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**SAMKELO GURA**  
**ACTING JUDGE OF THE HIGH COURT**

**DATED: 01 APRIL 2004**