

CA NO: 18/06

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

In the matter between:

THE STATE

and

TEFO MOSES MOSEKI

REVIEW JUDGMENT

HENDRICKS J:

[1] The accused Tefo Moses Moseki was charged with contravening the provisions of Section 34(1)(b) read with Section 1 of the South African Reserve Bank Act 90 of 1989 and further read with Section 2 of the Prevention of Counterfeiting of Currency Act 16 of 1965 (to wit tendering of counterfeit money), in that he unlawfully tendered a forged R200-00 note. He was convicted and sentenced to five (5) years imprisonment.

[2] This matter came as an automatic review before my sister

Tlhapi AJ (as she then was). She queried as to whether the South African Reserve Bank Act, Act 90 of 1989 conferred jurisdiction on a Magistrate Court to impose a sentence in excess of the limits as conferred by the Magistrate's Court Act 32 of 1944.

[3] In response to this query, the Magistrate states:-

“Pursuant to receiving the query from the learned Judge, I set out to look into the provisions of both the South African Reserve Bank Act 90 of 1989 and prevention of counterfeiting of Currency Act 16 of 1965 together with their subsequent amendments.

Consequently I agree with the purport of the learned reviewing Judge's query.

Both the above acts and their respective amendments do not give the Magistrate's Court increased Jurisdiction.

I humbly submit that I erred in giving the accused the sentence I have meted out to him.”

[4] I am in full agreement with the concession made by the Magistrate which in my view is a concession well made.

[5] The penalty for contravention of Section 34(1)(b) is imprisonment for a period not exceeding fifteen (15) years. However, in terms of Section 92(1)(a) of the Magistrate's Court Act 32 of 1944 the penal jurisdiction of a Magistrate is limited to three (3) years. It is therefore obvious that the Magistrate erred in imposing the sentence of five (5) years imprisonment which exceeds the penal jurisdiction.

[6] Having regard to the personal circumstances of the accused and especially the fact that he has four (4) relevant previous

convictions – three (3) of theft and one (1) of possession of suspected stolen property – committed between 1998 and 2004; the seriousness of the offence and the amount of the forged note that was presented, I am of the view that a direct term of imprisonment will be appropriate.

[7] The Magistrate suggested that a term of imprisonment of three (3) years be imposed. I am of the view that such a sentence will be excessive, if a portion thereof is not suspended.

[8] In the result, I make the following order:-

[i] The conviction is confirmed.

[ii] The sentence is set aside and substituted with the following:-

“Three (3) years imprisonment of which half is suspended for a period of three (3) years on condition that the accused is not again convicted of an offence of which dishonesty is an element, committed during the period of suspension”

R D HENDRICKS

JUDGE OF THE HIGH COURT

I agree.

A A LANDMAN

JUDGE OF THE HIGH COURT

16 MARCH 2006