

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

In the matter between:-

**THE STATE**

**and**

**SIYABONGA NJIKELANA**

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**REVIEW JUDGMENT**

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**MOTSOMANE AJ**

[1] This matter was initially placed before my brother Justice Gura who raised a Query about:-

[i] Offence written on J4 i.e. Housebreaking with intent to steal and theft.

[ii] The use of the phrase “any offence” in a suspended sentence and inclusion of theft.

[2] The learned Magistrate answered to the Query by rectifying the J4 and giving reasons for the use of phrase “any offence”

and theft. He also indicated his disagreement with the concern of my brother Justice Gura.

[3] I share the same sentiments with my brother Gura that the phrase “any offence” is too broad to mean “all offences” unless if there could be an offence which could not be committed while under the influence of liquor.

[4] The inclusion of the crime of theft is also with respect not necessary if the suspended sentence is aimed at curbing offences committed while under the influence of liquor.

[5] Under these circumstances, the sentence imposed by the learned Magistrate is set aside and substituted with the following:-

“R3 600 or six (6) months imprisonment which is wholly suspended for a period of three (3) years on condition that the accused is not convicted of C/Sec 1(1) r/w Sec 1(2) of Act 1 of 1988 committed during the period of suspension.”

**R H MOTSOMANE**  
ACTING JUDGE OF THE HIGH COURT  
11 OCTOBER 2007