

In the matter of

ALICE MAGAGULA

vs

THE KING

CORAM

F. X. ROONEY

FOR THE CROWN
FOR APPELLANT

SIMELANE
MTHEMBU

JUDGMENT

7 JUNE, 1989

Rooney, J.

The appellant in this case, and another woman called Pauline Dlamini who has not appealed were both convicted of the offence of cultivating dagga contrary to section 8 of the Opium and Habit Forming Drugs Act 1922 in the Magistrate's Court at Piggs Peak by Mr A. P. Cele and each sentenced to 4 years imprisonment.

Although the appellant pleaded not guilty at her trial, this is an appeal against sentence only.

Evidence was led that on the 20th December 1988 police officers attached to the Drug Squad found the accused uprooting plants in a field of dagga. The field was "as big as two standard sized football pitches". The police counted 9,705 dagga plants. There may have been more on this large plantation.

The appellant did not deny her presence at the scene. She said that she had been asked by Pauline Dlamini to assist her in transplanting the dagga plants. Pauline is her sister-in-law whom the appellant described as poverty stricken. She knew that she was engaged in an illegal activity.

The appellant said that the dagga did not belong to her, but, she did expect a financial reward when the dagga was eventually sold. Her main contention was that she was not as blameworthy as her sister-in-law and

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should be treated with more leniency.

Pauline Dlamini who pleaded guilty is entitled to have her sentence reviewed by this Court. She offered as her only excuse that she was a widow with four children to support and that her poverty decided that she should "cheat the king"

I have no idea of the value of the crop cultivated on this land, but, I am satisfied that had the plantation not been detected, Pauline Dlamini, would have been raised from rags to riches in a remarkably short time.

I have read the unreported judgment of Hannah C. J. in R.C. 223/86, The King v. Boy Phiri. This sets

out the guidelines which should be followed by magistrates in the sentencing of persons convicted of offences under section 8 of the Opium and Habit Forming Drugs Act. The learned Chief Justice said that in the case of wholesale suppliers -"This offender should be regarded as standing at the top end of the sentencing scale. He is the person who is cultivating or in possession for the purpose of widespread distribution to a number of retail outlets. Where the court is satisfied that this is the purpose and the operation is being conducted on a large scale, the sentence should be at or near the maximum even in the case of a first offender."

While it is likely that Pauline Dlamini did not undertake this enterprise alone and unaided, she must be regarded as a prime cultivator out to amass a small fortune. The public interests demands that people like her should be severely punished as a warning to others. The magistrate exercised a discretion in the matter which it would be improper to interfere with on review.

It was submitted that the appellant was entitled to more sympathetic treatment as she was not the owner of the land upon which the plants were cultivated and only came into the matter as a result of a request for assistance from her sister-in-law. If that is the case she is nonetheless a socius criminis or partner in a crime. Under the Roman Dutch law she is as guilty and liable to as much punishment as if she had been the actual perpetrator of the deed. (R. Peekhan and Lalloo

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1906 T.S. 798 per Innes CJ. at 802). That view was expressly confirmed by the Privy Council in R. v Mapholisa 1965 (3) S.A. 578.

It does not, of course follow that a court is bound to award the same penalty to all the perpetrators of a crime. Their personal circumstances and the degree of participation must be taken into account in assessing the appropriate punishment.

While the magistrate was entitled to take a serious view of the offence he ought to have taken into account in favour of the appellant that all that was proved against her was her participation in the cultivation of dagga on one day only. The dagga had been planted same time before.

Accordingly I set aside her sentence and substitute a term of 2 years imprisonment, one year of which is suspended for 3 years on condition that she is not convicted of any offence under the Opium and Habit Forming Drugs Act committed during the period of the suspension.

I certify under review that the proceedings against Pauline Dlamini were in accordance with real and substantial justice.

F. X. ROONEY
JUDGE