



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Review Case No.60/14

In the matter between:

THE KING

Applicant

vs

THEMBI MNISI

Respondent

Neutral citation: *The King vs Thembi Mnisi (60/2014) [2014] SZHC 345 (22nd September 2014)*

Coram: **MAMBA J**

Heard: 19 September 2014

Delivered: 19 September 2014

Summary: [1] *Criminal law – sentence on a conviction of contravening section 12(1) of the **Pharmacy Act 37 of 1929**. The jurisdiction of a Senior Magistrate is unless otherwise provided by any other law, limited to a term of imprisonment*

*not exceeding ten years, as per section 72(1) of the **Magistrates Court Act 66 of 1938 (as amended)**.*

*[2] Criminal law & procedure – sentence. Accused convicted of contravention of section 12(1) (a) of the **Pharmacy Act 37 of 1929** and sentenced by a Senior Magistrate to pay a fine of E15,000.00 failing which to undergo imprisonment for a period of 15 years. Sentence beyond jurisdiction of Senior Magistrate and quashed.*

JUDGMENT

- [1] This matter has come before me on automatic review.
- [2] The accused, who was represented by counsel, appeared before the Piggs Peak, Senior Magistrate on 05 May 2014 on a charge of contravening section 12(1) (a) (i) of the **Pharmacy Act 37 of 1929 (as amended)**. It was alleged that she had been found in unlawful possession of 34kg of dagga which is a potentially harmful drug. She was also charged under the **Opium & Habit Forming Drugs Act 37 of 1922** in that she had unlawfully cultivated 520 plants of dagga within her premises in contravention of section 2(1) (b) of the Act.

- [3] On arraignment, she pleaded guilty to both counts. In support of its case, the Crown led the evidence of one of the investigating police officers. His evidence was not disputed by the defence and in my judgment amply justified her subsequent conviction on both counts. She closed her case without leading any evidence.
- [4] On the first count, the accused was sentenced to pay a fine of E15,000.00 failing which to undergo a period of 15 years imprisonment. One fifth of the sentence was conditionally suspended for a period of 3 years. On the second count she was ordered to pay a fine of E2,000.00 or undergo imprisonment for 2 years, in default of payment of that fine.
- [5] The conviction of the accused appears to have been in order, and so is the sentence that was imposed on her in respect of the second count. However, the sentence imposed on her by the learned Magistrate on the first count is clearly irregular.
- [6] In terms of section 72(1) (II) (b) of the **Magistrate's Court Act 66 of 1938 (as amended)**, a Senior Magistrate may only impose a term of imprisonment for a period not exceeding ten years and an ordinary Magistrate, i.e. a Magistrates Court lower than a Senior Magistrate, may

not impose a sentence of imprisonment for a period exceeding seven years. Clearly therefore, the sentence of 15 years was beyond the jurisdiction of the learned Magistrate; whether he was an ordinary Magistrate or Senior Magistrate at the time in question. I have not been able to find any provision in the **Pharmacy Act 37 of 1929** that permits a Magistrate or Senior Magistrate to go beyond his sentencing jurisdiction as laid down in section 72 of the **Magistrate's Court Act 66 of 1938** and act as the Magistrate did herein.

Vide: R v Themba Mkhontfo, Review Case 36/10, delivered on 16 December 2010.

[7] In the result, the following order is made:

- (a) The conviction of the accused on both counts is confirmed.
- (b) The sentence imposed on the accused on the second count is confirmed.
- (c) The sentence imposed on the accused on the first count is hereby set aside and the matter is remitted to the court **a quo** for the learned Magistrate to pass sentence anew on that count.

MAMBA J