

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**



REFERENCE NUMBER:

**Magistrate's review. no: 47/05 (Westonaria)
Westonaria serial number A60/05**

THE STATE

versus

**MICHAEL MCHUNU
Accused**

REVIEW JUDGMENT

WILLIS J:

The accused was charged with contravening section 4(B) of Act 140 of 1992 – possession of dagga.

He was convicted and sentence to a fine of R2000 (two thousand) rand or 12 (twelve) months' imprisonment of which R1000 (one thousand) or 6 (six) months was suspended for a period of 5 (five) years on condition that the accused is not found guilty of section 5(b) or 4 (B) of Act 140 of 1992 committed during the period of suspension. The dagga was declared forfeited to the State. The learned magistrate was Mrs F.B. Khan. The sentence was imposed on 25th May, 2005.

It would appear that the matter was referred to the High Court for automatic review. It is not clear whether the matter was ever reviewed.

It would appear from statements filed by Mrs C.M. Van Heerden, the Acting Head of the Court at Westonaria and Ms L. Daniel, the clerk of the court that despite numerous attempts to follow up the matter, the record of the proceedings has been lost.

The only way in which the matter can now be regularized is to set aside the conviction and sentence of the accused.

The following order is made:

The conviction and sentence of the accused are set aside.

DATED AT JOHANNESBURG THIS 28th DAY OF JULY, 2009.

N.P. WILLIS
JUDGE OF THE HIGH COURT

I agree.

F.H.D. VAN OOSTEN
JUDGE OF THE HIGH COURT