


## REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA,  
GAUTENG LOCAL DIVISION,  
JOHANNESBURG

HIGH COURT REF. NO: 68/14  
MAGISTRATE'S SERIAL NO: 10/14  
CASE NO: 5/0278/2014

(1)	REPORTABLE: YES / <u>NO</u>
(2)	OF INTEREST TO OTHER JUDGES: YES / <u>NO</u>
(3)	REVISED: <u>✓</u>
<u>4.6.14</u> ..... DATE	
 ..... SIGNATURE	

In the matter between:

**THE STATE**

and

**EKENIA MUFPEKI**

**ACCUSED**

---

**REVIEW JUDGMENT**

---

**WRIGHT J**

1. This case came before me on 3 June 2014 at the request of Acting Senior Magistrate J Kassie-Persutam. The concern is the propriety of the proceedings before a different Magistrate.

2. Ms Mufpeki is a woman in her early thirties. She is unmarried but has two young children. She is from Zimbabwe and earned unspecified, presumably small, amounts of money doing piece jobs. Presently her two young children live with her parents in Zimbabwe.
3. Ms Mufpeki was arrested on 17 January 2014 and charged with theft. She pleaded guilty and was found guilty on her plea and a written statement signed by her. She was legally represented throughout. She had shoplifted 22 items of clothing with a value R5 447.45 on a single occasion from a large chain store. From the time of her arrest on 17 January 2014 to the date of her sentencing on 29 January 2014 she was in custody, that is for twelve days.
4. The State proved no previous convictions. Ms Mufpeki was sentenced to 3 years' imprisonment. In my view the sentence is so severe that it induces a sense of shock.
5. During judgment on sentence the trial Magistrate made the following remarks:  
*"But I want to place it on record that this Court it is aware of the fact that some foreign nationals, Zimbabwean, Mozambique and so on, Botswana, there is no crime in their country they do not commit a crime in Zimbabwean because the conditions in jail in Zimbabwean are not favourable. If your family does not bring you food in Zimbabwe you will starve to death."*
6. What is meant by these words is unclear. In my view they constitute a misdirection seeing that the trial Magistrate seems to have used these words against Ms Mufpeki.
7. The Magistrate also said *"Whether you have got a previous convictions or not the sentence that I am going to give you is normally the sentence that I give it to people who have committed this type of an offence."* This constitutes a misdirection. The Magistrate should not have lumped together offenders with previous convictions and Ms Mufpeki.
8. Given the three misdirections to which I have referred, I am at liberty to impose sentence afresh. I accept the Magistrate's finding that shoplifting is a prevalent offence. Against Ms Mufpeki is the fact that she stole as many as 22 items of clothing. The total value of over R5 000 is not insignificant. However,

she is to be treated as first offender who battles financially to support herself and her two young children. The stolen items were recovered by the store.

9. A sentence of 18 months imprisonment suspended for 5 years on condition that Ms Mufpeki is not found guilty of an offence of which dishonesty is an element committed during the period of suspension is in my view appropriate in the circumstances of this case.
10. Under Section 103(1)(g) of the Firearms Control Act 60 of 2000 a person found guilty of an offence involving dishonesty for which the person is sentenced to a period of imprisonment without the option of a fine becomes unfit to possess a firearm unless the court determines otherwise. The trial Magistrate declared Ms Mufpeki unfit to possess a firearm. In view of the sentence I propose to impose, Section 103 does not apply and it follows that the order made under this section must be set aside.
11. I would make the following order.

**Order**

1. The sentence of 3 years imprisonment is set aside and substituted with 18 months' imprisonment suspended for 5 years on condition that Ms Mufpeki is not found guilty of an offence of which dishonesty is an element committed during the period of suspension.
2. The order declaring Ms Mufpeki unfit to possess a firearm is set aside.



**VAN OOSTEN J**

I agree