

A627/2012

IN THE HIGH COURT OF SOUTH AFRICA  
(NORTH GAUTENG HIGH COURT, PRETORIA)

4/9/2012  
Date: ~~15 August 2012~~

Supreme Court Ref: 474

Magistrate's Serial No: 05/2012

Review Case No: 05/2012

In the matter between:

THE STATE

and

ISAAC SEBONE

Respondent

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: ~~YES~~/NO.

(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO.

(3) REVISED.

15/08/2012  
DATE

SIGNATURE

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REVIEW JUDGMENT

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MNGQIBISA-THUSI J.:

- [1] The accused was charged and pleaded guilty to contravention of section 38(1)(b) read with section 38(2) of the Limpopo Environmental Management Act 7 of 2003 ("the Act"), in the Mokopane (Potgietersrus) Magistrates Court.
- [2] On 19 January 2012 he was convicted on the basis of his plea. However, before the proceedings on sentence could start, the presiding officer, acting senior Magistrate, Mr A P Van Der Kooi, realised that in his statement in terms of section 112(2) of the Criminal procedure Act 51 of 1977, the accused had admitted to knocking down a protected species using tractor, such offence is not covered by section 38(1)(b) on which he


was charged and convicted, but falls squarely within the provisions of section 31(1)(a) of the Act, which does not require the use of any device in the hunting. Section 38(1)(a) reads as follows:

"31. Hunting of wild and alien animals.- (1) No person may without a permit hunt-  
(a) Specially protected wild animals."


[3] Having read the record and having considered the matter, I am satisfied that the accused was charged and convicted on an incorrect section of the Act and that his conviction on the basis of 38(1)(b) should be set aside.

[4] Accordingly I would recommend that the following order be made:

"The conviction of the accused on 19 January 2012 is hereby set-aside."

  
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N.P. MNGQIBISA-THUSI  
JUDGE OF THE HIGH COURT  
NORTH GAUTENG HIGH COURT

I agree and it is so ordered

  
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N.M. MAYUNDLA  
JUDGE OF THE HIGH COURT  
NORTH GAUTENG HIGH COURT