



**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, PRETORIA**

A349/2016  
20/5/2016

**DELETE WHICHEVER IS NOT APPLICABLE**

- (1) REPORTABLE: ~~YES~~/NO  
(2) OF INTEREST TO OTHER JUDGES: ~~YES~~/NO  
(3) REVISED ✓

DATE: 24/5/2016

SIGNATURE: [Signature]

**HIGH COURT REF. NO. 173/2016**

**CASE SERIAL NO. A1111/2015**

**REVIEW CASE NO. 18/2015**

In the matter between

**THE STATE**

and

**THEMBEKILE TSHABALALA**

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**REVIEW JUDGMENT**

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**VORSTER AJ**

1. This is a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977.
2. The accused was convicted of a charge fraud in the district court of Benoni and sentenced to two years imprisonment wholly suspended for two years.
3. In terms of section 297(1)(b) of Act 51 of 1977 a sentence may be wholly or partly suspended for a period not exceeding five years on conditions referred to in section 297(1)(a)(i).
4. The sentence in this case was suspended unconditionally, which is clearly irregular. It should read "*2 years imprisonment wholly suspended for 5 years on condition that the accused is not convicted of fraud or any attempt thereto, which offence is committed during the time of suspension*".
5. Consequently the sentence is set aside and replaced with a sentence of two years imprisonment, wholly suspended for five years on condition that the accused is not convicted of fraud or any attempt thereto, which offence is committed during the time of suspension.



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VORSTER AJ

JUDGE OF THE HIGH COURT

I agree

A handwritten signature in black ink, appearing to be 'P. de V.' followed by a long, sweeping horizontal stroke.

**VAN NIEKERK AJ**

**JUDGE OF THE HIGH COURT**