

REPUBLIC OF SOUTH AFRICA**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

*A181/2016.
7/4/16.*

DATE: 23 March 2016**CASE NO: A447****HIGH COURT REF NO: 457/15****MAGISTRATE SERIAL NO: 16/15****REVIEW NO: MR/22/2015****In the matter between:****THE STATE****And****PATRICK INNOCENTIA TSELA****ACCUSED**

SPECIAL REVIEW JUDGMENT

TEFFO J

1] The accused was arrested on 6 August 2015 at or near Oshoek Port of Entry by members of the South African Defence Force. He was subsequently taken to the Hartebeespoort police station where the bag that he was carrying at the time of his arrest was searched and dagga, which weighed 1,17 kilograms, was found inside it.

2] He stood trial at the Eerstehoek Magistrate's Court where he faced a charge of dealing in dagga and or possession thereof.

3] He pleaded guilty and an enquiry in terms of **S112 (b) of Act 51 of 1977** was held. He admitted to possession of dagga and the quantity thereof. The magistrate surprisingly convicted him of dealing in dagga in contravention of **Section 5(a) and (b) read with sections 1, 13, 17, 25 and 64 of the Drugs and Trafficking Act 140 of 1992**. He was eventually sentenced to three months imprisonment which sentence was wholly suspended for a period of three years on condition that he is not convicted of dealing in dagga, which offence, is committed during the period of suspension. The accused was further sentenced to pay a fine of R1500,00 or serve a period of one month imprisonment.

4] The magistrate misdirected himself by convicting the accused of dealing in dagga while the evidence on record only proved possession of dagga.

5] Under the circumstances I am of the view that the conviction of the accused of the offence of dealing in dagga should be set aside and be replaced with a conviction on possession of dagga.

6] In the light of the information received from the clerk of the Magistrate's Court that the accused has already served a sentence of one month imprisonment, I am inclined to confirm the sentence imposed by the Magistrate Court.

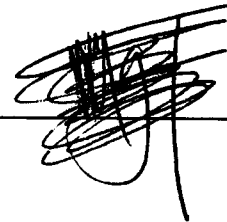
7] In the result I make the following order:

7.1 The conviction of the accused on the offence of dealing in dagga in contravention of **Section 5(a) and (b) of Act 140 of 1992** is set aside.

7.2 The accused is convicted of the offence of possession of dagga in contravention of **Section 5(a) and (b) of Act 140 of 1992**.

7.3 The sentence imposed by the magistrate court is confirmed.

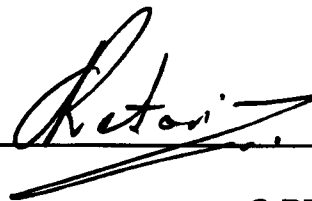
7.4 As part of the condition of his suspended sentence, the accused should also not be found guilty of possession of dagga.



M J TEFFO

JUDGE OF THE HIGH COURT

I agree



C PRETORIUS

JUDGE OF THE HIGH COURT