REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

CASE NO: 56633/2021

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

Date: 6 June 2022 E van der Schyff

In the matter between:

TONSIN TIMILEHIN OJUAWO	APPLICANT
AND	
THE STATE	FIRST RESPONDENT
THE MINISTER OF POLICE	SECOND RESPONDENT

JUDGMENT

Van der Schyff J

[1] The applicant, Mr. Ojuawo, is a Nigerian citizen. He was arrested on 13 May 2018 on a charge of being in possession of dagga in contravention of section 4 of the Drugs and Drugs Trafficking Act 140 of 1992. The vehicle he was driving was

stopped by two police officers, who, after conducting a search, found dagga in the back of the car. Mr. Ojuawo avers the dagga was found in a passenger's purse but according to the police statement attached as annexure D to the founding affidavit a plastic bag containing dagga was found on the floor behind the driver's seat. one of the passengers in the vehicle, and a second packet of dagga was found in a red handbag belonging to a passenger. Mr. Ojuawo was arrested and transported to the Sunnyside Police Station where he was charged as stated.

[2] Mr. Ojuawo avers that he was interviewed by an unknown police official whom he informed that he did not agree with the charges. This averment corresponds with the content of the 'Statement by Suspect' that is attached to the founding affidavit. Mr. Ojuawo states that he was issued with a fine of R300 at the Sunnyside Police Station. He claims that it was never explained to him that by signing the admission of guilt fine he would receive a criminal record. If he knew that he would acquire a criminal record, he would not have paid the fine but 'appeared on the date stipulated on the fine'. He claims that his constitutional rights were compromised by the arresting officers and the police officers who charged him and who did not explain the consequences that would flow from paying a R300 admission of guilt fine.

[3] Mr. Ojuawo approaches the court more than three years after the admission of guilt fine was paid. He states that he applied for police clearance during November 2020 to have his visa renewed. He was, however, informed that he has a criminal record in that he was convicted of possession of dagga and fined R300 at the Sunnyside Police Station.

[4] Despite the citation in the head of the notice of motion, the first respondent is described in the founding affidavit as the National Director of Public Prosecutions (the NDPP). The Minister of Police (the Minister) is the second respondent.

[5] The application is ostensibly brought in terms of s 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA). This section provides as follows:

> '(4) If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms

of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.'

[6] It is apposite to mention at this point that Mr. Ojuawo's explanation as to what he was informed by one Constable Kgatla, that motivated him to accept the admission of guilt fine, contains a number of inherent contradictions. On the one hand Mr. Ojuawo states that he was informed that if the matter was escalated to a trial, he would have to pay an exorbitant amount towards legal fees for representation. It would thus be better to simply pay R300.00 and be released immediately. On the other hand, he avers that he was informed that the R300.00 admission of guilt fine constituted payment of bail money. And then, he states that he was also informed that the failure to pay the R300.00 fine would have made him stay 'in the filthy Sunnyside SAPS cells for 48 hours' and he would only appear in Court on Tuesday 15 May 2018 where the Magistrate would commit him to Kgosi Mampuru Prison since he would have to apply for a Legal Aid representative before the actual date of trial.

[7] Mr. Ojuawo avers that the police officials did not inform him that he was waiving his constitutional right to contest the allegation of possession of dagga in an open court. I find this allegation unconvincing in light of Mr. Ojuawo's contention that he was informed that if he did not pay the admission of guilt fine he would have to pay attorneys to represent him in court. The founding affidavit indicates that he was aware of the fact that a choice existed between paying the admission of guilt fine, or a hearing in open court. He also avers that the police officials did not inform or warn him that he was waiving his constitutional right to legal representation. Again, this averment flies in the face of his previous averment that he was informed that attorneys' fees may amount to twenty thousand rand or more if he chose to defend himself against the charge in open court.

[8] Mr. Ojuawo avers that the Magistrate who concluded that his conviction was based on the admission of guilt fine misdirected him- or herself on several grounds. The magistrate is, however, not cited as a party to these review proceedings.

[9] The second respondent points out in the answering affidavit that it is common cause that the admission of guilt, signed by Mr. Ojuawo states clearly:

> 'I hereby acknowledge that I'm guilty of an offence set out in the notice and that by paying the admission of guilt I will be deemed to have been convicted in a court of the offence without having appeared in court, having had the benefit of facing my accuser, having had legal representation or having exercised my right to call a witness in open court, and that the conviction may be recorded as a previous conviction against my name and appear in the criminal record.'

[10] The J534 form signed by Mr. Ojuawo was not uploaded to Caselines. I invited both parties to file supplementary heads of argument on the fact that no J534 formed part of the documents before the court. Counsel for the second respondent submits in supplementary heads that it was agreed between the parties during the pre-trial held on 26 August 2022 that Mr. Ojuawo signed the admission of guilt. The admission of guilt forms part of the J534.

[11] I agree with the second respondent that Mr. Ojuawo failed to make out a case that he paid the admission of guilt fine in ignorance and wished to defend himself in court. He also failed to make out a case that he merely paid the fine, without considering the consequences because he wanted at all costs to be released from the police station. A trial date is provided in the J534 and Mr. Ojuawo could have decided not to pay the admission of guilt fine and to attend court. As stated above he provides different reasons for paying the admission of guilt fine that cannot co-exist.

[12] No reason exists not to order that costs follow the result.

ORDER

In the result, the following order is granted:

1. **The review application is dismissed with costs.**

E van der Schyff
Judge of the High Court

Delivered: This judgement is handed down electronically by uploading it to the electronic file of this matter on CaseLines. As a courtesy gesture, it will be sent to the parties/their legal representatives by email.

Counsel for the applicant:	Adv. L Maake
Instructed by:	Makota Attorneys
For the second respondent:	Adv. F Q Sathekge
Instructed by:	State-Attorney
Date of the hearing:	16 May 2022
Supplementary heads filed:	3 June 2022
Date of judgment:	6 June 2022