**IN THE HIGH COURT OF SOUTH AFRICA**

**(WESTERN CAPE HIGH COURT, CAPE TOWN)**

CASE NUMBER: A593/2010

DATE: 16 SEPTEMBER 2011

In the matter between:

**ZUKO DANISO** 1st Appellant

**NOKWANDA NTSAPO** 2nd Appellant

and

**THE STATE** Respondent

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**J U D G M E N T**

**VELDHUIZEN, J**:

The appellants were convicted in the Regional Court, Mossel Bay on a charge of contravening section 2(b) of the Drugs & Drug Trafficking Act 140 of 1992, in that they had dealt in 59 988,70 grams, the equivalent of 41 229 tablets of Mandrax. They were sentenced to eight years imprisonment. They now appeal their conviction.

On 23 October 2003 members of the South African Police

Services, Inspectors Windwaai and Van den Berg, received information that the first appellant was en route from Gauteng to George. They proceeded to the N9 National Road. On their way, they noticed the first appellant travelling in a pickup motor vehicle in the opposite direction. They turned around and drove along the N1 National Road towards Mossel Bay. When they reached Mossel Bay, the pulled off and waited on the side of the road. Not long afterwards, they noticed the pickup approaching. The first appellant was still driving it. He also had a passenger.

They stopped the pickup and noticed that the registration number on it was different from the number on the licence disc. The first appellant stated that the pickup was on loan to him and that he was not aware that the numbers were different. He was asked to accompany them to the Mossel Bay Police Station. On their arrival, the motor vehicle was searched. The driver's seat was moved forward. Behind it they found hidden 42 parcels containing tablets in a plastic bag. These were later taken to the forensic laboratory where it was analysed. It was determined that the tablets contained methaqualone, a dependentce producing substance.

A substantial portion of the evidence before the magistrate dealt with the question of the ownership of the pickup motor

vehicle. For purposes of this judgment, it can be accepted that the state had proved beyond a reasonable doubt that the second appellant was the registered owner of the pickup and that she had caused the pickup to be registered in her name. It can also be accepted that the she had loaned the pickup to the first appellant.

The first appellant testified that he had on previous occasions contracted with one Donald who, shortly before his last visit, had died, to fetch clothes and curios for him. On these occasions Donald paid him R4 000,00 per trip. The first appellant's defence was that he wanted to go to Gauteng to visit his ex-wife in an attempt to reconcile. Because Donald was deceased, he approached one Advocate Thomas at whose premises the pickup was parked, to request permission to use the pickup. Thomas informed him that he should ask the second appellant for permission, as the pickup was registered in her name.

When he approached her, she was surprised to learn that the pickup was registered in her name, but nevertheless agreed to him using it. On his arrival at his ex-wife's address, he found his sister there. His ex-wife was, however, adamant that she did not want to see him or even talk to him. He and his sister, who was accused 2 at the trial, then decided to return to Cape

Town. It was on their return journey that they were arrested. I interpose to mention that accused 2 was acquitted after the defence closed its case, but even before argument was addressed to the court.

The magistrate found that the first appellant was a poor witness. There is ample support for this finding. I mention but a few reasons. The first appellant's evidence was extremely vague regarding the arrangements he made prior to his visits to Gauteng to transport clothes and curios for Donald. He, on more than one occasion, contradicted himself regarding the discussions between Donald and himself. Why he would approach Advocate Thomas for permission to use the pickup after Donald's death, is not clear and his answers in this regard were equally unsatisfactory. He set off to Gauteng to visit his ex-wife, without inquiring whether she would be at home and also whether she would be prepared to have any contact with him. If the first appellant is to be believed, it would mean that someone, other than himself, had hidden the drugs in the pickup before he left for Gauteng. That someone would leave drugs worth more than R1.2 million in the pickup and allow the first appellant to drive all the way to Gauteng with it, is so farfetched, that it can be rejected out of hand.

Before us it was argued that there is a possibility that the drugs may have been placed in the vehicle whilst the appellant

was visiting his ex-wife in Gauteng. This, in my view, is so farfetched that it can also be rejected out of hand. The vehicle was under the control of the first appellant at all times whilst he was in Gauteng. There was no testimony given by him that anyone had approached him to gain access to the vehicle whilst he was there. The possibility that someone would place the drugs in the vehicle whilst he was there without his knowledge, is untenable. Section 5(b) of the Act reads:

> "No person shall deal in:
>
> (b) Any dangerous dependence producing substance."

The Act defines "deal in" in relation to a drug as including:

> "... any act in connection with the sale of the drug."

Sell is also defined to mean, amongst other things, the possession of a drug for sale. Lastly I refer to the definition of possess. In terms of section 1 of the Act, it:

> "... includes to keep or to store the drug or to have it in custody or under control or supervision."

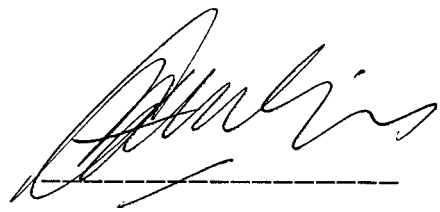
Once the first appellant's evidence is rejected, as it must be, then the evidence conclusively proves that he had the tablets,

if not in his custody then at least under his control. The volume of the drugs leads inexorably to the conclusion that it was intended to be sold.

The second appellant is in a different position. The only evidence against her is that she is the registered owner of the pickup motor vehicle in which the drugs were transported. There is no evidence that she in any way dealt or possessed the drugs within the meaning of the Act. Even if she knew of the presence of the drugs in the motor vehicle, it would not be sufficient for a finding that she possessed the drugs within the meaning of possess in terms of the Act. This is so, even if it were to be found that she had lied in this regard. (S v Mkize 1975 (1) SA 517 AD at page 525B). It also does not warrant the inference, as being the only reasonable inference, that she had dealt in the drugs as required by the Act.

In the result, the first appellant's appeal against his conviction falls to be dismissed. Second appellant's appeal should be upheld. The order I make is as follows:

1. The first appellant's appeal is dismissed and his conviction and sentence is confirmed.
2. The second appellant's appeal is upheld and her conviction and sentence is set aside.



VELDHUIZEN, J

I agree:

VAN STADEN, AJ