

Woman "wrongly" sentenced to 16 years for drug dealing must be immediately released

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Beaufort West magistrate committed a litany of errors in sentencing says High Court.



The Western Cape High Court has issued a scathing ruling, overturning a Beaufort West magistrate's decision. Illustration: Lisa Nelson

- A mother of three who was sentenced to 16 years in prison for drug dealing must be immediately released, the Western Cape High Court has ruled.
- Two judges said there was a regrettable grave miscarriage of justice in the case.
- Among the errors committed by the presiding magistrate were that she said the woman had been dealing drugs in her own home and wrongly ordered the immediate removal of the children.

- **The judges substituted the sentence and ordered that the woman be immediately released from jail.**

A woman who was wrongly sentenced to 16 years behind bars for dealing in drugs must be immediately released, two Western Cape High Court Judges have ruled.

The Beaufort West magistrate who sentenced Minkana Elizabeth Makgoba in July 2022 had committed a litany of errors, including granting an order before passing sentence, that her young children must be immediately taken into care.

Judge Judy Cloete and Acting Judge Nontuthuzelo Ralarala said the magistrate had also erred in denying a request by Makgoba's attorney for a pre-sentence report and had wrongly stated that Makgoba had been "dealing drugs in her own home".

"In all the circumstances of this case, there was regrettably a grave miscarriage of justice and the sentence must be set aside," Judge Cloete said.

She changed the sentence to one of ten years, but wholly suspended eight years and 11 months, backdated to 28 July 2022, and directed correctional services to immediately release her.

Read the judgment [here](#)

In September 2020, Makgoba was found in possession of mandrax tablets stored in a sealed "Herbal Life" box in her luggage after the bus she was travelling in from Potchefstroom to Mossel Bay was intercepted by police just outside Beaufort West.

She was charged with one count of dealing in drugs. According to the charge sheet she was found in possession of 7,215 mandrax tablets, with a street value of R360,750.

She was released on bail.

In July 2022, she pleaded guilty. She said she had been desperate for work and a friend had asked to carry the package, for which she would be paid R3,000.

She admitted that just before she boarded the bus, the person who gave her the box told her it contained mandrax tablets.

She said she was 31 years of age, unemployed, and had three young children and a sick mother. The children's father had abandoned them.

Judge Cloete said no evidence had been led by the state to prove the street value of the drugs. There was also no evidence that she was aware of the quantity of tablets in the box.

The state had accepted the plea and she was convicted as charged. No previous convictions were proven.

In mitigation of sentence, Makgoba said she had committed the crime because the "wolf was at the door ... I did not have much of a choice, there was no food on the table and we were struggling, really struggling to survive".

"Her legal representative requested pre-sentence reports but, alarmingly, this request was simply ignored by the magistrate, who without warning, took it upon herself to declare that the children would have to be removed immediately from her care, purportedly in terms of the Children's Act, and on the entire erroneous ground that she had exposed her children to danger by dealing drugs in her own home," Judge Cloete said.

"In aggravation of sentence, the prosecutor submitted that the street value of the drugs was R360,000. There was simply no evidence to support this. Nor was there any evidence to support the prosecutors' submission that Makgoba had the known intention that the drugs would 'hit the streets'."

Judge Cloete said the magistrate then set bail, pending sentence, at R20,000 and was "unmoved" when her lawyer said she would not be able to afford that.

In handing down sentence at the end of July, the magistrate repeated the same material error, saying the children had been removed because she was “dealing in drugs in her own house where she has children”.

The magistrate had remarked that “it seems that everyone wants to prosper in the business of drugs”.

“This was also not borne out by the evidence ... It seems that the magistrate’s overwhelming consideration was the need for deterrence irrespective of the particular facts of the case,” Judge Cloete said.

The magistrate then, also wrongly, said she could not consider a suspended sentence because the Drugs Act did not allow for this, and sentenced Makgoba to 16 years in prison.

On the removal of the children, Judge Cloete said only a Children’s Court had the authority to do this.

The magistrate had also ordered the removal of the children before sentencing on a fundamental error of fact that Makgoba had been dealing in drugs in her home.

“What is even more concerning is that the record is completely silent as to what, if any, feedback the magistrate obtained from the social workers.

“We were informed during the appeal, by agreement between the parties, that the children have, in fact, not been removed and are currently still with their maternal grandmother, although they are largely having to fend for themselves,” Judge Cloete said.

She said she had considered sending the matter back to the regional court for fresh sentencing proceedings but given the circumstances, and the urgent need for the Makgoba to be reunited with her children, she believed it was appropriate to substitute the sentence and to suspend the balance of the period which she had not already served.

Judge Cloete ordered the head of the correctional facility in which she is currently incarcerated to immediately release her.

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