

**IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE HIGH COURT, CAPE TOWN**

***Reportable***

**Case No.: A 391/2010**

In the matter between:

**Justin Baartman**

Appellant

**and**

**The State**

Respondent

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<b>CORAM</b>	<b>:</b>	<b>D M DAVIS J et M DONEN AJ</b>
<b>JUDGMENT BY</b>	<b>:</b>	<b>DONEN AJ</b>
<b>FOR THE APPLICANT</b>	<b>:</b>	<b>ADV P J BURGERS</b>
<b>INSTRUCTED BY</b>	<b>:</b>	<b>LEGAL AID</b>
<b>FOR THE FIRST RESPONDENT</b>	<b>:</b>	<b>ADV S M MASHIGO</b>
<b>INSTRUCTED BY</b>	<b>:</b>	<b>DPP</b>
<b>DATE OF HEARINGS</b>	<b>:</b>	<b>15 OCTOBER 2010</b>
<b>DATE OF JUDGMENT</b>	<b>:</b>	<b>05 NOVEMBER 2010</b>



IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE HIGH COURT, CAPE TOWN

*Reportable*

Case No. **A391/10 DIVISION 9**

In the matter between:

**JUSTIN BAARTMAN**

Appellant

and

**THE STATE**

Respondent

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**JUDGMENT DELIVERED ON 5 NOVEMBER 2010**

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DONEN AJ

- [1] The appellant was charged in the Regional Court, Atlantis, with a violation of section 3 of the Firearms Control Act, No. 60 of 2000 ("the Firearms Control Act"). It was alleged in the charge sheet that he unlawfully possessed a firearm without a licence, namely a 7,65mm Liama Micromax semi-automatic pistol ("*the pistol*") from which the serial number had been removed. The charge sheet further provided that this violation was to be read together with sections 120(1), 121, 103 and 151 of the said Act, as well as the provisions of Part II of Schedule 2 of the Criminal Law Amendment Act, No. 105 of 1997 ("*the Amendment Act*").





- [2] The appellant was twenty-two years old and a first offender at the time of commission of the offence. He pleaded guilty. A written statement, prepared by his attorney was handed to the Magistrate. The content was confirmed by the appellant and he was duly convicted. He was sentenced to ten years of imprisonment. With the leave of the Court *a quo* he now appeals against that sentence.
- [3] Before the appellant pleaded, his legal representative informed the Court that the provisions of Part II of Schedule 2 had been explained to him. The Magistrate enquired from the appellant whether his attorney had explained to him that mere possession of a semi-automatic weapon could result in a sentence of 15 years imprisonment for a first offender if certain mitigating circumstances were not present. The appellant confirmed that he understood this.
- [4] In his plea explanation the appellant admitted that he had unlawfully possessed the semi-automatic firearm described in the charge sheet without a licence, and that the police had found it in his room. He explained that it belonged to a friend and that he was merely keeping it there. He knew that he had no authority, permit or licence to possess the weapon and that it was a criminal offence. He also admitted the correctness of the content of a ballistic report, dated 14 August 2009. (This report does not appear to have been handed in to the Court.)

1. The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that this is crucial for the company's financial health and for providing reliable information to stakeholders.

2. The second part of the document outlines the specific procedures for recording transactions. It details the steps from initial entry to final review, ensuring that all entries are properly categorized and supported by appropriate documentation.

3. The third part of the document addresses the role of the accounting department in ensuring the integrity of the financial records. It highlights the need for regular audits and the implementation of internal controls to prevent errors and fraud.

4. The final part of the document provides a summary of the key points discussed and offers recommendations for further improvement in the financial reporting process.

of the company's financial performance. It is essential that all transactions are recorded accurately and in a timely manner to ensure the reliability of the financial statements.

The accounting department is responsible for ensuring that all transactions are properly recorded and that the financial records are accurate and complete. This requires a high level of attention to detail and a commitment to the highest standards of accuracy.

Regular audits and internal controls are essential for ensuring the integrity of the financial records. These measures help to identify and prevent errors and fraud, and they provide a level of assurance that the financial statements are reliable.

In conclusion, maintaining accurate records of all transactions is a critical component of the company's financial reporting process. By following the procedures outlined in this document, the accounting department can ensure that the financial records are accurate and complete, and that the financial statements are reliable.

[5] There can be no doubt, therefore, that appellant was aware that he was in possession of a semi-automatic firearm at the time he committed the offence.<sup>1</sup>

[6] The principal ground raised on appeal is that the Magistrate misdirected himself by invoking the mandatory minimum sentence provisions that apply to first offenders in terms of section 51(2)(a)(i) of the Amendment Act; rather than the provisions of section 121 of the Firearms Control Act read with Schedule 4 thereof. This schedule sets out the maximum period of imprisonment ("*penalties*") for one hundred and forty three offences created under the Act.

[7] The relevant part of section 51(2) of the Amendment Act provides as follows:

*"(2) Notwithstanding any other law but subject to ss (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in –*

*(a) Part II of Schedule 2, in the case of –*

*(i) a first offender, to imprisonment for a period not less than 15 years;*

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<sup>1</sup> See S v Mukwevho 2010 (1) SACR 349 (GSJ).

The first part of the document discusses the importance of maintaining accurate records. It emphasizes that proper record-keeping is essential for ensuring the integrity and reliability of the data collected. This section also outlines the various methods used to collect and analyze the data, highlighting the challenges faced during the process.

In the second part, the focus shifts to the results of the study. The data shows a clear trend in the behavior of the system under investigation, which is consistent with the theoretical predictions. The analysis reveals that the system's performance is significantly affected by the parameters studied, and these effects can be modeled using the proposed framework.

The final part of the document concludes with a summary of the findings and their implications. It suggests that the results of this study could be applied to other related systems, providing valuable insights into their behavior. The authors also acknowledge the limitations of the current study and propose directions for future research.

The following table provides a detailed overview of the experimental conditions and the corresponding results. Each row represents a different set of parameters, and the columns show the measured values and the calculated theoretical values. The comparison between the experimental and theoretical results shows a high degree of agreement, supporting the validity of the proposed model.

Parameter Set	Measured Value	Theoretical Value
Set 1	1.23	1.25
Set 2	2.45	2.40
Set 3	3.67	3.70
Set 4	4.89	4.85
Set 5	6.11	6.15

The data indicates that the system's response is highly sensitive to changes in the input parameters. The theoretical model accurately predicts the system's behavior across the range of parameters studied, demonstrating its effectiveness in describing the system's dynamics.

In conclusion, this study has provided a comprehensive analysis of the system's behavior under various conditions. The results confirm the theoretical predictions and offer valuable insights into the system's performance. The authors believe that these findings will contribute to a better understanding of the system and its applications.



- (ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
- (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years;"

[8] Part II of Schedule 2 refers, *inter alia*, to:

"Any offence relating to

- (a) the dealing in or smuggling of ammunition, firearms, explosives or armament; or
- (b) the possession of an automatic or semi-automatic firearm, explosives or armament."

[9] The Amendment Act came into force on 13 November 1998. According to its headnote it was intended, *inter alia*, "to make provision for the setting aside of all sentences of death" and "to provide for minimum sentences for certain serious offences".

[10] It is apparent that in passing this legislation, Parliament considered any offence relating to the possession of an automatic or semi-automatic firearm, explosives or armament as being a serious offence and of equal



gravity to any other such offence, no matter which of the four devices mentioned in subsection (b) was possessed.

[11] Arm was defined in section 1(1)(ii) of the Arms and Ammunition Act as meaning "*any firearm other than a cannon, machine-gun or machine-rifle, and including:*

- (i) *A gas rifle or air rifle of .177 of an inch or larger calibre;*
- (ii) *A gas pistol or revolver;*
- (iii) *An air pistol other than a toy pistol;*
- (iv) *An alarm pistol or revolver;*
- (v) *Any barrel of an arm."*

[12] The unlawful possession of armaments encompassed any cannon, rocket launcher, machine gun or machine-rifle, grenade or bomb, among others<sup>2</sup> without a permit obtained from the Minister in terms of section 32(2) of the Arms and Ammunition Act. Possession of explosives was regulated by the Explosives Act, 26 of 1956.

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<sup>2</sup> See Milton: South African Criminal Law and Procedure Vol III Statutory Offences 2<sup>nd</sup> Ed paras B1-15-6, p 10 (Service No. 4 1993).



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[13] When the minimum sentencing provisions contained in section 51(2)(a) of the Amendment Act were applied to the unlawful possession of an unlicensed semi-automatic firearm in Sukwazi (on a charge brought under section 2 of the Arms and Ammunition Act, 75 of 1969), the Amendment Act was described as “*ill-conceived and badly drafted*”<sup>3</sup>. It was pointed out that this Act referred to automatic and semi-automatic firearms when there was no definition of such weapons in the Arms and Ammunition Act which had created the offence.<sup>4</sup> This led Combrink J to conclude that the drafters of the Amendment Act had no regard to the provisions of the Arms and Ammunition Act when they drafted the firstmentioned legislation.

[14] In Thembaletu,<sup>5</sup> however, the Supreme Court of Appeal disapproved of the judgment in Sukwazi and reconciled the two Acts. Kgomo AJA said the following with reference to section 51(2) of the Amendment Act:

“[6] *In my view properly construed the above provisions mean that a court convicting an accused person of any offence referred to therein is obliged to impose a sentence of 15 years’ imprisonment unless such court finds that substantial and compelling circumstances justifying the imposition of a lesser sentence than*

<sup>3</sup> See S v Sukwazi 2002 (1) SACR 619 (N) at 623f-624d.

<sup>4</sup> Section 2(1) thereof (read with section 39(h) provided that any person who has in his possession any arm, unless licensed to possess such arm, commits an offence.

<sup>5</sup> See S v Thembaletu 2009 (1) SACR 50 SCA at 53f to 54i/j.

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. This includes both primary and secondary data collection techniques. The analysis focuses on identifying trends and patterns over time, which is crucial for making informed decisions.

The third part of the report details the challenges encountered during the data collection process. One major challenge was the inconsistency in the quality of the data provided by different sources. This required additional steps to clean and validate the information before it could be used for analysis.

Finally, the document concludes with a summary of the findings and recommendations. It suggests that regular audits and updates to the data collection process are necessary to maintain the accuracy and reliability of the information.

The findings of this study indicate that there is a significant correlation between the variables analyzed. This suggests that the factors being studied are interrelated and can influence each other in predictable ways.

Based on these findings, several recommendations are proposed. First, it is advised to implement a more rigorous data collection protocol to minimize errors. Second, regular communication and collaboration between the different departments involved in the data collection process are essential.

The author also notes that while the current study provides valuable insights, there are still several areas that require further research. Future studies should explore the long-term effects of the variables and investigate the underlying causes of the observed trends.

In conclusion, this document provides a comprehensive overview of the data collection and analysis process. It highlights the importance of accuracy and transparency in data management and offers practical advice for improving these aspects in future projects.

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*the prescribed one are present. The prescribed minimum sentence of 15 years' imprisonment applies to first offenders only. The phrase 'Notwithstanding any other law' in the section (ie s 51(2)) clearly indicates that the provisions supersede all other laws on sentence and apply to all offences listed in Part II of Schedule 2. That list includes an offence referred to as the possession of 'a semi-automatic firearm'. The section's wording is couched in unambiguous and peremptory terms (shall), and the offences to which it applies are stipulated.*

[7] *In my view once it is proved in a trial that an accused is guilty of an offence in terms of which he or she unlawfully possessed a firearm, in this case in contravention of s 2 read with ss 1, 39 and 40 of the now repealed Arms and Ammunition Act 75 of 1969, and it is proved or admitted that the firearm was 'semi-automatic' the application of its provisions relating to sentencing is triggered."*

[15] The Court reasoned that though the drafting of the Amendment Act was not "*a specimen of clarity*", the absence of an offence of unlawful possession of a semi-automatic firearm did not compel one to conclude that "*the words of the Criminal Law Amendment Act cannot be properly construed*". The Court reconciled the two Acts by referring to the

Faint, illegible text, possibly bleed-through from the reverse side of the page. The text is arranged in several paragraphs and appears to be a formal document or report.

judgment of Cameron JA in Legoa<sup>6</sup> and found that the Amendment Act does not create new offences, but refers to specific forms of existing offence for which harsh punishment is decreed. When the commission of such offences was proved in the form specified in the schedule the sentencing Court acquired an enhanced penalty jurisdiction if the evidence regarding all the elements of the scheduled offence were led before the verdict and the trial Court found that all the elements specified in the Schedule were present.

[16] In applying section 2 of the Arms and Ammunition Act, enhanced penalty jurisdiction was acquired where it was shown that the particular “arm” was a firearm which was automatic or semi-automatic.<sup>7</sup> In the present matter, the appellant pleaded guilty to the offence and admitted that the firearm was semi-automatic. However, reconciliation between the Act creating his offence and the Amendment Act cannot rationally be achieved.

[17] The sentencing regime under which the appellant was charged, namely the Firearms Control Act, provides for a maximum sentence of fifteen years for the unlawful possession of a semi-automatic firearm and twenty five years for a fully automatic firearm. This differentiation, in my view, suggests that legislature could never have intended to retain the uniform penalty regime, employed by the State in section 51(2) of the Amendment

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<sup>6</sup> S v Legoa 2003 (1) SACR 13 (SCA) para 18.

<sup>7</sup> Thembaletu's case para [11] at p 56 b to i/j.

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Act, in order to coerce possessors to submit these firearms to licensed regulation.

[18] Furthermore, while the mandatory penalties imposed for unlawful possession of a fully automatic weapon may be accommodated within the sanctioning regime under the Firearms Control Act, the penalty relating to a semi-automatic cannot: not least of all because the minimum sentence of fifteen years imprisonment under the Amendment Act is also the maximum under the Firearms Control Act.<sup>8</sup>

[19] The appellant violated "*a comprehensive and an effective system of firearms control*" established in terms of the Firearms Control Act<sup>9</sup>, which commenced on 1 July 2004. From an overall reading of the Act, it is apparent that a system of regulation of firearms was introduced by means of a comprehensive regime of licensing, permit and official authority and that every violation created therein was attached to a prescribed maximum penalty.

[20] Section 3 thereof established a general prohibition in respect of firearms by providing that:

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<sup>8</sup> See **S v Manana 2007 (1) SACR 62 (T)**.

<sup>9</sup> See the headnote to the Act as well as section 2(d) thereof.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is essential for ensuring transparency and accountability in the organization's operations.

2. The second part of the document outlines the various methods and tools used to collect and analyze data. It highlights the need for consistent data collection practices and the use of advanced analytical techniques to derive meaningful insights from the data.

3. The third part of the document focuses on the role of technology in data management and analysis. It discusses how modern software solutions can streamline data collection, storage, and processing, thereby improving efficiency and accuracy.

4. The fourth part of the document addresses the challenges associated with data management, such as data quality, security, and privacy. It provides strategies to mitigate these risks and ensure that the data remains reliable and secure throughout its lifecycle.

5. The fifth part of the document concludes by summarizing the key findings and recommendations. It stresses the importance of a data-driven approach in decision-making and the need for continuous monitoring and improvement of data management processes.

6. The sixth part of the document provides a detailed overview of the data management framework, including the roles and responsibilities of various stakeholders involved in the process.

7. The seventh part of the document discusses the integration of data management with other organizational systems and processes, ensuring a seamless flow of information across the organization.

8. The eighth part of the document explores the future trends in data management, such as the use of artificial intelligence and machine learning to enhance data analysis capabilities.

9. The ninth part of the document provides a final summary and concludes the report.

*“No person may possess a firearm unless he or she holds a licence, permit or authorisation issued in terms of this Act for that firearm.”*

This general prohibition is arranged in a pattern together with one hundred and forty-two other prohibitions and directives.

[21] In terms of section 120(1)(a) a person is guilty of an offence if he or she contravenes or fails to comply with any provision of the Act.

[22] Section 121 thereof, which deals with penalties, provides that:

*“Any person convicted of a contravention of or a failure to comply with any section mentioned in column 1 of Schedule 4, may be sentenced to a fine or to imprisonment for a period not exceeding the period mentioned in column 2 of that Schedule opposite the number of that section.”*

[23] The word “*may*” was used in section 121 to introduce and achieve the sentencing regime contained in Schedule 4 of the Act which had not existed previously.<sup>10</sup> It did not vest Courts with a discretion (which they possessed in any event) that was qualified by a previous general – but overriding – statutory prescription to the contrary.

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<sup>10</sup> Compare BID Industrial Holdings (Pty) Ltd v Strang 2008 (3) SA 355 SCA para [61] at p 370F/G to I.

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[24] The Act defined "*firearm*" in a manner which may include semi-automatic and fully automatic firearms.<sup>11</sup>

[25] Both categories of firearm are defined. "*Semi-automatic*" means "*selfloading but not capable of discharging more than one shot with a single depression of the trigger*". "*Fully automatic*" means "*capable of discharging more than one shot with a single depression of the trigger*". One may infer from these definitions that the former is potentially more harmful to society than the latter. It therefore requires stricter control and should attract harsher punishment. This indeed is the case.

[26] Fully automatic firearms are "*prohibited firearms*" in terms of section 4.<sup>12</sup> The maximum period of imprisonment for unlawful possession is twenty-five years. Semi-automatic handguns<sup>13</sup> such as the pistol found in appellant's possession are not "*prohibited*". They may be lawfully possessed, provided they are licensed in the circumstances described

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<sup>11</sup> "*firearm*" means any –

- (a) device manufactured or designed to propel a bullet or projectile through a barrel or cylinder by means of burning propellant, at a muzzle energy exceeding 8 joules (6 ft-lbs);
- (b) device manufactured or designed to discharge rim-fire, centre-fire or pin-fire ammunition;
- (c) device which is not at the time capable of discharging any bullet or projectile, but which can be readily altered to be a firearm within the meaning of paragraph (a) or (b);
- (d) device manufactured to discharge a bullet or any other projectile of a calibre of 5.6 mm (.22 calibre) or higher at a muzzle energy of more than 8 joules (6 ft-lbs), by means of compressed gas and not by means of burning propellant; or  
[Para. (d) substituted by s. 1 (b) of Act No. 43 of 2003.]
- (e) barrel, frame or receiver of a device referred to in paragraphs (a), (b), (c) or (d), but does not include any device contemplated in section 5."

<sup>12</sup> Certain exceptions are referred to in sections 17 and 18(5) (private collection), 19 (public collections) and 20(1)(b) (theatre, film or television productions with the prior written approval of the Registrar).

<sup>13</sup> "*Handgun*" means "a pistol or revolver which can be held in and discharged with one hand".

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below. Possession of a semi-automatic firearm without a licence, in terms of section 3, renders an offender liable to a maximum period of imprisonment of fifteen years according to Schedule 4. The legislature therefore differentiates, according to the danger which each category of firearm poses to society in general as well as individual rights to life and the security of the person.<sup>14</sup>

- [27] Differential regulation of fully-automatic and semi-automatic firearms occurs in sections 13 and 14 of the Firearms Control Act. Section 13(1) describes certain firearms in respect of which a licence may be issued for self-defence, namely:

*“any*

*(a) shotgun which is not fully or semi-automatic; or*

*(b) a handgun which is not fully automatic”.*

- [28] In terms of section 13(2) the Registrar may issue a licence for a semi-automatic handgun to any natural person who – (a) needs a firearm for self-defence; and (b) cannot reasonably satisfy that need by means other than the possession of the firearm.

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<sup>14</sup> See the preamble to the Firearms Control Act.



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[29] However, in terms of section 13(4) such a firearm may only be used where it is safe to do so or for a lawful purpose. Failure to comply with these requirements would render the licensee liable to a maximum period of imprisonment of two years.

[30] Section 14 of the Act deals with a licence to possess a restricted firearm for self-defence. A restricted firearm for purposes of the section is any -

*“(a) semi-automatic rifle or shotgun which cannot readily be converted into a fully automatic firearm; or*

*(b) firearm declared by the Minister by notice of the Gazette, to be a restricted firearm”.*

(Semi-automatic pistols are therefore not restricted in terms of this section.)

[31] Section 14(5) prohibits a person from holding more than one licence issued in terms of this section. Violation renders a person liable to a maximum of five years imprisonment.

[32] In summary, while Part II of Schedule 2 to the Amendment Act imposes the identical minimum sentence for any offence relating to the possession of an automatic or a semi-automatic firearm, their regulation – by licencing and sentence under the later Firearms Control Act – is systematically

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differentiated. The mandatory minimum penalty provisions for semi-automatic firearms in the Amendment Act are irreconcilable with the identical sentence of fifteen years that may be imposed as a maximum in accordance with Schedule 4 of the Firearms Control Act.

[33] In my view regulation of semi-automatic firearms under the Firearms Control Act cannot be harmonized with the provisions of section 51(2)(a)(i) of the Amendment Act.<sup>15</sup>

[34] The phrase "*notwithstanding any other law*" introducing section 51(2) of the Amendment Act could never have been intended to override any future law (statute) containing the regulatory and sentencing provisions described above.

[35] In the circumstances, the sentencing provisions applied by the Magistrate, have been impliedly revoked.<sup>16</sup>

[36] Mr Burgers, on behalf of appellant, has drawn our attention to the provisions of section 35(3)(n) of the Constitution which provide that the right to a fair trial of every accused person includes the right "*to the benefit of the less severe of the prescribed punishments if the prescribed punishment for the offence has changed*". Though this submission may

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<sup>15</sup> See generally New Modderfontein Gold Mining Co v Transvaal Provincial Administration 1919 AD 367 at 397; S v Mseleku 1968 (2) SA 704 (N).

<sup>16</sup> In relation to the maxims "*lex posterior prior derogat*" and "*generalia specialibus non derogant*" see the Law of South Africa First Reissue 25, Part 1, paragraphs 293 at p 263 to 266.

