

SOUTH AFRICA / JUDGMENT

Masemola v S (A42/18) [2018] ZAGPPHC 758 (1 March 2018)

[2018] ZAGPPHC 758

COURT

North Gauteng High Court, Pretoria

BEFORE

P Pistorius, AJ Bam

CASE / FILE NUMBER

A42/18

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG

DIVISION, PRETORIA

(1)

NOT REPORTABLE

(2)

NOT OF INTEREST TO

OTHER JUDGES

(3)

REVISED

A42/18

Case

Number: 731/17

Special

Review: 24/18

01/03/2018

In

the matter between:

TYSEN
SEKOME
MASEMOLA
ACCUSED
V
THE
STATE
RESPONDENT

Coram:

PISTORIUS AJ
REVIEW

JUDGMENT

PISTORIUS AJ

[1] The matter has been referred to this court on special review, by the magistrate of Cullinan, Mrs P.W Engelbrecht.

[2.1] The accused was charged in the District of Tshwane East, held at Cullinan with one count of house breaking with intent to steal and theft.

[2.2] It was alleged that upon or about the period 20-21 December 2017 and at or near Plot 45, Pienaarspoort, in the district of Tshwane East, the accused unlawfully and intentionally and with the intent to steal, break open and enter the window of the room/shack of Khomotso Dorris Mathiba and did then and there unlawfully and intentionally steal the following items, to wit two (2)* cellphones, R500 cash, one (1)* body mist perfume, one (1)* roll on, the property or in lawful possession of Khomotso Dorris Mathiba.

[3.1] The accused elected to conduct his own defence.

[3.2] On January 2018, the accused pleaded guilty to the charge in front of Magistrate N Mabunda.

[3.3] The proceedings were not mechanically recorded, although ex facie the record it was mechanically recorded.

[4.1] The residing Officer Mr N.V Mabunda passed away on 10 January 2018.

[4.2] No record of the proceedings were recorded, and according to the information conveyed to the Magistrate Engelbrecht, the stenographer informed her that the recording machine was broken, and accordingly the proceedings were not recorded.

[5.1] The case was postponed to 9 February 2018, for typing of the record and sentence proceedings in terms of Section 275(1) of Act 51 of 1977.

[5.2] Section 275 (1) of Act 51 of 1977 read as follows:

" If sentence is not passed upon an accused forthwith upon conviction in a lower court, or if by reason of any decision or order of a superior court on appeal, review or otherwise, it is necessary to add or vary any sentence passed in a lower court or to pass sentence afresh in such court, any judicial officer of that court may, in the absence of the judicial officer who convicted the accused or passed the sentence, as the case may be and after consideration of the evidence recorded and in the presence of the accused, pass sentence or take such other steps as the judicial officer who is absent, could lawfully have taken in the proceedings in question if he or she had not been absent."

[5.3] The Magistrate is the second judicial officer who must consider the "evidence" recorded. No evidence or plea proceedings were recorded in casu. The Magistrate accordingly cannot consider any evidence and is unable to make any findings.

[6] I respectfully concur with the learned Magistrate reasoning. It is unfortunate that no measures were in place at the time of the hearing to ensure the correct functioning of the recording machine. Certainly the stenographer whose duty it was to ensure the proper function thereof should have advised the presiding officer of the defective equipment. This failure to timely alert the court to the proper functioning or lack thereof of the recording equipment must be

avoided and measures be taken to avoid repetition thereof in future.

[7] In the light of the above, I cannot make a finding that the proceedings indeed were in accordance with Justice. It follows that the conviction must be set aside

[8] ORDER:

[8.1] The conviction of the accused is set aside.

P. PISTORIUS

ACTING JUDGE OF THE HIGH COURT OF SOUTH AFRICA

I agree.

A.J BAM

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

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