

SOUTH AFRICA / JUDGMENT

Phiri v S (CA 55/2015) [2024] ZANWHC 185 (11 July 2024)

[2024] ZANWHC 185

COURT

North West High Court, Mafikeng

BEFORE

J T Djaje, T Masike

CASE / FILE NUMBER

CA 55/2015

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IN

THE HIGH COURT OF SOUTH AFRICA

NORTH

WEST PROVINCIAL DIVISION, MAHIKENG

CASE

NO: CA 55/2015

Reportable:

YES / NO

Circulate

to Judges: YES / NO

Circulate

to Magistrates: YES / NO

Circulate

to Regional Magistrates: YES / NO

In

the matter between:

TEBOGO

MICHAEL PHIRI

APPELLANT

AND

THE

STATE

RESPONDENT

CRIMINAL

APPEAL

DJAJE

AJP; MASIKE AJ

Heard:

18 June 2024

Delivered: This judgment is handed down electronically by circulation to the parties through their legal representatives' email addresses.
The date for the hand-down is deemed to be 11 JULY 2024
ORDER
The following order is made: -
1.
The appeal is removed from the roll due to incomplete record.
2.
The appellant is ordered to file the complete record or an explanation why the complete record could not be filed.

JUDGMENT

DJAJE AJP

- [1] The appellant was convicted of rape by the Regional Court in Garankuwa and sentenced to life imprisonment. In the charge sheet it was alleged that the complainant was raped more than once and hence the reference to the applicability of section 51(1) of the Criminal Law Amendment Act 105 of 1997 read with Part 1 of Schedule 2. He now appeals against both conviction and sentence exercising his automatic right of appeal.
- [2] This appeal was previously struck off the roll due to incomplete record of proceedings. It has now been re-enrolled, and the record is still incomplete. The missing portions of the record are the appellant's entire evidence including cross examination. The evidence of one state witness who was with the appellant and the complainant on the day of the incident is also missing from the record. There was no explanation from the appellant what steps were taken to obtain the complete the record or if the record could be reconstructed. This court is not able to deal with the appeal when the version of the appellant is not part of the record. The appeal should be removed from the roll and the appellant file the complete record for consideration of the matter.

Order

- [3] Consequently, the following order is made: -
3. The appeal is removed from the roll due to incomplete record.
4. The appellant is ordered to file the complete record or an explanation why the complete record could not be filed.

J T DJAJE

ACTING JUDGE PRESIDENT

NORTH WEST DIVISION; MAHIKENG

I agree

T MASIKE

ACTING JUDGE OF THE HIGH COURT

NORTH WEST DIVISION, MAHIKENG

APPEARANCES

DATE OF HEARING: 18 JUNE 2024 DATE OF JUDGMENT: 11 JULY 2024 COUNSEL FOR THE
APPELLANTS: ADV KEKANA COUNSEL FOR THE RESPONDENT: ADV RASAKANYA

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Prepared on 10 October 2026 · Esheria