

SOUTH AFRICA / JUDGMENT

S v Legong (A893/2013) [2013] ZAGPPHC 322 (1 November 2013)

[2013] ZAGPPHC 322

COURT

North Gauteng High Court, Pretoria

BEFORE

Ismail Mthe, Jordaan E

CASE / FILE NUMBER

A893/2013

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IN

THE HIGH COURT OF SOUTH AFRICA (NORTH GAUTENG, PRETORIA)

CASE

NO: A935/12

DATE:

01/11/2013

In

the matter between:

THE

STATE

and

ASEITSIWE

JOHANNES LEGONG

JUDGMENT

Ismail J:

- [1] This matter was referred to this court by means of a special review at the request of the presiding magistrate.
- [2] The magistrate in the letter to the reviewing judge stated the following:

“During the sentence procedure the magistrate realized that the accused was incorrectly charged and convicted of the provisions of section 1 (a) of the Corruption Act, Act 94 of 1992, repealed by The Prevention of Combating of Corrupt Activities Act 12 of 2004...

...as the charge on which the accused was convicted differs drastically from The Prevention of Combating of Corrupt Activities Act 12 of 2004 that will render the application of section 270 of the Criminal Procedure Act 51 of 1977 impossible.”

- [3] Initially the accused pleaded guilty to the contravention of section 1(1) (a) read with section 3 of the Corruption Act 94 of 1992.
- [4] After questioning the accused in terms of section 112 of the Criminal Procedure Act (CPA) the magistrate altered the plea to not guilty in terms of section 113 of the CPA.
- [5] Evidence was led of two policemen who testified that the accused left money on the bonnet of his car, as the police officer took out the book to give him a traffic violation ticket. He was told “do you know what you are doing is illegal” the accused was consequently arrested and charged.
- [6] Pursuant to the traffic officers testifying on behalf of the state and the accused also giving evidence during the trial, the accused was convicted of the charge.
- [7] The matter was then sent on review with the request as set out in paragraph [2] above.
- [8] It is clear that the accused was charged and found guilty of an offence in terms of the repealed Act, accordingly I am of the view that the conviction should be set aside as he cannot be sentenced in terms of that Act.
- [9] In the circumstances I make the following order:
 - [9.1] the conviction is set aside;
 - [9.2] the accused may be charged de novo in terms of the current Act;
 - [9.3] the trial should proceed before a different magistrate than the one who presided during a final trial.

ISMAIL MTHE

JUDGE OF THE HIGH COURT

I agree

JORDAAN E

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