

SOUTH AFRICA / JUDGMENT

S v Mabatha (REV50/2023; D8251087)

[2023] ZALMPTHC 9 (19 September 2023)

[2023] ZALMPTHC 9**COURT**

Limpopo High Court, Thohoyandou

BEFORE

IM Khosa, AML Phatudi

CASE / FILE NUMBER

REV50/2023; D8251087

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Source record**HIGH****COURT OF SOUTH AFRICA****LIMPOPO LOCAL****DIVISION, THOHOYANDOU****HIGH****COURT REVIEW CASE NO: REV50/2023****WATERVAL****MAGISTRATE CASE NO: D8251087****REPORTABLE:**

NO/YES

OF

INTEREST TO OTHER JUDGES: NO/YES

REVISED

DATE:

19/09/2023

In

the matter between

THE

STATE

And

TSHWARELO

FORGIVENESS MABATHA

JUDGMENT

IM KHOSA AJ (AML PHATUDI J concurring)

Introduction

[1] This is a special review in terms of section 304 (4) of the Criminal Procedure Act[1] (“the CPA”). The matter emanates from the Waterval Magistrate’s court.

Factual background

- [2] On the 08 October 2021, the accused, a 29 years old professional nurse, was issued with a written notice to appear in court to answer a charge of contravention of Section 19(2) of the Sexual Offences Act[2]. According to the said notice, the accused’s appearance date was the 09 November 2021.
- [3] The basis of the charge was that on the same day at Bungeni Village, near “Big Tree”, the accused wilfully and openly exhibited himself in an indecent manner at a place within view of “Public Street” at about 20:00.
- [4] The mentioned notice was issued by members of the South African Police Service in terms of the provisions of Section 56 of the CPA and it made provision for payment of an admission of guilt fine of R 200.00 without appearing in court.
- [5] In order to avoid detention, the Accused paid an admission of guilt fine in the sum of R 200.00 without appearing in court. He was released the same day.
- [6] On 12 October 2021, the Accused submitted representations to the Control prosecutor requesting withdrawal of the charges against him. The control prosecutor withdrew the charges and endorsed - “withdrawn”- on the Accused copy of the written notice to appear, signed and affixed a date stamp of the 14th October 2021 on the notice.
- [7] Unfortunately, the control prosecutor did not endorse the “withdrawal of the charge” against the accused on the control document. On the 14 October 2021, the R200 admission of guilt was paid over to the clerk of court.
- [8] On the 12 November 2021, the admission of guilt was confirmed by a Magistrate pursuant to the provisions of Section 57(7) of the CPA. The admission of guilt endorsement on the reverse side of the written notice to appear in court, and, the control prosecutor’s failure to endorse the withdrawal of the charge against the accused on the control document, resulted in the accused’s guilt being confirmed. Later, the accused failed to secure work visa due to this previous conviction.

- [9] The Magistrate's reasons for special review are accompanied by the accused's affidavit as part of the records of the court a quo. In the affidavit, the accused set out the events of the date in question, from the scene until his payment of admission of guilt fine at the police station.
- [10] On importance, the accused indicates that the police informed him that he is required to pay a ticket of R 200.00, which is similar to a traffic fine, and, at that time of payment, he did not understand the nature and consequences of paying the fine.

Issue to be decided

- [11] The issue to be decided is whether the proceedings against the accused were in accordance with justice.

The law

- [12] Section 304(4) of the CPA provides as follows:

"If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance

with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid

before such court or judge in terms of section 303 or this section."

Evaluation

- [13] Section 304(4) of the CPA refers to all cases in lower courts where a non-reviewable sentence was imposed, and then brought before the reviewing Judge in any manner and in respect of which proceedings were, for any reason, not in accordance with Justice.
- [14] In this matter, a case against the accused came to nought when the control prosecutor decided to withdraw the charge on the 14 October
2021. In the circumstances, it ought not to have been tabled for confirmation by the Magistrate in terms of Section 57(7) of the CPA.
- [15] The record of the proceedings clearly depicts that the Accused's conviction was purely because of human error, being the control prosecutor's failure to endorse the withdrawal of the charge against the accused on the control book.
- [16] Further, the accused's affidavit accompanying the Magistrate's reasons for special review reflects that the accused misled on the consequences of the payment of the admission of guilt fine. He was made to believe that it has a consequence similar to a traffic fine.

[17] The accused right to fair trial include the right to be properly informed of the charges against him and the consequences of his admission of guilt. In my view, failure to inform the accused of true consequences of payment of admission of guilt fine violated the accused constitutional right to a fair trial[3].

[18] It is trite law that the Magistrate acting in terms of section 57 (7) of the Act, becomes functus officio[4]. The Magistrate became functus officio immediately after confirming the admission of guilt on the 12 November 2021.

[19] As a result, this matter begs for this court's intervention to correct the erroneous conviction. In the circumstances, I am of the view that the proceedings in the Magistrates court were not in accordance with justice.

[20] I therefore make the following order:-

20.1 Confirmation of the accused' admission of guilt in terms of Section 57 (7) of the Criminal Procedure Act 51 of 1977 is reviewed, and, set aside.

20.2 The State must, within Ten (10) days, pay back to TSHWARELO FORGIVENESS MABATHA, two hundred rand (R200) paid at Waterval SAPS as the admission of guilt fine on 08 October 2021.

IM KHOSA

ACTING JUSTICE OF THE HIGH COURT OF SOUTH AFRICA

I agree, and it is so ordered.

AML PHATUDI

JUSTICE OF THE HIGH COURT OF SOUTH AFRICA

[1] Act 51 of 1977

[2] Act 23 of 1957

[3] See section 35(3) of the Constitution of the Republic of South Africa Act 108 of 1996

[4] S v Vermaak 1991

(1) SACR 336 (EC)

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Prepared on 10 October 2026 · Esheria