

SOUTH AFRICA / JUDGMENT

S v Macebele (B478/2006) [2007] ZAGPHC 80 (12 February 2007) [2007] ZAGPHC 80

COURT

High Courts - Gauteng

BEFORE

G Webster, J R Murphy

CASE / FILE NUMBER

B478/2006

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A142/07

IN

THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

Date: 12/02/2007

UNREPORTABLE

Magistrate:

MALAMULELE
Review Case no.: B478/2006
High Court Ref. No.: 131
THE STATE VS VICTOR MACEBELE
REVIEW

JUDGMENT

WEBSTER J

The matter came before me on automatic review.

The accused was convicted in the district court of assault with the intent to do grievous bodily harm and sentenced to a fine of R5 000 or twelve (12) months' imprisonment.

In addressing the court in mitigation of sentence the accused informed the court that he had a sum of R500 available to pay a fine. He further informed the court that he earned R150 per day.

The trial Magistrate was clearly aware that the accused could not pay the fine imposed. Despite this the Magistrate failed to inform the accused of the deferment of the fine. This was clearly an irregularity, (*S v Maluleke* 2002(1) SACR 260 (T); *S v Durdiss* 1995(2) SACR 537 (W); *S v Mathonsi* 2003(1) SACR

625) as it offends against the provisions of section 297(6)(a) of the Criminal Procedure Act 51 of 1977.

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Where an accused person is accorded the opportunity of staying out of jail by the imposition of a fine the court is obliged to ascertain whether the accused can pay the fine or not. In this case the Magistrate was aware of this fact but chose not to advise the accused of the right to deferment of payment.

The following order is granted:

1. 2.

The conviction of the accused is confirmed;

The matter is remitted to the trial Magistrate who must conduct a proper inquiry into the accused's ability to pay off the fine in reasonable monthly instalment, in terms of the provisions of section 297(6)(a) of the Criminal

Procedure Act 51 of 1977.

G WEBSTER JUDGE IN THE HIGH COURT

I agree

J R MURPHY

JUDGE IN THE HIGH COURT

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