

SOUTH AFRICA / JUDGMENT

S v Makumbila (01/2025) [2025] ZALMPPHC 60 (26 March 2025)

[2025] ZALMPPHC 60**COURT**

Limpopo High Court, Polokwane

BEFORE

M. Naude-Odendaal, J.T. Ngobeni

CASE / FILE NUMBER

01/2025

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****DIVISION, POLOKWANE****REV:**

01/2025

(1) REPORTABLE: NO/YES

(2)

OF INTEREST TO THE JUDGES: NO/YES

(3)

REVISED.

DATE:

26/03/2025

SIGNATURE:

IN

THE MATTER OF:

THE

STATE

V

VICTOR

MAKUMBILA ACCUSED

JUDGMENT

NAUDE-ODENDAAL J:

- [1] This is a Review Application in terms of Section 304 of the Criminal Procedure Act, 51 of 1977, sent on review by the Magistrate: Acting Senior Magistrate, Polokwane.
- [2] The Accused appeared before the Magistrate's Court, Polokwane on a charge of Contravening the provisions of Section 31(1) of the Maintenance Act 99 of 1998 - failure to pay maintenance, in that during the period October 2007 to May 2024, the Accused did wrongfully fail to pay maintenance in compliance with the Maintenance Order. Before the charge was put to the Accused person and before he pleaded to the charge, the State applied that the Criminal proceedings be converted into a Maintenance enquiry in terms of Section 41 of the Maintenance Act 99 of 1998.
- [3] The Magistrate in the court a quo then transferred the matter to the Maintenance Court for a Maintenance Enquiry. After consultation with the respective parties, the matter was brought back to the Criminal Court where the charge against the Accused was ultimately withdrawn by the Prosecutor.
- [4] According to the Acting Senior Magistrate, the procedure which ought to have been implored when this matter was converted to a Maintenance Enquiry was not properly applied and was not in accordance with the Maintenance Act, 99 of 1998. According to the Acting Senior Magistrate, the reading of Sections 31(1) and 41 of the Maintenance Act 99 of 1998, appear to suggest that a Criminal Court Enquiry in accordance with the provisions of Section 31(1) of Act 99 of 1998, must first be conducted and only after conviction and sentence of an Accused, and the court is satisfied that the matter may be converted into a maintenance enquiry, may it so be converted into a maintenance enquiry.
- [5] Section 22 of the Superior Courts Act 10 of 2013 deals with the grounds upon which the proceedings of a Magistrate's Court may be reviewed whilst Rule 53 lays down the relevant procedure.
- [6] Section 22 of the Superior Courts Act 10 of 2013 stipulates as follows:-

"22 Grounds for review of proceedings of Magistrates' Court [sic]

 - (1) The grounds upon which the proceedings of any Magistrates' [sic] Court may be brought under review before a court of a Division are -
 - (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and

(d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates' Courts."

[7] Section 31(1) to (2) of the Maintenance Act, 99 of 1998 stipulates as follows:-

"31(1) Subject to the provisions of subsection (2), any person who fails to make any particular payment in accordance with a maintenance order shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year or to such imprisonment without the option of a fine.

(2) If the defence is raised in any prosecution for an offence under this section that any failure to pay maintenance in accordance with a maintenance order was due to lack of means on the part of the person charged, he or she shall not merely on the grounds of such defence be entitled to an acquittal if it is proved that the failure was due to his or her unwillingness to work or misconduct,"

[8] Section 41 of the Maintenance Act, 99 of 1998 stipulates as follows:-

"Conversion of criminal proceedings into maintenance enquiry

41. If during the course of any proceedings in a magistrate's court in respect of-

(a) an offence referred to in section 31(1); or

(b) the enforcement of any sentence suspended on condition that the convicted person make periodical payments of sums of money towards the maintenance of any other person,

it appears to the court that it is desirable that a maintenance enquiry be held, or when the public prosecutor so requests. the court shall convert the proceedings into such enquiry." (Own emphasis added)

[9] Section 41 of the Maintenance Act supra is clear that such a conversion can be made by the court or upon request by the prosecutor during the course of any proceedings in the Magistrate's Court.

[10] In the present matter, the charge had not been put to the Accused person and the Accused had not pleaded yet. The general rule is that an accused who has pleaded is entitled to a verdict. This does not mean that the Accused is entitled to a verdict immediately, it means only that proceedings may not be concluded without reaching a verdict. This contrasts with the situation where the Accused has not pleaded. If the Accused has not pleaded, the case could be withdrawn and the Accused would not be entitled to a verdict.

- [11] In South Africa, criminal proceedings typically commence with an arrest or a summons, followed by the Accused's appearance in court where he/she is informed of the charges and his/her rights, and then the matter proceeds through various stages, including plea, evidence and judgment.
- [12] In my view, the proceedings commence in the Magistrate's Court upon appearance by an Accused before court where he is informed of his rights and the charges he is facing. The proceedings do not only commence at the stage when a charge is put to the Accused and the Accused pleads to the charge so put.
- [13] From a reading of Section 41 of the Maintenance Act, 99 of 1998, it is clear that a conversion of criminal proceedings into a maintenance enquiry can be done during the course of any proceedings

in a magistrate's court in respect of an offence referred to in Section 31(1). Had the Accused pleaded in the present matter, it would have been his Constitutional Right to a verdict before the matter could be converted to a Maintenance Enquiry, but since the charge had not been put to the Accused and he had not yet pleaded thereto, the Court a quo, and in my view, correctly so, upon the request by the Prosecutor converted the matter and referred the matter to the Maintenance Court for a Maintenance enquiry. It was only after the Maintenance Enquiry that the Prosecutor took the matter back to the Criminal Court where the charges were withdrawn against the Accused.

- [14] In the result in my view, the Magistrate did not err, nor misdirected herself/himself when the matter was converted and referred for a maintenance enquiry upon the request of the prosecutor before the charges were put and the Accused had pleaded.

- [15] In the result the following order is made:-

1. The review application is dismissed.

M. NAUDE-ODENDAAL

JUDGE OF THE HIGH COURT,

LIMPOPO DIVISION,

POLOKWANE

I AGREE:

J.T. NGOBENI

APPEARANCES:

JUDGMENT

DELIVERED ON: 26 MARCH 2025

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