

SOUTH AFRICA / JUDGMENT

S v Mashilo (REV 56/2023) [2023] ZALMPPHC 21 (10 May 2023)

[2023] ZALMPPHC 21

COURT

Limpopo High Court, Polokwane

BEFORE

MG Phatudi, GC Muller

CASE / FILE NUMBER

REV 56/2023

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IN

THE HIGH COURT OF SOUTH AFRICA

(LIMPOPO

DIVISION, POLOKWANE)

CASE

NO: REV 56/2023

REPORTABLE:

YES/NO

OF

INTEREST TO OTHER JUDGES: YES/NO

REVISED

In

the matter between:

THE STATE

APPLICANT

and

KOKETSO FANA

MASHILO

RESPONDENT

REVIEW

JUDGMENT

MG PHATUDI J:

- [1] This matter is referred to this Court for special review in terms of section 304 of the Criminal Procedure Act, 1977[1], as amended. (“the Act”)

The facts giving rise to the present review are briefly the following:

THE

FACTS:

1.1. The accused, Mr. Koketso Fana Mashilo, born 29 June 2003, was issued with written notice to appear in the District Court, Moutse, on 31 March 2021, pursuant to the provisions of section 56 of the Act. The charge stated in the said notice was one of “public drinking” which allegedly took place at Thabakhwibidu on 27 February 2021 in contravention of section 154 of the Liquor Act 27 of 1989, as amended.

1.2. In the said notice, provision was made for admission of guilt in respect of the alleged offence for payment of R 100.00 admission of guilt fine on or before 19 March 2021, without appearing in Court. The accused, as a signification of receipt thereof, signed the relevant notice on 27 February 2021. He also paid the R 100.00 admission of guilt fine on the same day it was issued.

- [2] It is quite apposite to mention for the sake of completion, that section 56 (1) (a) –
- (d) of the Act makes provision for written notices of securing attendance of accused in the district court to specify inter alia, the name, the residential address and the occupation or status of the accused.

The general purport of section 56 envisages the saving of time and legal costs for both the arrestee and the State, respectively, on account of unnecessary incarcerations, maintenance and support of the arrestee at the state expenses while in detention, over-crowding, and prolonged court appearances, while the Court roll flow is case managed in an informal procedure.

- [3] In the instant case, the accused paid the admission of guilt fine at the Dennilton police station, (section 57 of the Act) whereafter the conviction was confirmed on review pursuant to section 57 (7) by the District Magistrate, Moutse on 08 March 2021, after examining relevant documents in support of such admission of guilt.
- [4] Furthermore, it appears from Form J534 issued to the accused that his age was recorded as “18”, and cancellation was not initialed so as to correctly note his age. Although as on the date of the offence (27 January 2021) the accused had not yet attained the age of 18 years, it follows that it was erroneously recorded on the notice that he was 18 years of age already.

Applying the correct arithmetical exactitudes, accused would attain 18 years on 29 June 2021, and not on 27 February 2021 as indicated.

To record that accused was 18 years old at the time of the alleged offence was not only wrong, but irregular. It follows logically that as on the date of the offence he was still a minor “child” within the meaning of section 28 (3) of the Constitution, Act 108 of 1996[2]. (“the Constitution”)

LEGAL FRAMEWORK:

[5] Proceeding from the premise that the accused was still a minor “child” as on the date of the offence, his treatment as an offender for purposes of what the notice referred to was intended, would fall within the purview of Chapter 3 of the Child Justice Act 2008[3], in particular, sections 17 and 18 thereof.

WRITTEN NOTICE, SUMMONS AND ARREST:

5.1. Section 17 reads as follows:

“The methods of securing the attendance of a child at a preliminary inquiry are –

(a) a written notice as provided for in section 18.”

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5.2. Section 18 (1) in turn provides that:

“A police official may, in respect of a child who is alleged to have committed an offence referred to in Schedule 1, hand to the child a written notice provided for in section 56 of the Criminal Procedure Act, but as amended by this section in respect of children, requiring the child to appear at a preliminary inquiry.”

5.3. Section 18 (2) states that:

“The provisions of section 56 (1) (c) of the Criminal Procedure Act relating to an admission of guilt and payment of fine, do not apply to a written notice in terms of this Act.”

5.4. Section 18 (3)(a) states that:

“A written notice must specify the date, time and place of the preliminary inquiry and be handed to the child in the presence of his or her parent, appropriate adult or guardian, in which case both the child and parent, appropriate adult or guardian must acknowledge receipt by way of a signature or mark.”

5.5. It is only in “exceptional circumstances” where it is impossible to hand a written notice to the child offender in the manner prescribed in section 18(3)(a) of the said Act that it must be served on the accused minor child, but a copy thereof must, “as soon as circumstances permit”, be handed to the parent, appropriate adult or guardian, and who together with the minor child offender, as the case may be, acknowledge receipt by way of signature or mark.

5.6. The police officer must, in effecting delivery of the said written notice, inform the recipients of the nature of the allegation against the child, his/her rights, and the immediate procedure applicable in terms of the Act, and to warn the child offender to appear at the preliminary inquiry.

[6] On closer perusal of the enclosed annexures to the review documents, it is patently clear that the police official's actions fell short of those statutory requirements. Failure to comply with the prescribed legal requirements rendered the issued notice and the resultant payment of the admission of guilt fine, irregular.

In consequence, confirmation or a determination by the district Magistrate of the admission of guilt fine stipulated in such a written notice, equally became a nullity and, therefore, liable to be reviewed and set aside.

[7] The High Court, in the instant case, has inherent power to set aside on review the irregular notice and the payment of admission of guilt fine.

This is simply because the weight of authority, seems to me, to swing on the side of settled view that, the magistrate acting in terms of section 57 (7) of the Act, becomes functus officio.

The foregoing observation is fortified by the decisions of the Full Court in *S v Louw*[4], *S v Manon*[5], *S v Vermaak*[6].

[8] In consequence, this Court, being bound by prevailing precedent, is entitled to review and set aside the aforesaid irregular conduct.

The following order would issue:

ORDER:

- (a) The confirmation by the Acting District Magistrate made in terms of Section 57 (7) of the Criminal Procedure Act 51 of 1977, is reviewed and set aside.
- (b) It is ordered that the admission of guilt fine (R 100.00) paid, be refunded to the accused within Ten (10) days after the granting of this Order.

M G PHATUDI

JUDGE OF THE HIGH COURT,

DIVISION, POLOKWANE

I agree,

G C MULLER

LIMPOPO DIVISION, POLOKWANE

[1] Act 51 of 1977.

[2] Act 108 of 1996, as amended, (RSA).

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- [3] Act 75 of 2008.
- [4] 1982 (4) SA 556 (C), See also, S v Miller 1981
- (3) SA 560 (O).
- [5] 1981 (1) SA 1216 (T), See also, S v Mokhele 1981
- (4) SA 956 (NC).
- [6] 1991 (1) SACR 336 (EC) – The majority view in all Divisions in the Republic (RSA) except KZN, held that the magistrate became functus officio and may not re-open the inquiry.
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