

SOUTH AFRICA / JUDGMENT

S v Matee (R08/2020) [2020] ZAFSHC 130 (28 May 2020)

[2020] ZAFSHC 130

COURT

Free State High Court, Bloemfontein

BEFORE

N.M MBHELE, P.E. MOLITSOANE

CASE / FILE NUMBER

R08/2020

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Review number: R08/2020

In the matter between:

THE STATE

and

WELLINGTON TSHEPO MATEE

CORAM: MBHELE, ADJP et MOLITSOANE, J

JUDGEMENT BY: MBHELE, ADJP

DELIVERED ON: 28 MAY 2020

[1] The matter came before us by way of special review, in terms of Section 304(4) of Act 51 of 1977, at the instance of Senior

Magistrate, SF Ferreira during the routine check of finalised files.

[2] The accused, who was conducting his own defence, was charged with contravening Section 59(4)(c) read with section 59(1)(b), 69(1), 73 and 89(1) of Act 96 of 1996. He pleaded guilty to the charge and he was sentenced to a fine of six hundred rands (R600) or two (2) months imprisonment. His driver's license was not suspended. The accused was recorded driving a motor vehicle on the R730 public road near Odendaalsrus at 144 kilometres per hour in excess of the general speed limit of 100 kilometres per hour for the particular area. This was measured over a distance of 448.6 metres.

- [3] The learned magistrate omitted to deal with the aspect relating to the competency of the traffic operator to set up the speed measuring device. The questions asked by the court also do not indicate that the calibration certificate of the device was shown to the accused.
- [4] The trial court must satisfy itself that the accused admits all the elements of the offence as set out in *STATE v PHUZI* 2019 (SACR 648 FB where the full court of this division held as follows when dealing with the competency of the traffic operator setting up the speed measuring device:

“In order to prove that the speed limit was exceeded the state would have to prove that the speed-measuring device was reliable for the purpose; that it determined and registered the speed accurately; and that it was properly set up in accordance with the manufacturer's

specifications. It is axiomatic that a properly trained person would be able to set up the device in accordance with the manufacturer's

specifications”.

The conviction is marred with irregularities and it falls to be set aside.

[4] I make the following order: -

4.1 The conviction and sentence are reviewed and set aside.

--_____

N.M MBHELE, ADJP

I concur

P. E. MOLITSOANE, J

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Prepared on 10 October 2026 · Esheria