

SOUTH AFRICA / JUDGMENT

S v Mayimele (Review) (109/2024)

[2025] ZALMPTHC 3 (4 March 2025)

[2025] ZALMPTHC 3**COURT**

Limpopo High Court, Thohoyandou

BEFORE

Semenya, TC Tshidada

CASE / FILE NUMBER

109/2024

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Policy**REPUBLIC****OF SOUTH AFRICA****IN****THE HIGH COURT OF SOUTH AFRICA****LIMPOPO****LOCAL DIVISION, THOHOYANDOU****High****Court Review Case No: 109/2024****Magistrate****Court Serial. 47/2024****Magistrate Case No:**

B495/2024

(1)

REPORTABLE: YES/NO

(2)

OF INTEREST TO THE JUDGES: YES/NO

(3)

REVISED.

DATE:

04.03.2025

SIGNATURE: (on
which review judgment is handed
In
the matter between
THE
STATE
v/s
WISANI
MAYIMELE
ACCUSED

JUDGMENT

SEMENYA DJP

[1] This matter was forwarded to this court for automatic review in terms of section 304 of the Criminal Procedure Act 51 of 1977 (the CPA). The accused was convicted on negligent driving in contravention of section 63(1) read with section 1, 63(2), 63(3), 69,73 and 89(50 of the National Road Traffic Act 93 of 1996 (the Act. He was sentenced

to Ten Thousand Rand (R10 000.00) or four (4) months' imprisonment which is wholly suspended for a period of three years on condition

the accused is not found guilty of similar offence committed during the period of suspension.

[2] In view of the fact that the accused was not legally represented, the magistrate questioned him in terms of section 112(1)(b) of the CPA in order to establish whether he admits all the elements of the offence he is charged with and whether he has no valid defence. The questioning of the accused proceeded in this way:

COURT: On the main count, do you admit or deny that on 24 August 2024 you were travelling on Madonsie Road next to Havana Park?

ACCUSED: I admit Your Worship.

COURT: Do you admit or deny that the road was a public road in the District of Malamulele?

ACCUSED: I admit Your Worship.

COURT: Do you admit or deny that you then wrongfully drove motor vehicle to wit Chevrolet Utility bearing registration number D[...] negligently?

COURT: Are you pleading guilty freely, voluntarily, without any undue influence? ACCUSED: I am pleading guilty Your Worship out of my own volition."

[3] The magistrate proceeded to pronounce judgment and said the following:

"I am satisfied that your plea of guilty is in accordance with justice and further that you have admitted to all the allegations contained in the main count, which is that of negligent driving and you are accordingly found guilty as charged."

- [4] The importance of the proper manner of invoking the procedure laid down in section 112(1)(b) can never be overemphasised. The questioning serves two purposes, namely, to establish the factual basis of the plea of guilty; and to establish the legal basis for such a plea.[1] Furthermore, in *S v Pieters*[2], a case in which negligence was an element of the offence the accused was charged with, the court stated that it was irregular for the magistrate to continuously question the accused about his negligent conduct requiring him to admit or disagree with that. The court stated that negligence is a generic term which should be avoided when questioning the accused.
- [5] The facts admitted by the accused in a plea of guilty must be such that a conclusion can be reached that he is admitting all elements of the offence he is charged with. For an accused to be convicted on a charge of negligent driving a magistrate must be satisfied, out of the facts admitted by the accused, that he drove his motor vehicle without the degree of care and skill which the reasonable man would have displayed in the same circumstances[3]. In the present case, there are no facts from which a conclusion can be reached that the accused's manner of driving fell short of what was required of a reasonable driver. The circumstances under which the accused in this case drove the motor vehicle are not known. As stated in *S v Mkhize*,[4] this is a case where the magistrate was expected to invite the accused to explain what happened with the hope that he would shed

some light with regard to the events leading to his arrest for reckless and negligent driving.

- [6] The magistrate materially misdirected himself in convicting the accused based on the answers he had given during questioning in terms of section 112(1)(b) of the CPA. There are no facts, in the form of admissions by the accused, that on the date of the incident, the accused drove his motor vehicle in a manner in which a reasonable driver, in the circumstances in which the accused found himself, would have driven.
- [7] On sentence, the accused called one Wisani David Shilenge to testify in mitigation of sentence. Mr Shilenge testified that he and the accused have agreed that the accused will repair the damage caused to his motor vehicle to the tune of R15000.00. He went further to plead for mercy on behalf of the accused stating that what happened was an accident that cannot be reversed. He told the court that the accused is unemployed and that the court should regard the fact that the accused has promised to repair his motor vehicle as sufficient punishment. The accused stated that he can afford to pay a fine of R500.00 in answer to the court's question. In his address on sentence, the prosecutor submitted that the court should consider a wholly suspended sentence in view of the fact that he is a first offender.

- [8] As it appears in paragraph [1] above, the magistrate proceeded to impose a wholly suspended sentence. Although the sentence may seem appropriate, I am concerned about the manner in which the condition of suspension is formulated. In this regard, I agree with the conclusion reached by the court in *S v Mafolo*[5] that the word "similar" is too wide. A similar offence may include reckless and inconsiderate driving, which the accused in this case has not been convicted of.
- [9] The magistrate conceded that his manner of questioning of the accused did not meet the well-established standard. This, in my view, constitute a material irregularity that vitiate the proceedings before the court below. The conviction and sentence should be set aside on that basis. The appropriate order would be to remit the matter back to the court below for purposes of questioning of the accused in terms of section 112(1) (b) of the CPA.
- [10] In the result I make the following order:
- i. The conviction and sentence are set aside: and
 - ii. The matter is remitted to the magistrate for proper invocation of section 112(1)(b) of the Criminal Procedure Act.

DEPUTY JUDGE PRESIDENT

I agree.

TC TSHIDADA

JUDGE OF THE HIGH COURT

- [1] *S v Nyanga* 2004(1) SACR 198 (C)
- [2] 2014 (3) NR 825 (HC)
- [3] *Kruger v Coetzee* 1966 (2) SA 428 (A)
- [4] 1981(3) SA 585 (N)
- [5] Unreported TPD case No. A433/2006, 5 May 2006)

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Prepared on 12 October 2026 · Esheria