

SOUTH AFRICA / JUDGMENT

S v Molaba (A276/16) [2016] ZAGPPHC 315 (5 May 2016) [2016] ZAGPPHC 315

COURT

North Gauteng High Court, Pretoria

BEFORE

J W Louw, D S Fourie

CASE / FILE NUMBER

A276/16

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IN THE GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

A276/16

5/5/16

Not reportable

Not of interest to other judges

Revised

Review Case no : K698/ 2015

High court ref no : 72/16

THE STATE

v

MESHACK SAMUEL MOLABA

REVIEW

JUDGMENT

J W LOUW, J

- [1] The accused was arraigned before the Kwa-Thema magistrates' court on a charge of contravening s17(a) of the Domestic Violence Act 116 of 1998 and a charge of assault with intent to do grievous bodily harm. After several postponements, the matter came before Acting Magistrate

J. M. Moloto on 7 December 2015. On that date, Mr. Moloto postponed the matter to 28 January 2016 for trial. Due to a bona fide mistake, he noted on the J15 charge sheet cover that the accused had pleaded guilty in terms of s 112(2) of Act 51 of 1977 ("the Act"), that the accused was found guilty and that he was cautioned and discharged. Those notes should have been made on the charge sheet cover of another matter which served before Mr. Moloto on that day, where the accused was a Mr. Mbonani. Realising his mistake afterwards, Mr. Moloto, in the absence of the accused, deleted the plea, conviction and sentence and wrote the word "ERROR" between two parallel lines across the relevant part of the charge sheet cover.

- [2] The Acting Senior Magistrate, Springs has referred the matter to the High Court for a special review in terms of s 304(4) of the Act. She states in her submission that Acting Magistrate Moloto was *functus officio* at the end of the trial and that he was therefore not competent to amend the record as such amendment could only be made on application by the prosecutor or the accused in terms of Rule 66(6) of the Magistrates' Court Act 32 of 1944. No such application had been made. The Acting Senior Magistrate is therefore of the view that the proceedings were not in accordance with justice.
- [3] Sec. 304(4) of the Act only permits a special review after an accused has been sentenced, not before. Sec. 304A permits a special review after conviction but before sentence. In the present matter, the accused has not been convicted or sentenced. There is nothing to set aside. A review in terms of either of the sections is therefore inappropriate. In my view, the erroneous inscription was simply an administrative error which was adequately rectified by the presiding acting magistrate.
- [4] The Acting Senior Magistrate's view that an application for the correction of the error should have been made by the prosecutor or the accused in terms of rule 66(6) of the Magistrates' Court Rules is, with respect, not correct. The rule refers to an application by the prosecutor or the accused after judgment for correction of an error in the court's record or a certified transcript thereof. The rule does not find application in the present matter.
- [5] In the result, the matter is remitted to the trial court for finalization of the trial.

J W LOUW

JUDGE OF THE GAUTENG DIVISION OF THE HIGH
COURT, PRETORIA

I agree

D S FOURIE

JUDGE OF THE GAUTENG DIVISION OF THE HIGH
COURT, PRETORIA

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