

SOUTH AFRICA / JUDGMENT

S v Molefe (281/17) [2017] ZAGPPHC 867 (16 October 2017)

[2017] ZAGPPHC 867

COURT

North Gauteng High Court, Pretoria

BEFORE

D S Fourie, H J Fabricius

CASE / FILE NUMBER

281/17

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IN THE HIGH COURT OF
SOUTH AFRICA

(GAUTENG
DIVISION, PRETORIA)

Review

Case No: PR27/2017

High

Court Ref No: 281/17

Not

reportable

Not

of interest to other judges

Revised.

16/10/17

In

the matter between:

THE
STATE
MOLEFE,
HENDRIK MAROLE
JERICHOAccused
MOLEFE,
HENDRIK MAROLE
JERICHO
Accused
REVIEW

JUDGMENT

D S FOURIE, J:

[1] On 4 May 2017 and in terms of section 112(2) of the Criminal Procedure Act the accused pleaded guilty in the Brits Magistrate's

Court on a count of culpable homicide. On the same day he was sentenced to a fine of R3 000.00 or three years imprisonment, wholly

suspended for a period of five years subject to the usual condition.

[2] The matter was submitted for special review in terms of section 304 of the Act and was forwarded to the Director of Public Prosecutions

for comment. According to the Magistrate the proceedings are not in accordance with justice due to the following irregularities that appear from the record:

(a) the section 112(2) statement does not reflect the factual basis of the plea of guilty;

(b) the record does not reflect that the Prosecutor accepted the plea of guilty.

[3] As was pointed out by the Director of Public Prosecutions, the content of the section 112(2) affidavit is a mere regurgitation of the charge sheet and does not contain the underlying factual matrix upon which the plea of guilty is based. In Sv B1991 (1) SACR 405(N) it was emphasised that section 112(2) requires not only a series of admissions, but also the facts upon which those admissions

are based. A conviction based on such an inadequate statement alone is improper. Although the record does not indicate that the

Prosecutor accepted the plea of guilty, nothing turns on this omission, as the plea itself cannot stand and must be set aside.

1991 (1) SACR 405

[4] This means that the matter will have to be remitted to the Court aquoto comply with the provisions of section 113(1) of the Criminal Procedure Act (correction of a plea of guilty).

In the result I propose the following order:

The conviction and sentence are set aside and the matter is remitted to the Courta quoto comply with the provisions of section 113(1) of Act 51 of 1977.

D S FOURIE

JUDGE OF THE HIGH COURT

PRETORIA

I agree, and it is so ordered.

H J FABRICIUS

JUDGE OF THE HIGH COURT PRETORIA

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Prepared on 23 October 2026 · Esheria