

SOUTH AFRICA / JUDGMENT

S v Mosia (62/2011) [2011] ZAFSHC 42 (3 March 2011) [2011] ZAFSHC 42

COURT

Free State High Court, Bloemfontein

BEFORE

S Singh, HM Musi

CASE / FILE NUMBER

62/2011

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FREE STATE HIGH COURT, BLOEMFONTEIN

REPUBLIC OF SOUTH AFRICA

Review No. : 62/2011

In the review between:-

THE STATE

and

LEBUANG JOSEPH MOSIA

CORAM: MUSI, JP et SINGH, AJ

DELIVERED ON: 3 MARCH 2011

SINGH, AJ

INTRODUCTION:

- [1] This matter was referred to this court for special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977, by the magistrates' court, Bloemfontein.

BACKGROUND FACTS:

- [2] On 24 December 2010, Mr. Lebuang Joseph Mosia, the accused, was stopped on the N6 road near Bloemfontein by traffic officer, Mr. Muller. He was served with a written notice (annexure "B") issued in terms of section 56 of Act 51 of 1977 and his vehicle was impounded for allegedly having conveyed passengers for reward without a valid operating permit. The notice further contains an endorsement specifying an amount of one thousand five hundred rands (R1 500), which may be accepted as an admission of guilt fine. The notice generally

complies with the requirements set out in section 56(1)(a), (b), (c) and (d) of Act 51 of 1977. Mr. Mosia complied and paid the admission of guilt fine plus an additional impounding fee of two thousand rands (R2 000). The magistrate presiding at the subsequent proceedings in terms of section 57(7) of Act 51 of 1977 confirmed the deemed conviction and sentence of Mr. Mosia.

FURTHER EVIDENCE:

- [3] Subsequent to the section 57(7) confirmation, Mr. Mosia addressed a letter of complaint to the Court a quo setting out new evidence that was not before the magistrate. He annexed the following documents in support of his allegations being the letter of complaint (annexure “A”), the section 56 notice (annexure “B”), the receipt for R1 500,00 (annexure “C”), the registry record of payments showing the payment of R1 500,00 (annexure “D”), particulars of permit holder, Mr. Mosia, issued by the Department of Transport for his motor vehicle YNB417GP (annexure “E”), the application fee for the said licence in the sum of two hundred rands (R200) paid by Mr. Mosia (annexure “F”), and electronic confirmation of the approval of the said licence (annexure “G”). It is Mr. Mosia’s allegation that Mr. Muller

issued the section 56 notice inspite of the fact that he produced his transport permit, and kept his transport permit and refused to give it back to him. He further alleges that he asked another traffic officer, Mr. Mdluli, to release his vehicle, who said it would not be released unless he paid the admission of guilt fine (R1 500) and impounding fine (R2 000) respectively. According to Mr. Mosia, he paid the aforesaid fines under protest to get his vehicle back as he could not afford to lose income he generated with it. Whilst there is a receipt for the admission of guilt fine (R1 500), the records of the Court a quo do not show the payment of the impounding fine (R2 000) made by Mr. Mosia.

THE ISSUE:

- [4] The issue for this court to determine is whether or not the conviction and sentence of the accused (Mr. Mosia) is in accordance with justice and whether interference by this court will be warranted for justice to prevail.

THE PRINCIPLES OF LAW:

- [5] Section 57(7) of the Criminal Procedure Act, 51 of 1977, makes provision for the presiding magistrate, after examination of the documents, in his or her discretion to set aside a conviction and sentence which is not in accordance with justice or a determination made by the magistrate in terms of section 57(5), and direct that the accused be prosecuted in the ordinary way. It is a further proviso to section 57(7) that, in lieu of setting aside the conviction and sentence, the magistrate may direct that the amount by which the admission of guilt fine exceeds the said determination be refunded to the accused.

[6] From the documents annexed to Mr. Mosia's letter of complaint to the Court a quo it appears that he was wrongly convicted and sentenced. Had the new evidence been available at the section 57(7) confirmation proceedings, the magistrate would probably not have confirmed the fines and would have directed that the accused be prosecuted in the ordinary course.

[7] In the result it is ordered as follows:

1. The accused's conviction and sentence are set aside.
2. The matter is referred back to the Court a quo for the magistrate to deal with the matter de novo in terms of section 57(7) of the Criminal Procedure Act 51 of 1977 and in any other manner as the magistrate may deem fit.

S. SINGH, AJ

I concur.

H.M. MUSI, JP

/sp

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