

SOUTH AFRICA / JUDGMENT

S v Motrobi / Lefoane (R64/2016) [2016] ZAFSHC 73 (5 May 2016)

[2016] ZAFSHC 73

COURT

Free State High Court, Bloemfontein

BEFORE

Moloi, Molemela

CASE / FILE NUMBER

R64/2016

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Case

Nr. : R64/2016

In

the matter between:-

THE

STATE

And

NTHABELENG

MOTHOBI / JOYCE LEFOANE

CORAM:

MOLOI, ADJP et MOLEMELA, JP

DELIVERED

ON: 05

MAY 2016

REVIEW

JUDGMENT

MOLOI, J

- [1] This matter was referred to me by the magistrate, Bloemfontein, to review the proceedings in terms of section 304(4) of the Criminal Procedure Act 51 of 1977. The magistrate remarked as follows in the letter covering the record of the proceedings:

“3 The accused pleaded guilty to the charge in terms of S 112(2) of Act 51/1977 and I accordingly convicted her. However it came to my attention before sentence was imposed that the accused misrepresented

the court into thinking that she was indeed Nthabeleng Mothobi, whereas she was in actual fact Ms Joyce Lefoane. The above was

disclosed by the accused on the day the sentencing proceedings were scheduled.

4 I confirm therefore that when convicting the accused before me, I labored under the impression that it was indeed, the right person and the Attorney was unaware of the misinterpretation and the conviction in this matter was based on misrepresentation by the accused.

5 In the light of the above the Honourable Reviewing Judge is requested to set aside the conviction and remit the matter for trial De Novo.”

- [2] It is trite that only the accused who has committed a specified charge can be convicted thereof. In *S v Sebeko* [1998] JOL3782(T) the accused pleaded guilty to possession of dagga and was questioned in terms of section 112(1)(a) of Act 51 of 1977 and was convicted. It later, before sentence, transpired that the accused was never charged with possession of dagga but with housebreaking with intent to steal and theft. On review the proceedings and the conviction were set aside by the court.

- [3] The key consideration in such proceedings, as in this matter, is whether the proceedings and the conviction are “in accordance with justice”: *Taljaard v S* [2004] JOL 13095 (c).

In this case the accused pleaded guilty to a charge with which a different person, Nthabeleng Mothobi, was charged. It will not be in accordance with justice to convict a different person than the person charged. In the circumstances the proceedings and the subsequent conviction stand to be set aside.

- [4] What causes a problem with the magistrate’s request is to remit the matter for trial de novo in the magistrate court. A trial de novo means the same person must go face the same charge afresh in the magistrate’s court. There can be no justification for such a ruling when the finding is made that a wrong person was charged. Making such a ruling will again not be in accordance with justice.

Whom to charge in respect of this matter and on which charge remains the prerogative of the prosecution.

[5] In the circumstance I would make the following order:

The proceedings and conviction of the accused on 22 February 2016 are set aside.

MOLOI, ADJP

I agree and it is so ordered.

MOLEMELA, JP

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