

SOUTH AFRICA / JUDGMENT

S v Mramba (Review) (CA & R 7/2025) [2025] ZAECBHC 2 (11 February 2025) [2025] ZAECBHC 2

COURT

Eastern Cape High Court, Bhisho

BEFORE

B Hartle, L Rusi

CASE / FILE NUMBER

CA & R 7/2025

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IN

THE HIGH COURT OF SOUTH AFRICA

(EASTERN

CAPE DIVISION, BHISHO)

OF

INTEREST

CASE

NO. CA&R7/2025

Whittlesea Case No. B

80/2023

In

the matter between:

THE

STATE

and

ANELE

MRAMBA

REVIEW

JUDGMENT

HARTLE J

[1] The matter became before us by way of a “special review” from the Whittlesea Magistrate’s Court.

[2] The presiding officer explains his predicament as follows:

“The accused was on bail in the sum of R200.00 (Two Hundred Rand). He then failed to appear on a date to which the proceedings had been postponed. His bail was provisionally cancelled and provisionally forfeited to the State and a warrant (for) his arrest was authorised. He appeared within 14 (Fourteen) days in terms of Section 67 (2) of the Criminal Procedure Act 51 of 1977 (the CPA) after having been arrested.

He was convicted and sentenced to 3 (Three) Months imprisonment for failure to appear which was wholly suspended for two years and his bail was re-instated. I am of the opinion that I wrongly convicted and sentenced the Accused for failing to appear after

(being) released on bail. The summary enquiry was supposed to be conducted (into) his failure to appear and to decide whether to re-instate his bail, if satisfied with the explanation, or confirm final forfeiture and cancellation of bail. The conviction and sentence for failing to appear whilst on bail must therefore be set aside.

The matter is hereby referred to the Honourable Judge for decision and direct accordingly as to how to handle the situation herein.”

[3] The facts of this matter are similar to those in the matter of *S v Kondile*[1] save that in the latter scenario the accused appeared after the fourteen day period contemplated in section 67 (2) of the Criminal

Procedure Act, No. 51 of 1977 (“the CPA”).

[4] The irregularity that is common to both matters however is that the presiding officers proceeded to convict and sentence the accused persons under the provisions of section 67a without either of them having been separately charged for such offence.

[5] The presiding officer in casu concedes that the enquiry that he was supposed to conduct under the provisions of 67 (3) of the CPA was only to decide the issue whether the accused’s bail should be reinstated. Since it was, the obvious implication is that the accused satisfied the court, in terms of the provisions of section 67 (2), that his failure under sub-section (1) to appear was not due to fault on his part, hence the order made by the court in terms of section 67 (2)(b) that his bail be reinstated.

[6] The presiding officer was correct to refer the matter on review since both the summary enquiry and consequent conviction and sentence were a mistake in the circumstances.

[7] In the result we issue the following order:

1. The conviction and sentence imposed by the magistrate for the accused's failure whilst then on bail to appear on 14 July 2023 is set aside.

B HARTLE

JUDGE OF THE HIGH COURT

I AGREE

L RUSI

DATE OF JUDGMENT: 11 February 2025

[1] (11/2020) [2021] ZAECBHC 3 (12 February 2020)

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