

SOUTH AFRICA / JUDGMENT

S v Msiza and Others (06, 07, 08, 09/2012) [2020] ZANWHC 78 (11 May 2020)

[2020] ZANWHC 78

COURT

North West High Court, Mafikeng

BEFORE

R.D. Hendricks, T.J. Djaje

CASE / FILE NUMBER

06, 07, 08, 09/2012

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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

HIGH COURT REF: 06, 07, 08, 09/2012

MAGISTRATE CASE NO: RE 2835/2019

RE 1744/2020

RE 1989/2019

RE 1869/2019

In the matter between:-

THE STATE

AND

JOHN MSIZA (CASE: RE 2835/2019)

XOLANI PIKA (CASE: RE 1744/2020)

ZACHARIA CHAUKE (CASE: RE 1989/2019)

ALFRED MAKAMU (CASE: RE 1869/2019)

Corum: HENDRICKS DJP et DJAJE J

11 MAY 2020

REVIEW JUDGMENT

HENDRICKS DJP

- [1] The Head of Office at Ga Rankuwa District Court, Senior Magistrate J.R. Jantjies, stumbled upon the abovementioned cases which were not sent on automatic review by the Presiding Magistrate, Mr. L.T Raborife. Being duty bound to do so, Mr. Jantjies sent these cases on special review under a covering letter, the contents of which reads thus:

“The above-mentioned case is not reviewable. I have however come across some irregularities which warrant the intervention of the High Court. My reasons are stated in the minute to the reviewing Judge.

I am the head of office and in my humble opinion the anomalies need to be rectified. The Presiding Officer in these matters was duly informed and his response is attached hereto.

1. The proceedings in casu were finalised by Mr. Raborife.
2. The accused person, who was unrepresented, was convicted and sentenced to a term of imprisonment exceeding 06 (six) months.
3. The presiding officer, Mr. Raborife failed to send the case for review as required by section 302 (1) of the Criminal Procedure Act 51 of 1977.”

- [2] Acting Judge Nobanda addressed the following query to Mr. Jantjies:

“1. In the Senior Magistrate's covering notes, the Senior Magistrate state that the above cases are not reviewable.

Kindly clarify.

2. The Senior Magistrate also state that he had detected anomalies in the above cases.

2.1 Was the presiding Magistrate made aware of these anomalies?

2.2 If so, what was his response?”

- [3] In reply, Mr. Jantjies stated the following in a letter:

“1. I incorrectly stated in my communique dated 27/08/19 the above-mentioned cases are not reviewable. The presiding magistrate failed to heed the provisions of section 302 (1) (a) of act 51 of 1977.

Section 302 (1) (a) provides that “Any sentence imposed by a magistrate's court (i) which, in the case of imprisonment ... exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer ... shall be subject in the ordinary course to review by a judge of the provincial or local division.

The cases were not send on automatic review by the magistrate despite the peremptory provisions of section 302 (1) (a) of Act 51 of 1977.

2. The Presiding Officer in these matters was duly informed and his response is attached hereto.”

[4] The response of the Presiding Magistrate Mr. L.T. Raborife, which is attached to the letter of Mr. Jantjies, reads thus:

“REASONS FOR FAILURE TO SEND LISTED CASES FOR REVIEW:

During the previous year I was under a lot of stress emanating from a divorce case against me wherein a certain Magistrate made an order that an amount of R5000.00 be deducted from my salary towards spousal maintenance although that order was not prayed for in the divorce summons. A further amount of R2500.00 was also being deducted towards the arrears of about R220 000.00 which I was said to have accumulated. An emoluments attachment was granted against me to enforce the said unlawful order of spousal maintenance.

I became aware of the stress during the last months of the previous year and I obtained treatment.

I however, had then committed an error of not sending the abovementioned cases for review.

The accused in those cases had pleaded guilty and were convicted in terms of Section 112(1)(b) of the Criminal procedure Act 51 of 1977.

The error is deeply regretted.”

[5] Section 302 (1) (a) of the Criminal Procedure Act 51 of 1997, as amended, (the CPA), reads:

“(1)

(a) Any sentence imposed by a magistrate's court-

(i) which, in the case of imprisonment (including detention in a child and youth care centre providing a programme contemplated in section 191 (2) (j) of the Children's Act, 2005 (Act 38 of 2005)), exceeds a period of three months, if imposed by a judicial officer who has not held the substantive rank of magistrate or higher for a period of seven years, or which exceeds a period of six months, if imposed by a judicial officer who has held the substantive rank of magistrate or higher for a period of seven years or longer;

[Sub-para.

(i) substituted by s. 13 (a) of Act 26 of 1987 and by s. 99 (1) of Act 75 of 2008.]

(ii) which, in the case of a fine, exceeds the amount determined by the Minister from time to time by notice in the Gazette for the respective judicial officers referred to in subparagraph (i), [Sub-para. (ii) substituted by s. 8 of Act 109 of 1984 and by s. 15 of Act 5 of 1991.]

(iii)

[Sub-para. (iii) deleted by s. 2 of Act 33 of 1997.]”

- [6] As quite correctly pointed out by Mr. Jantjies and tacitly conceded to by Mr. Raborife, the provisions of Section 302 (1) (a) of the CPA is peremptory. These cases should have been sent on automatic review, which regrettably did not happen. I take note of the explanation proffered by Mr. Raborife which is of a personal nature and to which I am not insensitive. However, occurrences such as these should be avoided at all costs, as it infringe and trample upon the rights of the accused persons.
- [7] The fact that automatic review is compulsory does not imply that the conviction or sentence is invalid if it is not sent on review for some or other reason such as administrative negligence. The effect is only that the accused did not get an advantage he or she could have had. It is also of interest to note that, in spite of the fact that

review is coupled with the extent of the sentence imposed, it is not only the sentence which is reviewed but the entire proceedings.

See: S v G 1990 (2) SA 22 (T)

S v Joale 1998 (1) SACR 293 (O)

Hiemstra's Criminal Procedure [Issue 3] 30-16.

- [8] I have perused the records of these cases and I find them to be in accordance with justice. As such, I have signed the J4 Review Case covering sheets.

R. D. HENDRICKS

DEPUTY JUDGE PRESIDENT OF THE HIGH COURT

I agree

T.J. DJAJE

JUDGE OF THE HIGH COURT

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