

SOUTH AFRICA / JUDGMENT

S v Namane (R49/2021) [2021] ZAFSHC 262 (4 November 2021)

[2021] ZAFSHC 262**COURT**

Free State High Court, Bloemfontein

BEFORE

Mhlambi, Mbhele

CASE / FILE NUMBER

R49/2021

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**IN THE
HIGH COURT OF SOUTH AFRICA
FREE STATE
DIVISION, BLOEMFONTEIN**

Application No: R49/2021
In

the matter between: THE
STATE
State
and
RAMOTSABI RONALD
NAMANE
Defence

CORAM: MBHELE DJP et MHLAMBI,
J

JUDGMENT**BY: MHLAMBI, J****DELIVERED ON: 04 NOVEMBER 2021**

- [1] This matter was referred to us by the Magistrate's Court, Kroonstad, in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA), with the request that the court declare the proceedings irregular and set them aside or make such order as is expedient in the circumstances. The accused paid an admission of guilt fine in the amount of R750.00 on

16 April 2021 for having contravened the provisions of section 102 of the Free State Public Transport Act 4 of 2005 (the Free State Act), in that he conveyed nine passengers for reward, without a Road Transportation Permit to do so. The admission of guilt fine payable was R1 500.00, but was reduced to R750.00 after consultations with the state prosecutor.

- [2] The review was sent under cover of a letter in which the senior magistrate stated that, upon perusal of the matter, he was of the opinion that the proceedings were irregular and that there was a failure of justice. According to his observations, the accused's vehicle was impounded by the relevant traffic officers and released without the required pound fee on the strength of an order granted by the magistrate on 27 October 2020 in terms of section 99(2)(b) of the Act. The order was erroneous as it was granted before the commission of the offence; which could have been an error on the part of the magistrate as regards the date of the order. Consequently, the concern was that, as the order stood, it was invalid. The further concern was that the magistrate did not keep a proper record of the proceedings as required by the Magistrate's Court Act.
- [3] Certain queries were addressed to the magistrate in respect of both the senior magistrate's and reviewing judge's concerns. In response, the magistrate acknowledged his mistake and stated that the reduced admission of guilt fine was paid on 23 April 2021 whereafter the documents were brought before him in chambers by the prosecutor and he was asked to confirm the amount and the payment. He was also asked to make an order to return the vehicle in terms of section 99(2)(b) of the Act. It was not necessary that the traffic inspectors be present to assist him to make an order as the prosecutor was there to bring to his attention anything that could influence his decision. The pro forma order was on his computer and he only changed the notice number and the particulars before it was printed. In this case he forgot to change the date and stamp.
- [4] An affidavit was attached to his statement by the owner of the motor vehicle who confirmed the dates, that she initially approached the prosecutor who had reduced the traffic fine payable whereafter the latter took her to the magistrate who typed a letter on his laptop, handed it over to her for production to the traffic department for the release of the motor vehicle. This took place after the R750.00 was paid and the magistrate had accepted her explanation that she could not afford to pay the pound fee.
- [5] Section 99(2) of the Free State Act provides as follows:
- "99 Impoundment of vehicles*
- (1)
- (2) A vehicle impounded under subsection (1) must be delivered to the head of the depot contemplated in subsection (4), who must retain the vehicle in the depot and release it to the person concerned only-

(a) when the criminal charges against the person have been withdrawn or the person has been acquitted of the offence charged; or

(b) in the case where the person is convicted of the offence charged, and

unless the court has ordered otherwise, on payment to the head of the depot of the amount determined by the MEC.”

[6] This court, sitting as a court of review, has the power to set aside or correct the proceedings of the magistrate’s court[1] or generally give such a judgment or impose such sentence or make such order as the magistrate’s court ought to have given,

imposed or made on any matter which was before it at the trial of the case in question.[2] It is so that the magistrate committed an error by not paying proper attention when he put the date stamp on the order he granted. It would therefore be proper and in the interests of justice if the magistrate’s order is set aside and substituted with a correct order.

[7] In the circumstances, the following order is made:

7.1 The payment of the reduced admission of guilt fine is confirmed.

7.2 The order of the magistrate in respect of the return of the vehicle, is set aside and replaced with the following:

“In terms of section 99(2)(b) of the Free State Public Transport Act, it is ordered that the motor vehicle, a Toyota Minibus, bearing

registration number JFW 221 NW, be returned to the person concerned, without him/her being required to pay the fee determined by the MEC”.

MHLAMBI,J

I concur

MBHELE, DJP

[1] Section 304(2)(c)(ii).

[2] Section 304(2)(c)(iii).

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