

SOUTH AFRICA / JUDGMENT

S v Ndlangamandla (A842/07) [2007] ZAGPHC 224; [2008] 1 All SA 64 (T) (1 October 2007) [2007] ZAGPHC 224

COURT

High Courts - Gauteng

BEFORE

Rasefate, W.L. Seriti

CASE / FILE NUMBER

A842/07

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1

A842/07 TM IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

REPORTABLE DATE: 1/10/2007

Magistrate: BENONI

Magistrate serial no.: 17/07

Review Case no.: T023054/06

High Court Ref no.: 1600

THE STATE VS PHUMLANI EMMANUEL NDLANGAMANDLA

REVIEW JUDGMENT

RASEFATE,AJ

1.

The record of this case came before me for review in the ordinary course, from the magistrate of Benoni.

2.

The accused appeared before the magistrate court as a result of a written notice to appear issued in terms of section 56 of the Criminal Procedure Act 51 of 1977,

apparently for driving a motor vehicle whose stop light was defective. The accused pleaded guilty and was then sentenced.

3.

It is striking even at first glance that the proceedings in the case are not in accordance with justice for the following

reasons:

3.1

3.2

2

There is no coherent charge which could have been put to the accused: The "Control Document" which apparently represents what should have been a charge sheet dismally falls short of that purpose. I

can't imagine how the charge could have been coherently and intelligibly put to the accused, and thus how he could have understood it.

It is an essential requirement of fair trial that a proper charge should inform an accused person clearly of the charge(s) which he should face in court. This fact was stated clearly and fully in *S v Maketi and Another* 1979

(4) SA 569 (C), where the judge

said "The need to ensure that an unrepresented accused is afforded a fair trial and is not placed at a

disadvantage in proceedings against him where his liberty is endangered applies with equal force in the magistrate's and regional courts as it does in the (High Court): prosecutors must ensure that the charges they put to unrepresented accused spell out with sufficient clarity, the allegations of fact upon which reliance will

be placed for a conviction; and magistrates must ensure that such accused understands what the state's case is and why it constitutes the offence

charged. "

It does not appear that the prosecutor and magistrate in the case under review paid attention to the requirement of a properly framed charge sheet.

3.3

3.4

3.5

3

Moreover the offence is stated somewhat differently, but more eloquent in the warrant of arrest which was issued when the accused failed to appear in court, in that the warrant states that the "stop lamps not in clean condition or in a good working order." The problem is that the warrant of arrest describes the offence differently than what was the charge sheet from which it derives; and whose language it should convey to the person to be arrested. That is the first problem.

The second problem is that, from the record, the only right which was conveyed to the accused before he

was sentenced is that " he may make unsworn

statement." Obviously it is misleading and it is not true: He also had the right to give evidence on oath and to call witness (es).

Thirdly on the record the accused faced one charge of which he was convicted after pleading guilty, but two sentences have been passed. The sentence itemised

(2) is stated in garbled fashion, which entails that it cannot be interpreted meaningfully and, when the need arises, the sentence cannot be implemented without difficulty or confusion. Furthermore, it does

not say what it is for. [Although apparently it is for the accused's failure to appear in court, which fact is not reflected on the face of the record].

4

4.

Overall, the proceedings as evidenced by the record could only have been sloppy and confusing, and do not appear to have been in accordance with justice.

5.

The "Magistrates' reasons for sentence" which is not signed, but which accompanied the record; and through which the magistrate requests this Court to change the sentence (as per his paragraphs 1.11 and 1.12) is further evidence of the bewilderingly unsatisfactory level of care and professionalism which is displayed.

Furthermore, the so-called "reasons for sentence" takes into consideration facts that are nowhere in the record,

such as in paragraph 1.8 thereof.

The language and construction employed is also, with respect to the magistrate, not eloquent and understandable: Some sentences/ideas are incomplete!

6.

In the premises, the conviction and sentences should be set aside as not being in accordance with justice.

7.

The record as well as these remarks should be placed before the Court in terms of section 304(2) (a) of the Criminal Procedure Act, 51 of 1977.

8.

[Since the magistrate has given reasons for the reviewable sentence, I am of the opinion that it is not necessary to refer it back for the statement referred to in this section of

the Act].

I agree.

5

The Court should therefore make the following order:

The conviction and sentence of the accused are set
aside.

ACTING JUDGE OF THE HIGH COURT

W.L. SERITI

JUDGE OF THE HIGH COURT

IN THE ORDINARY COURSE OF EVENTS

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