

SOUTH AFRICA / JUDGMENT

S v Ngcobo (A186/15) [2015] ZAGPPHC 193 (1 April 2015) [2015] ZAGPPHC 193

COURT

North Gauteng High Court, Pretoria

BEFORE

F G Preller, H J Fabricius

CASE / FILE NUMBER

A186/2015

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IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DATE: 1 April 2015

Case No: A186/2015

Not reportable

Not of interest to other judges

Magistrate

Case No: 183/2014

High Court Ref No: 746/2014

THE STATE V POPPY G NGCOBO / BENSON BHUDA

REVIEW JUDGMENT

PRELLER. J

The Magistrate of Delmas forwarded the proceedings in this case to the Registrar with a request that same be reviewed and set aside and returned to be heard de novo before another Magistrate.

The proceedings arise from the opposed return day of a provisional protection order in terms of the Domestic Violence Act 116 of 1998. The problem arose when the Magistrate concerned reserved her judgment after the completion of the proceedings but was suspended pending investigations before it could be delivered.

As pointed out by the Director of Public Prosecutions these were not criminal proceedings which would be subject to a review in terms of section 302 of the Criminal Procedure Act. There was no indication when the investigation against the Magistrate will be finalised and when she would be able to deliver her judgment, if ever. As correctly pointed out by the Magistrate this resulted in an injustice which has to be rectified.

Section 16 of Act 116 of 1998 provides:

“The provisions in respect of appeal and review contemplated in the Magistrates Court Act 1944 and the Supreme Court Act 59 of 1959 apply to any proceedings in terms of this Act.”

The Supreme Court Act of 1959 has been replaced by the Superior Court Act 10 of 2013 which provides in section 21(1)(b) that this court has jurisdiction over all persons being in and in relations to all causes arising and offences triable within its area of jurisdiction and has the power to review the proceedings of all such courts. The magistrate has in my view correctly pointed out that even though this matter does not fall within the normal review powers of this court the court should in the exercise of its inherent powers do what is necessary to ensure that justice is done.

The following order is made:

The proceedings before the magistrate are set aside and the matter is referred back to the magistrate for trial de novo before another magistrate.

F G PRELLER

JUDGE OF THE HIGH COURT

I agree

H J FABRICIUS

It is so ordered

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