

SOUTH AFRICA / JUDGMENT

S v Ramahetlane and Others

(7/2019 – 24/2019) [2019]

ZAFSHC 19 (7 February 2019)

[2019] ZAFSHC 19

COURT

Free State High Court, Bloemfontein

BEFORE

DAFFUE, MUSI

CASE / FILE NUMBER

7/2019 – 24/2019

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IN

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

Review

numbers 7/2019 – 24/2019

In

the matter between:

THE
STATE
and
THABISO
RAMAHETLANE - CASE NO: R 24/2019
THABO
MAKGATO - CASE NO: R 23/2019
ISAAC
TANKI MPHARALALA - CASE NO: R 22/2019
MATHABA
JAMES LINYOLOHO - CASE NO: R 21/2019
MONDE
MICHAEL MPHATSOE - CASE NO: R 20/2019
TAYOB
JOOMA - CASE NO: R 19/2019
CHEN
XIAOQIANG - CASE NO: R 18/2019
YUSUF
ABDULLA - CASE NO: R 17/2019
ALPHONCE

MASILO KHOBOKO - CASE NO: R 16/2019
TRAVERS
JUSTIN JOHNS - CASE NO: R 15/2019
ANSUS
BELUNSAN - CASE NO: R 14/2019
SABELO
OTHEN'YEL NMLENGETFWA - CASE NO: R 13/2019
FRANCE
MOKOENA - CASE NO: R 12/2019
SIYABONGA
MICHAEL MACHI - CASE NO: R 11/2019
TSHILISO
MAKETEKETE - CASE NO: R 10/2019
MOHAILA
JOMANE - CASE NO: R 09/2019
KHOPOLO
VINCENT NTHONTHO- CASE NO: R 08/2019
MARTHIMS
RUDOLF RAUTENBACH- CASE NO: R 07/2019

CORAM: MUSI, JP et
DAFFUE,
J

JUDGMENT

BY: DAFFUE, J

DELIVERED ON: 7 FEBRUARY 2019

REVIEW

- [1] The proceedings in all 18 matters have been sent to the High Court on review. The first 17 matters are automatic reviews as the accused were unrepresented, whilst the last matter, that of the accused, Mr Rautenbach, is a special review insofar as he was represented by an attorney.
- [2] In all instances the accused were charged with contravention of section 59(4) of the National Road Traffic Act, 93 of 1996, to wit that they exceeded the speed limit of 100 km/h on the R26 public road near Clocolan by travelling at speeds ranging from 148 to 165 km/h respectively. They all admitted that:
- 2.1 their actions were unlawful and intentional;
 - 2.2 the speed limit of 100 km/h on the R26 public road is 100 kph;
 - 2.3 they had travelled at the speed accused of in the respective charge sheets.

- [3] The same magistrate, who has been appointed to the substantive rank of magistrate on 4 January 2013, was the presiding officer in all matters. It is apparent that her questioning in the first 17 cases virtually followed the same pattern in each case.
- [4] In the last matter the accused, Mr Rautenbach, was represented by an attorney who handed in the accused's signed s 112(2) statement upon which he was convicted. The accused went so far to admit that the Truvelo apparatus was duly calibrated, but that is not sufficient anymore.
- [5] On 28 December 2018 the full bench of this Division handed down judgment in *The State v Enoc Phuzi*, case number R254/2018. Neither the questioning by the presiding magistrate in the first 17 matters, nor the admissions by Mr Rautenbach comply with the requirements laid down by the full bench as set out in paragraph [39](b) of the judgment.
- [6] The stare decisis principle applies and consequently all convictions and sentences should be set aside.

[7] The conviction and sentence is set aside in respect of each of the following matters:

CASE NO: R 24/2019 THABISO RAMAHETLANE

CASE NO: R 23/2019 THABO MAKGATO

CASE NO: R 22/2019 ISAAC TANKI MPHARALALA

CASE NO: R 21/2019 MATHABA JAMES LINYOLOHO

CASE NO: R 20/2019 MONDE MICHAEL MPHATSOE

CASE NO: R 19/2019 TAYOB JOOMA

CASE NO: R 18/2019 CHEN XIAOQIANG

CASE NO: R 17/2019 YUSUF ABDULLA

CASE NO: R 16/2019 ALPHONCE MASILO KHOBOKO

CASE NO: R 15/2019 TRAVERS JUSTIN JOHNS

CASE NO: R 14/2019 ANSUS BELUNSAN

CASE NO: R 13/2019 SABELO OTHEN'YEL NMLENGETFWA

CASE NO: R 12/2019 FRANCE MOKOENA

CASE NO: R 11/2019 SIYABONGA MICHAEL MACHI

CASE NO: R 10/2019 TSHILISO MAKETEKETE

CASE NO: R 09/2019 MOHAILA JOMANE

CASE NO: R 08/2019 KHOPOLO VINCENT NTHONTHO

CASE NO: R 07/2019 MARTHIMS RUDOLF RAUTENBACH

J P DAFFUE, J

I concur

C J MUSI, JP

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