

SOUTH AFRICA / JUDGMENT

S v Thulo and Another (R87/2016)

[2016] ZAFSHC 120 (5 May 2016)

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COURT

Free State High Court, Bloemfontein

BEFORE

Mocumie, Moloi

CASE / FILE NUMBER

R87/2016

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IN THE HIGH COURT OF SOUTH AFRICA,

FREE STATE DIVISION, BLOEMFONTEIN

Review number: R87/2016

In the matter between:

The State

and

Samantha Thulo Kedibone Margeret Ntaita

CORAM: MOCUMIE,J et MOLOI,ADJP

DELIVERED ON: 05 MAY 2016

MOCUMIE,J

- [1] The matters under case A212/15 and A272/15 were placed before this court on special review by the Senior Magistrate, Welkom, Mr SF Ferreira, in terms of s304(4) of the Criminal Procedure Act 51 of 1977 (the CPA).
- [2] On 9 October 2015 two accused persons, Ms S Thulo (accused No1) and Ms K M Ntaita (accused no2), appeared in Hoopstad magistrate court before a magistrate, Mr SS Mmushi. The two were represented by Mr Kwela on instructions of the Legal Aid Board.
- [3] According to the record, accused no 1 pleaded guilty and accused no 2 pleaded not guilty. The court adjourned. On resumption, the prosecutor applied that accused no 2 be joined with accused no 1 in the same proceedings. The prosecutor informed the court that 'the state has just compiled a new charge sheet for accused no 2 which will use case number 8272/15 ...' He continued to place on record that 'case number 212 and 272 will be tried

together as they are involved in the same facts.' The court granted the application with no objection from the defence. The matter was then postponed until 12 October 2015.

- [4] There is no indication on record what happened on 12 October 2015. The next date on which case 212/2015 was attended to was on 6 November 2015 on which day, the state withdrew the charge against both accused persons on the basis that 'there was a successful mediation.'

The court endorsed the withdrawal of case 212/15 against both accused person, 'after successful mediation'.

However on 06 November 2015 as per the charge sheet the magistrate noted 'charge withdrawn in respect of offender 2 provisionally on 24/8/2015. Withdrawn against both by PP.'

- [5] There is no entry in respect of case A272/15 i.e. how it was disposed of or even whether it was disposed of in the first place.
- [6] What is abundantly clear on the transcribed record as well as the original J15 with its annexures pages 1-5 of the record there is no entry indicating whether case no 272/15 was disposed of finally.
- [7] Section 6 (b) on the CPA provides for various methods in which a case may be disposed of. The section refers to two instances:
- (a) where the proceedings were stopped by the prosecutor and (b) where the accused was acquitted/ found not guilty and discharged.
- [8] Section 106(4) of the CPA provides that once an accused person has pleaded to a charge, whether guilty or not guilty, (s)he is entitled to a verdict/ judgment as set out in s6(b) above.
- [9] In both cases in issue, there is no entry. i.e whether the accused persons were found guilty or not guilty. It remains unclear what finally happened in court despite the magistrate signing off the record on 6 November 2015.
- [10] In the light of the above, the two cases have not been finally disposed of. They are still alive. The only remedy available, as correctly proposed by the senior magistrate, is to set aside the order of withdrawal of the case against both accused persons on 6 November 2015 and set aside the plea (of not guilty) under case A272/15 to allow the proceedings in case A212/15 to be continued.
- [11] In the event, the following order is granted: ORDER
1. The order of withdrawal against both accused persons granted on 6 November 2015 against both accused as per the original J15 on 24 August 2015 is set aside.
 2. The plea of not guilty under case no A212/15 is set aside to allow the proceedings under case no A212/15 to continue and be dealt with as the Director of Public Prosecutor deems fit.'

MOCUMIE, J

MOLOI. ADJP

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