

SOUTH AFRICA / JUDGMENT

S v Tsotetsi (R40/2020) [2020] ZAFSHC 69 (26 March 2020)

[2020] ZAFSHC 69

COURT

Free State High Court, Bloemfontein

BEFORE

M. A. Mathebula, P. J. Loubser

CASE / FILE NUMBER

R40/2020

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IN

THE HIGH COURT OF SOUTH AFRICA,

FREE

STATE DIVISION, BLOEMFONTEIN

Review

number: R40/2020

In

the matter between:

THE
STATE
and
SIMON
TSHARELO TSOTETSI

CORAM:

MATHEBULA, J et LOUBSER, J

JUDGEMENT

BY: MATHEBULA, J

DELIVERED ON: 26 MARCH 2020

Criminal law and Procedure - Misinterpretation of evidence in the Proceedings

- proceedings set aside and remitted to the court a quo to start de novo before another regional magistrate.

[1] This is a special review in terms of Section 304(2)(c)(iii) of Act 51 of 1977 (as amended). The matter currently pending before the Acting Regional Magistrate, Heilbron is referred to us either to set aside or correct the proceedings before the court.

[2] The four accused are charged with one count of murder. The learned acting regional magistrate explained to them the consequences

of the minimum sentence legislation in the event of a guilty verdict. They all pleaded not guilty and through their legal

representatives did not advance any plea explanation.

[3] At the stage that the learned acting regional magistrate referred this matter to us the evidence of two (2) witnesses had been

completed. It is of no importance to repeat their evidence because this judgement is not about it. The nub of the review

is the interpretation services rendered in court which impacted on the principles of the fairness of the trial.

[4] It appears that the evidence was interpreted in both isiZulu and English. The learned acting regional magistrate, state

prosecutor and defence counsel are not proficient in isiZulu. It was brought to the attention of the learned acting regional

magistrate by the state prosecutor that there was a language barrier between the interpreter and witnesses.[1] This was also confirmed by the interpreter.[2]

[5] Defence counsel objected that the proceedings should be halted as a result of this issue. They cited among others the prejudice that will be suffered by the accused who have been incarcerated since their arrest. The high point of their argument is that the case against the accused is weak. Therefore, so the argument goes, the witnesses can be recalled and be examined on those aspects where there could have been a misinterpretation.

[6] The judicial authority in the Republic is vested in independent courts which are subject to the Constitution and the law.[3] It is required of the courts to apply the law impartially and without fear, favour or prejudice. This is the cornerstone of our legal system in the adjudication of disputes before courts.[4]

[7] In order to achieve these noble ideals, it is imperative that every litigant or witness before court is permitted to use a language that he/she understands. In our Republic, the language of the courts is English. It stands to reason that in situations as the matter on hand, effective interpretation service must be provided to achieve the desired goals. Regrettably it was not to be the case because there was glaring miscommunication between the interpreter and witnesses. They were speaking different type or dialect of isiZulu. The facts speak for themselves.

- [8] Confronted with a situation of this nature, there can be no talk of a trial measuring up to the notion of fairness and justice. The prejudice suffered by the state is that the correct version was not presented to the acting regional magistrate to enable her to apply the principles of the law in the correct manner. Indeed any delay is prejudicial to the accused persons who have been incarcerated for a period of about thirty three (33) months. They too, have an interest in participating in a trial which is conducted in accordance with the law.
- [9] The irregularity is of such a nature that the proceedings must be set aside. The matter must be prioritised and dealt with without further delay. The relevant authorities responsible for language services are implored to investigate the crux of the irregularity and appoint competent personnel to deal with matters before the court in an appropriate manner.
- [10] It will be undesirable that the matter be remitted before the same acting regional magistrate. Witnesses have testified of which she would have formed an opinion pertaining to their reliability and/or credibility. It is imperative that justice is not only done but seen to be done. That can only be achieved if the matter start de novo before another regional magistrate.

[11] Therefore I make the following order:-

11.1. The proceedings are reviewed and set aside.

11.2. The matter is remitted to the regional court to start de novo before another regional magistrate.

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M. A. MATHEBULA, J

I concur

P. J. LOUBSER, J

[1] Page 54 lines 9 - 25

[2] Page 55 lines 21 - 22

[3] Section 165 of the Constitution of the Republic of South Africa, Act 108 of 1996

[4] Le Grange and two others v State 2008 ZASCA 102

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Prepared on 9 October 2026 · Esheria