

SOUTH AFRICA / JUDGMENT

S v Zulu and Others (AR219/2022) [2023] ZAKZPHC 71 (30 June 2023)

[2023] ZAKZPHC 71**COURT**

Kwazulu-Natal High Court, Pietermaritzburg

BEFORE

Mngadi, P Bezuidenhout

CASE / FILE NUMBER

AR219/2022

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– Admission of guilt fines – Procedure – Accused arrested and released on police bail for failing to display route permits for public transport – No summons or written notice issued – Prosecutor fixing admission of fines which they paid – Magistrate submitting matter for review – Reasoning that only accused who were summoned or issued with notice to appear can admit guilt and pay fine without appearing before court and that arrested accused must appear before court – Charges found not to be in accordance with provisions of National Land Transport Act 5 of 2009 – Proceedings not in accordance with justice, reviewed and set aside.

IN

THE HIGH COURT OF SOUTH AFRICA

KWAZULU-NATAL

DIVISION, PIETERMARITZBURG

Case

No: AR219/2022

In

the matter between:

THE

STATE

And

THULILE

RACHEL ZULU AND 21 OTHERS

REVIEW

JUDGMENT

Date delivered

Mngadi J (P Bezuidenhout J concurring)

1. The magistrate submits for review in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977 (CPA) 22 matters. Section 304 (4) provides that: If in any criminal case in which a magistrate's court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section'.
2. The accused persons were arrested and charged by the police. The police released them on police bail. The prosecutor fixed an admission of guilt fine for the accused. The accused paid the admission of guilt fine. The accused appeared before court and the magistrate struck off roll the case.
3. The magistrate is of the view that the proceedings were not in accordance with justice for the following reasons:

'1. Only accused who were summoned or issued with notice to appear can admit guilt and pay fine without appearing before court. Arrested accused must appear before court before they are transferred from criminal court record book to the record book prepared for admissions of guilt.
2. Cases where accused admit guilt extra judicially are reserved only for petty crimes.
3. Cases where accused are arrested are prima facie serious offenses.
4. Maximum fines for offences in respect of which all accused were charged is R100 000.00 (One Hundred Thousand rand) and a maximum term of imprisonment is two (2) years imprisonment, and in no way this offence can be regardless as petty.
5. By virtue of seriousness of the offence and for the fact that they were arrested and therefore did not fall under section 57 but under section 57A accused were entitled to have legal representation explained to them as serious prejudice could result so they could make uniformed decisions.
4. The Deputy Director of Public Prosecutions (OPP) in a memo supports

the view of the magistrate that the proceedings are reviewable as they were not in accordance with justice in that the provisions of section 57 (1) (a) and (b) of the CPA were not complied with because no summons in terms of s54 of the CPA nor a written notice in terms of s56 of the CPA was issued. It resulted, submits the DPP in neither s57 nor s57A of the CPA being complied with.

5. The review section 304 (4) refers to a criminal case in which a magistrate's court has imposed a sentence. Although the admission of guilt fine was fixed by the prosecutor. Section 57(6) provides that the Clerk of Court shall enter the essential particulars in the criminal record book for admissions of guilt,

whereupon the accused concerned shall be deemed to have been convicted and sentenced by the court in the respect of the offences

in question.

6. An arrested person can be released from the arrest and be issued with summons or be issued with a notice to appear or be released on bail. If the offence he faces qualifies for a fixing of admission of guilt fine, it may be fixed for him. Thereafter, the fact that the accused were initially arrested is no impediment for fixing an admission of guilt fine.

7. The accused faced a charge reading as follows:

'The accused is guilty of the offence of contravening s50 read with s90 of the National Land Transport Act 5 of

2009. (Failure to display route permit).

In that or about....the said accused did operate a road based public transport service, upon a public road... in the district of The accused being the operator of a vehicle.... without displaying the permit authorising such transportation in terms of the National Land Transport Act'>.

8. The essence of the charge is to operate a road based public transport service on a specified public road by operating a specified vehicle without displaying a permit authorising such transportation. The essence of the charge is summarised in brackets to be 'Failure to display route permit'. Section 50(1) of National Land Transport Act 5 of 2009 (NLTA) provides that no person may operate a road based public transport service unless he or she is the holder of an operating licence or permit issued for the vehicle concerned.
9. Section 50 does not require a display of the operating licence or permit. Therefore, the purported charge is not in accordance with the provisions of s50 of NLTA. It is not known whether the accused were admitting failing to display the operating licence or permit, or they were admitting

operating a road based public transport service without being the holder of an operating licence or permit.

10. As a result, the proceedings relating to the under mentioned accused are found not to have been in accordance with justice. They are reviewed and set aside, namely:

1. Thulisile Rachel Zulu case B424/22 2. S W Buthelezi case A467/22 3. SM Ngubane case A468/22 4. W B Mbatha case A469/22 5. MA Ngobese case A470/22 6. TA Magwaza case A471/22 7. L Ntombela case A472/22 8. MT Zuma case A473/22 9. E T Shabalala case A474/22 10. MP Mbatha case A425/22 11. WP Khumalo case A426/22 12. BE Magwaza case A427/22 13. SK Shangase case A428/22 14. K J Ngcobo case A429/22 15. H B Mlotshwa case A430/22 16. BA Khumalo case A431/22 17. CI Thwala case B432/22 18. CP Ndlovu case B433/22 19. B N Masango case B434/22 20. M J Mahaye case B435/22 21. ME Ngobese case 436/22 22. SR Zungu case 437/22

Mngadi J

I agree, it is so ordered.

P Bezuidenhout J

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