

SOUTH AFRICA / JUDGMENT

Talane v S (CAP 22/2014) [2015] ZANWHC 8 (12 March 2015)

[2015] ZANWHC 8

COURT

North West High Court, Mafikeng

BEFORE

R D Hendricks, T Djaje

CASE / FILE NUMBER

CAP 22/2014

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IN THE NORTH WEST HIGH

COURT, MAFIKENG

CASE NO: CAP 22/2014

DATE: 12 MARCH 2015

In the matter between:

TALANE JABULILE

BABY.....Appellant

And

THE

STATE.....Respo

ndent

CRIMINAL APPEAL

HENDRICKS J; DJAJE AJ

DATE OF HEARING : 06 MARCH 2015

DATE OF JUDGMENT : 12 MARCH 2015

COUNSEL FOR THE APPELLANT : ADV

THOBEJANE

COUNSEL FOR THE RESPONDENT : ADV

MAILA

JUDGMENT

HENDRICKS J

- [1] The Appellant was arraigned before the Regional Court, GaRankuwa and charged with conspiracy to commit murder. She was convicted and sentenced to five (5) years imprisonment of which two (2) years were suspended for a period of five (5) years on condition that she is not again convicted of conspiracy to commit murder during the period of suspension. The Appellant appeal against both the conviction and the sentence.
- [2] Upon perusal of the record it became apparent that the prescripts of section 162 (1) of the Criminal Procedure Act 51 of 1997 (the “Act”) was not complied with in that the presiding officer did not personally swear in any of the witnesses that testified but instead instructed the interpreter to do it.

The following are extracts from the record:-

“COURT: Let us swear Mr Maluleka in.

INTERPRETER: Sworn in.

KING WINNER MUSO MALULEKA: d.s.s. (Through Interpreter)

COURT: Names in full?

WITNESS: Victor Matsila.

COURT: Swear him in.

VICTOR MATSILA: d.s.s. (Through Interpreter)

COURT: Names sir?

WITNESS: Elant Talana, E-L-A-N-T.

COURT: Yes let us swear him in.

ELANT TALANE: d.s.s. (Through Interpreter)

COURT: Yes you may come over. Your names in full?

ACCUSED: Baby Jabulile Talane.

COURT: Your age?

ACCUSED: I am 43 years of age.

COURT: You may place her under oath.

INTERPRETER: The witness is sworn in.

BABY JABULILE TALANE: d.s.s. (Through Interpreter)”

Counsel was alerted to this and even asked to advance argument in this regard. Oral and written submissions were made.

[3] Section 162 (1) of the Act states:-

“(1) Subject to the provisions of sections 163 and 164, no person shall be examined as a witness in criminal proceedings unless he is under oath, which shall be administered by the presiding judicial officer or, in the case of a superior court, by the presiding judge or the registrar of the court, and which shall be in the following form:

‘I swear that the evidence I shall give, shall be the truth, the whole truth and nothing but the truth, so help me God.’

(2) If any person to whom the oath is administered wishes to take the oath with uplifted hand, he shall be permitted to do so.”

[4] In my view, the provisions of section 162 (1) is peremptory. Furthermore, in the lower courts, the oath must be administered by a judicial officer and not the interpreter. In the event that the oath is not administered by the judicial officer as prescribed by section 162 of the Act, the witnesses will not be properly sworn in and their evidence will therefore be inadmissible.

See:- S v Raghubar 2013 (1) SACR 398 SCA.

[5] In Matshivha v The State (656/12)

[2013] ZASCA 124 (23 September 2013) the Supreme Court of Appeal stated the following:-

“[10] The reading of section 162

(1) makes it clear that, with the exception of certain categories of witnesses either falling under s 163 or 164, it is peremptory for all witnesses in criminal trials to be examined under oath. And the testimony of a witness who has not been placed under oath properly, has not made a proper affirmation or has not been properly admonished to speak the truth as provided for in the Act, lacks the status and character of evidence and is inadmissible.”

(my underlining.)

[6] The effect is also clear. If an oath was not properly administered in terms of the prescripts of section 162 then what was said by the witness lacks the status and character of evidence. In other words, whatever was said by the witness is not evidence and is inadmissible. That being the case, there is therefore no evidence before this Court in the present appeal to adjudicate upon. The irregularity committed by the Regional Magistrate vitiates the entire proceedings. It is therefore not necessary to consider the “evidence” that was tendered during the trial in order to establish whether or not the State succeeded in proving the guilt of the Appellant beyond reasonable doubt. The proceedings in the court a quo need to be set

aside due to this technical irregularity.

Therefore, in my view, the appeal must succeed and the conviction and sentence should be set aside.

Order:-

[8] Consequently, the following order is made:-

[i] The appeal is upheld.

[ii] The conviction and sentence is set aside.

[iii] A copy of this judgment must be send to the President of the Regional Court, North West Province.

R D HENDRICKS

JUDGE OF THE HIGH COURT

I agree.

T DJAJE

ACTING JUDGE OF THE HIGH COURT

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