

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**



(1) REPORTABLE: YES/NO
(2) OF INTEREST TO OTHER JUDGES: YES/NO
(3) REVISED

Case number: 115/2015

In the matter between:

THE STATE

And

CAMARA, SIMON

Accused 1

JUDGMENT

SATCHWELL J:

INTRODUCTION

1. Mr Camara was charged in the Randfontein Magistrate's Court on 1st October with offences of fraud and uttering. Mr Camara was represented by Ms Mjanha who brought a bail application on his behalf. The matter was postponed to 7th October. After giving judgment the learned magistrate refused to grant bail.

2. The record indicates that the magistrate heard the accused swear at the court as he left the dock. Almost immediately, an enquiry was convened. The magistrate asked if the same legal representative was going to represent Camara in “these contempt proceedings” and, after speaking to Camara, the answer was in the negative.
3. Camara then gave evidence which was really questioning by the magistrate. He confirmed that he had sworn at the magistrate. When asked if he wanted to say anything further he added “because the state did not do my docket correctly and because of that now, I must take the punishment for that. And I do not know if I have say in my own case I must keep quiet...” “Nobody listens to me” “The court was not fair to me”.
4. The learned magistrate gave a short judgment finding that Camara had acted contemptuously and was “not even apologetic” for that and found him guilty of contempt of court and sentenced him to pay a fine of R 300 or serve a period of 30 days imprisonment.
5. This matter is now sent on special review.
6. The learned magistrate appears to have had three options:
 - a) Firstly, to ignore the swearing of the accused. (See para [14] of *Lewis v S* [2007] 3 All SA 477 (SCA)). This is a matter eminently within the discretion of the presiding judicial officer who would take into account all circumstances including what was said, how it was said, who heard it, how many people heard it, and the impact on the proceedings in that court.
 - b) Secondly, adjourn the proceedings for another day when there would remain no emotions on the part of any person who had been in the court. This would also enable a decision to be made as to whether or not the magistrate would give evidence (since it could not be assumed that Camara would volunteer or agree that he had sworn), determine what the charge was, and advise him of the right to legal representation and so on. Again such decision is one to be taken by the learned magistrate – when would a court be available, did the accused want legal representation and so on.
 - c) Thirdly, a hearing could be convened (as it was) at the time when the accused, his legal representative and the magistrate were all present. Again this timing and this procedure falls within the discretion of the magistrate who would have to make a split-second decision as to whether or not evidence need be led that there had or had not been swearing, what words, at whom or at life in general, the impact on the dignity of the court and so on.

7. Our highest courts have considered the circumstances when a summary procedure should continue to be pursued as was done prior to our current Constitutional dispensation. In *S v Mamabolo (eTV and others intervening)* 2001 (3) SA 409 (CC) the court referred to the “exceptional circumstances” where “the orderly progress of judicial proceedings are disrupted, possibly requiring quick and effective judicial intervention in order to permit the administration of justice to continue unhindered”. It would only be in such exceptional circumstances that such a summary procedure could be permitted because such summary procedure “is a wholly unjustifiable limitation of individual rights and must not be employed”.
8. In the present instance, I cannot see that it was necessary to preserve the dignity or authority of the court to permit the administration of justice to consider unhindered that the summary procedure should have been followed. There was no reason why a prosecution led by the prosecuting authority at trial could not have taken place.
9. Camara was on his way out of court – having been refused bail. Immediate action was not required. The bail application, which was then the business of the court, had been made and considered and judgment handed down. The only ‘evidence’ pertaining to the alleged offence was extracted from Camara by the magistrate therefore constituting a ‘confession’ in court. If there had been a proper prosecution then evidence could have been led of what was said, to whom, with what loudness, and all the circumstances. The intention of such expression would have had to be proven. In short I can find no reasons why a fair trial with proper prosecution and presentation and legal representation should not have been permitted.
10. I have not, in this matter, sought the advice of the Office of the Director of Public Prosecutions since the law is clear in this matter and there need be no delay.
11. In the result, this conviction and sentence:
 - a. Are both set aside.
 - b. The magistrate, as complainant, may decide whether or not to refer the matter to the office of the public prosecutor to initiate a prosecution on such charges as are deemed appropriate.

DATED AT JOHANNESBURG 21ST OCTOBER 2015

SATCHWELL J

I Agree:

WEINER J

Counsel: No Counsel as review proceedings