



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	NO
Of Interest to other Judges:	NO
Circulate to Magistrates:	NO

Case No: A121/2022

In the matter between:

THAPELO HLUBI

Appellant

and

THE STATE

Respondent

HEARD ON: 29 MAY 2023

JUDGMENT BY: MHLAMBI, J

CORAM: MHLAMBI, J *et* OPPERMAN, J

DELIVERED ON: This judgment was handed down electronically by circulation to the parties' legal representatives by email and released to SAFLI. The date and time for the hand-down are deemed to be 08h30 on 6 June 2023.

[1] The appellant was convicted on charges of attempted rape, kidnapping and pointing of a firearm and sentenced to an effective 8 years' imprisonment. Having

successfully petitioned this court, he was granted leave to appeal against the convictions.

- [2] The convictions were assailed on various grounds but the main ground that was pursued on appeal was that the appellant did not enjoy a fair trial¹ in that the cross-examination of the complainant was not completed after it was interrupted by the attendance of the inspection in *loco*.²
- [3] The appeal was opposed on the basis of the incomplete trial record and that the matter be removed from the roll until such time that the trial record was properly reconstructed. During oral argument, the respondent conceded the correctness of the record and abandoned its opposition of the appeal.
- [4] Mr Nkhahle, who acted on behalf of the appellant, referred to the certificate of correctness of record filed by the Regional Court Magistrate and pointed out that the record was adequate enough for the proper consideration of the appeal.³ The cross-examination of the complainant was interrupted when an inspection in *loco* was held. The cross-examination of the complainant was never continued and finalised after the inspection in *loco* as indicated on the case record.⁴ He contended that the incomplete cross-examination of the complainant was grossly irregular and vitiated the proceedings. He contended furthermore that the testimonies of the other two witnesses called by the state did not implicate the appellant in anyway.
- [5] It was stated in the judgment that the state's case was based on the evidence of a single witness. The complainant's credibility was therefore of the outmost importance. The incomplete cross-examination denied the defence a significant opportunity to further place her credibility in issue.⁵ This was an irregularity which negated the appellant's right to a fair trial. The conviction must therefore be set aside.

¹ Section 35(3)(i) of the Constitution of the Republic of South Africa Act 108/1996.

² State vs. Motlhabane and Others 1995 (2) SACR 528 (B) at 532.

³ State vs. Chabedi 2005 (1) SACR 415 (SCA).

⁴ Page 30, lines 20-22 of the transcribed record.

⁵ State vs. Manqaba 2005 (2) SACR 489 (W).

[6] I therefore make the following order:

ORDER:

The convictions on all counts are set aside.

MHLAMBI, J

I concur

OPPERMAN, J

On behalf of the applicant: Adv. R. J Nkhahle

Instructed by: Thebe Attorney Incorporated
Suite 18 Keller Park
65 Kellner Street
Bloemfontein

On behalf of the respondent: Adv. S. Tunzi

Instructed by: The Director of Public Prosecutions
3rd Floor
Waterfall Centre
BLOEMFONTEIN