

IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION, BLOEMFONTEIN

CASE NUMBER: R44/2023

In the matter between:

THE STATE

AND

P[...] T[...] G[...]

REVIEW JUDGMENT

CORAM: VAN ZYL, J *et* BALOYI-MERE AJ

JUDMENT BY: BALOYI-MERE AJ

DELIVERED ON: 27 OCTOBER 2023

Introduction

1. This is a review in terms of section 302 of the Criminal Procedure Act 51 of 1977 (“the CPA”) which section is aimed at ensuring the validity and fairness of the convictions and sentences of unrepresented accused in lower court proceedings.

2. The Accused, Mr P[...] T[...] G[...] was charged for contravening section 30(1) of the maintenance Act 99 of 1998 as Amended by failing to make payment of maintenance towards the minor child of R700.00 per month for a period between February 2023 to August 2023. The Accused was charged in the Magistrates Court for the District of Fezile Dabi at Frankfort in the Free State Province. The Maintenance Court at Franfort had, on the 22nd October 2021, made an order for the periodical payment of sums of money to wit R700.00 per month towards maintenance of the beneficiary. At the time of this proceedings, the amended arrears amount that the Accused owed towards maintenance was R5 700.00.
3. The Accused was not legally represented and therefore this is a review in terms of section 302(3)(a) of the Act.
4. Accompanying the record of the proceedings in the lower court was a letter from the Acting Magistrate, Frankfort, Mr EL Matlou which referred to the fact that the Accused in the matter in question conducted his own defence and that the proceedings were conducted in terms of section 112(1)(b) of the Act and that the sentence imposed by the Magistrate is automatically reviewable. It is for those reasons that this matter is under review.
5. Upon perusal of the record, I found that there were procedural irregularities that resulted in the miscarriage of justice.

The Accused's Plea of Guilty

6. Before the charge could be properly put to the Accused, the presiding officer had already informed the Accused that he must just plead guilty as the court wanted to finalize the matter on that particular day.¹ The Magistrate said:

“It is obvious you are pleading guilty, to the effect, you are having arrears.”

7. Section 105 of the Act provides that, at the commencement of a trial it ought to be explained, in brief and understandable terms, to undefended Accused what it entails to plead either guilty or not guilty.² The presiding officer should also explain to the undefended Accused the procedure to be followed upon his plea, for example, questioning in terms of section 112 where a plea of guilty has been tendered.³ This was clearly not explained to the Accused before the Accused was told that it is obvious that he should plead guilty and this was procedurally irregular.
8. For this reason only the sentence imposed by the Magistrate falls to be set aside.

Legal Assistance to Accused

9. The Constitution of the Republic of South Africa, 1996 provides in section 35 that every accused person has a right to a fair trial which fair trial includes the right to choose and be represented by a legal practitioner, and to be informed of the right promptly⁴ and to have a legal practitioner assigned to them by the

¹ Record page 3 line 12.

² State v Balatseng 2005 (2) SACR 28 (B).

³ State v Bafokeng 2013 (1) SACR 143 (FB) at par 19.

⁴ Constitution, section 35(3)(f).

state and at the state expense if substantial injustice would otherwise result and to be informed of this right promptly.⁵

10. The presiding officer enquired from the Accused whether he can afford his own legal representative or he would like to be represented by Legal Aid or if he wants to proceed on his own and the Accused chose that he wanted the assistance of the Legal Aid practitioner who was present in court. Upon enquiries with the legal practitioner who was in court, Miss Makabene, she indicated that she was willing to assist but she would request a postponement as she needs to familiarize herself with the file and consult with the Accused. The Presiding Magistrate then proceeded to indicate that if the matter were to be postponed he would have a problem because he wanted to finalize this matter.

“Court: So the question is, she is willing to assist you. This is Ms Makabene.

Accused: Sorry.

Court: She is willing to assist you, but it is not going to be today, so if she assists you, you want the matter to be postponed, or you want the matter to be finalized today. The choice is yours.

Accused: Let us rather have it finalised today.

Court: Today?

Accused: yes.

Court: So, you can do it without her?

⁵ Section 35(3)(g).

Accused: Yes sir.

Court: And then you are pleading guilty?

Accused: Yes sir”

11. It is clear from the quoted passage that the Accused was pressured into proceeding on his own and conducting his own defence and pleading guilty.

12. In the matter of **S v Ramulifho**⁶ the Supreme Court of Appeal confirmed its earlier viewpoint as set out in **S v May**⁷:

“Whether or not prejudice has resulted from the lack of legal representation is really a question that can be determined only by having regard to the whole trial, and the way in which it was conducted by the judicial officer; and the ability, as shown during the course of the trial, of the accused to represent himself adequately; and to whether the evidence adduced has led justifiably to the conviction and sentence.”

13. In **S v Phala**⁸ it was held that section 73(2)(A) was couched in peremptory terms and that a Magistrate's failure to give effect to the provision of s73(2)(A)(e) had constituted an irregularity.

14. The conduct of the proceedings before the Magistrates Court was tainted by irregularities which renders that the conviction and sentence should be set aside.

15. In the result:

⁶ 2013 (1) SACR 388 (SCA).

⁷ 2005 (2) SACR 331 (SCA) at par 8.

⁸ Unreported ECG case number 20110161,(30 November 2011)

15.1 Both the conviction and sentence are set aside.

15.2 The matter is remitted back to the Magistrates Court to start *de novo* before a different Magistrate.

EM Baloyi-Mere AJ

I agree

C VAN ZYL J