



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

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

Review numbers 7/2019 – 24/2019

In the matter between:

THE STATE

and

THABISO RAMAHETLANE - CASE NO: R 24/2019
THABO MAKGATO - CASE NO: R 23/2019
ISAAC TANKI MPHARALALA - CASE NO: R 22/2019
MATHABA JAMES LINYOLOHO - CASE NO: R 21/2019
MONDE MICHAEL MPHATSOE - CASE NO: R 20/2019
TAYOB JOOMA - CASE NO: R 19/2019
CHEN XIAOQIANG - CASE NO: R 18/2019
YUSUF ABDULLA - CASE NO: R 17/2019
ALPHONCE MASILO KHOBOKO - CASE NO: R 16/2019
TRAVERS JUSTIN JOHNS - CASE NO: R 15/2019
ANSUS BELUNSAN - CASE NO: R 14/2019
SABELO OTHEN'YEL NMLENGETFWA - CASE NO: R 13/2019
FRANCE MOKOENA - CASE NO: R 12/2019
SIYABONGA MICHAEL MACHI - CASE NO: R 11/2019
TSHILISO MAKETEKETE - CASE NO: R 10/2019

MOHAILA JOMANE - CASE NO: R 09/2019
KHOPOLO VINCENT NTHONTHO- CASE NO: R 08/2019
MARTHIMS RUDOLF RAUTENBACH- CASE NO: R 07/2019

CORAM: MUSI, JP *et* DAFFUE, J

JUDGMENT BY: DAFFUE, J

DELIVERED ON: 7 FEBRUARY 2019

REVIEW

- [1] The proceedings in all 18 matters have been sent to the High Court on review. The first 17 matters are automatic reviews as the accused were unrepresented, whilst the last matter, that of the accused, Mr Rautenbach, is a special review insofar as he was represented by an attorney.
- [2] In all instances the accused were charged with contravention of section 59(4) of the National Road Traffic Act, 93 of 1996, to wit that they exceeded the speed limit of 100 km/h on the R26 public road near Clocolan by travelling at speeds ranging from 148 to 165 km/h respectively. They all admitted that:
- 2.1 their actions were unlawful and intentional;
 - 2.2 the speed limit of 100 km/h on the R26 public road is 100 kph;

2.3 they had travelled at the speed accused of in the respective charge sheets.

- [3] The same magistrate, who has been appointed to the substantive rank of magistrate on 4 January 2013, was the presiding officer in all matters. It is apparent that her questioning in the first 17 cases virtually followed the same pattern in each case.
- [4] In the last matter the accused, Mr Rautenbach, was represented by an attorney who handed in the accused's signed s 112(2) statement upon which he was convicted. The accused went so far to admit that the Truvelo apparatus was duly calibrated, but that is not sufficient anymore.
- [5] On 28 December 2018 the full bench of this Division handed down judgment in *The State v Enoc Phuzi*, case number R254/2018. Neither the questioning by the presiding magistrate in the first 17 matters, nor the admissions by Mr Rautenbach comply with the requirements laid down by the full bench as set out in paragraph [39](b) of the judgment.
- [6] The *stare decisis* principle applies and consequently all convictions and sentences should be set aside.

- [7] The conviction and sentence is set aside in respect of each of the following matters:

CASE NO: R 24/2019 THABISO RAMAHETLANE
CASE NO: R 23/2019 THABO MAKGATO
CASE NO: R 22/2019 ISAAC TANKI MPHARALALA
CASE NO: R 21/2019 MATHABA JAMES LINYOLOHO
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CASE NO: R 08/2019 KHOPOLO VINCENT NTHONTHO
CASE NO: R 07/2019 MARTHIMS RUDOLF RAUTENBACH

J P DAFFUE, J

I concur

C J MUSI, JP

