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

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

Case number: R241/2018

In the matter between:

THE STATE

State

and

MAKGALE MOELA

Defence

CORAM:

MBHELE J, *et* MHLAMBI, J

JUDGMENT BY:

MAHLAMBI, J

DELIVERED ON:

11 OCTOBER 2018

SPECIAL REVIEW JUDGMENT

Mhlambi, J

- [1] The matter served before us by way of special review in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977. The accused, who was unrepresented, was convicted of the contravention of section 59 (4) (b) read with sections 1, 33, 34, 59 (1) (b), 69 (1), 73 (1), 75 and 89 (3) of the National Road Traffic Act, 93 of 1996 and also read with Regulations 1 and 292 (b) of the National Traffic Regulations of 1996; in that on or about 03 July 2018 and on the N1, between Werda and Glen, a public road in the magisterial district of Bloemfontein, the accused did unlawfully and intentionally or negligently drive a vehicle, to wit a Volkswagen with registration number BC [...] GP at a speed of 163 km/h which was in excess of the general speed limit of 120 km/h which applied to that road.
- [2] The accused pleaded guilty to the charge and the court, having asked him certain questions, convicted and sentenced him to a fine of R 1 500.00 or 12 months imprisonment.
- [3] A letter styled an application for review in terms of section 304A (a) of the Criminal Procedure Act 51 of 1977 was addressed to the review judge by the acting Senior Magistrate, Bloemfontein 1 and 2, in which it was stated that the presiding officer was supposed to have sent the matter on review in terms of section 302 (1) of Act 51 of 1977. The matter was discovered among the finalized matters and discussed with the presiding magistrate who conceded that the conviction should be set aside on the basis that

the provisions of section 112(b) of Act 51 of 1997 were not explained to the accused. Similarly, his rights relating to mitigation of sentence were not explained to him. The presiding officer also failed to hold an inquiry in terms of section 35 (3) of Act 93 of 1996.

- [4] The presiding magistrate had drafted a letter dated 14 September 2018 which was attached to the Acting Magistrate's letter to the review judge, the contents of which read as follows:

"It is my respectful submission that the conviction be set aside for the following reason, viz:- See S v Mhlolo Khambule, Review number: R177/2018. It is my respectful submission that accused did not admit that the operator/the traffic officer concerned was duly authorized to/competent to operate the speed capture device. It is my respectful submission that accused did not admit that he was aware before he was pulled over by the traffic officer, that he was travelling at an excessive speed. He became aware of the speed he was travelling when it was shown to him. The proceedings generally and the record of proceedings are shabby."

- [5] Upon perusal of the record, it appears that the trial court did not appreciate the purpose of questioning in terms of section 112 of the Criminal Procedure Act. The court skimmed over the issues and did not interrogate or establish whether the accused admitted the elements of the offence he was charged with. The court was enjoined to inform the accused of any of his legal rights in terms of the constitution and any failure to do so may lead to an unfair trial and injustice. The several misdirections committed by the magistrate warrant the setting aside of both the conviction and sentence.

[6] I therefore make the following order:

1. Both the conviction and sentence set are aside.

MHLAMBI, J

I concur

MBHELE, J

/SRadigomo