

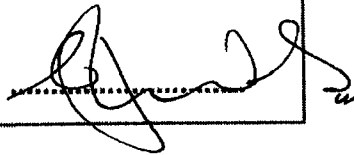
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

A7 / 17
20/01 / 2017

HIGH COURT REF.: 3/17
Review Case No: R/C2-104/2015
MAGISTRATE'S SERIAL NO.: 32/16

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

13/1/2017



In the matter between:

THE STATE

vs

PETROS THABO KOKOBELA MALESA

First Accused

PITSO MARTIN DESPERADO MOGWE

Second Accused

SPECIAL REVIEW

JUDGMENT

VAN DER WESTHUIZEN, AJ

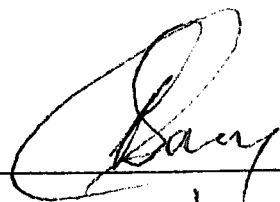
1. The regional Magistrate, Gauteng North Regional Division, Pretoria North, referred this matter for special review on the following grounds.
2. The Accused are charged on two counts of rape (gang rape) and kidnapping.

3. The claimant, a minor girl, testified through an intermediary. The claimant testified in Setswana mixed with Sepedi (North Sotho). The intermediary then testified in English. There was no official interpreter involved as all parties, i.e. the accused, their legal representatives and the prosecutors were apparently conversant in the language spoken by the claimant. Only the presiding officer was not so conversant and was dependant on interpretation into the English language.
4. The complainant did not complete her testimony on the first day of the trial. On the second day of the trial use was made of an interpreter and the issue was raised by one of the legal representatives of the accused whether the services of the interpreter was required in view of the fact that all the parties including the accused were conversant in the language spoke by the complainant. The presiding officer became aware that no official interpreter was involved during the first part of the complainant's testimony.
5. Neither the accused, nor their legal representatives had any problems with the interpretation into English of the complainant's testimony by the intermediary.
6. The presiding officer was of the view that an irregularity had taken place under the aforementioned circumstances and sought guidance from the High Court as to the manner in which the case was to proceed.
7. It is a requirement that the intermediary is to be conversant in the language spoken by the complainant. The purpose being that the complainant and the intermediary are to understand each other fully. The official interpreter is not present in the room where the complainant and the intermediary are seated during the trial.

8. It is further customary that the intermediary translates the testimony of the complainant into English. There is no requirement that the intermediary has to be an official interpreter.
9. The intermediary is conversant in the language of the complainant, i.e. Setswana mixed with Sepedi, and the English language.
10. In the present instance, no objection was raised by the accused or their legal representatives in respect of the translation of the complainant's testimony into English. All understood the language of the complainant, but for the presiding officer.
11. The presiding officer requested the parties to address him on the issue. It is common cause between the parties that whether or not an irregularity was committed, no problems were encountered in respect of the complainant's testimony and the translation thereof.
12. In my view, no irregularity was committed and no special review is required. The matter is to proceed before the presiding officer.
13. However, it may be advisable in order to avoid any possible misunderstanding and possible irregularity that the presiding officer employs the services of an official court interpreter to assist in the translation of testimony for the duration of the trial.


C J VAN DER WESTHUIZEN
ACTING JUDGE OF THE HIGH COURT

I concur and it is so ordered.


A J Bam
JUDGE OF THE HIGH COURT