

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

Review No.: 6/2016

In the review between:

THE STATE

and

NYAMEKO SIMON RAMAKATSA

CORAM: VAN ZYL, ADJP *et* EBRAHIM, J

JUDGMENT: EBRAHIM, J

DELIVERED ON: 4 FEBRUARY 2016

- [1] The accused was charged with the crime of driving whilst the concentration of alcohol in his bloodstream was excessive (Section 65(2)(a) of The National Road Traffic Act 93 of 1996.) He was convicted on his plea of guilty in terms of section 112(1)(a) and sentenced to pay a fine of R1 500,00 or undergo 3 months imprisonment which was wholly suspended on certain conditions.
- [2] The control magistrate detected the following irregularities in the matter upon performing a supervisory check and has requested a special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977.

- “4.1 In view of the seriousness of the offence of contravention section 65(2) of Act 93 of 1996 it is submitted questioning in terms of section 112(1)(b) of Act 51 of 1977 should have been applied.
- 4.2 The Magistrate should not have convicted the accused in view of the fact the annexure to the charge sheet does not indicate the concentration of alcohol that was found in a sample of blood taken from any part of the body of the accused.
- 4.3 With regard to the section 35 of Act No. 93 of 1996 enquiry the Honourable Reviewing Judge is respectfully referred to page 2 line 10 of the transcribed record where the presiding officer already expressed the opinion that she was not going to suspend the driver's licence of the accused before inviting any evidence or address in this regard.
- 4.4 Section 35(3) of Act 93 of 1996 is to the effect that suspension of licence or disqualification can only be dispensed with after presentation of evidence under oath. (See *S v Swartz* (86/2013)(2013) ZAFSHC 93). No such evidence had been adduced.”

[3] The control magistrate's reservations with regard to the conviction and sentence of the accused are well founded. The proceedings were not conducted in accordance with justice for the reasons stipulated by him in his letter. The conviction and sentence is accordingly set aside and any monies paid by the accused in satisfaction of the sentence are to be repaid to him immediately.

S. EBRAHIM, J

I concur.

C. VAN ZYL, ADJP

/eb