



**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: R180/2016

In the matter between:

THE STATE

and

MAJORO JOHN REDITSEBE

CORAM: NAIDOO, J *et* TSATSI, AJ

JUDGMENT BY: TSATSI, AJ

DELIVERED ON: 15 DECEMBER 2016

**REVIEW IN TERMS OF SECTION 302
OF THE CRIMINAL PROCEDURE ACT 51 OF 1977**

TSATSI, AJ

- [1] This matter came before us as a review, to section 302 of the Criminal Procedure Act ("the Act") against the decision of the

Magistrate in Ladybrand. The accused conducted his own defence. He pleaded guilty. Initially the reviewing Judge Hinxa AJ, addressed a query to the magistrate as follows:

- "1. If the accused took over because the driver fell sick on the way, was the accused not impliedly raising a defence of emergency/neccesity?*
- 2. Why was the it not specifically enquired if the accused driving ability was not impaired as a result of the consumption of liquor?*
- 3. Even on the questioning on his mental ability (which was at any rate not enough because he was supposed to be questioned on the impairment of his driving ability) accused stated that he could still drive safely .Any comments?"*

[2] Hinxa AJ, brought to the attention of the learned magistrate the case of **S v Mzimba** 2012 (2) SACR 233. The magistrate responded as follows:

"In response to the first question raised by the Honourable Reviewing Judge, my understanding and conclusion was that accused has been all along aware of the health status of his father since he (the father) had just been discharged from certain hospital in Bloemfontein on the date of the incident but accused nevertheless decided to imbibe alcohol and allow his sickly father drive them back to Lesotho. I subjectively concluded that accused foresaw possibility of his father not being able to reach their destination since he had just been discharged from hospital but accused reconciled himself with such a possibility and acted outside the scope of a 'reasonable person' under cirucmstances that had warranted an exercise of caution.... In response to the second and third query raised by the Honourabe Revieweing Judge, accused was questioned whether the beer he took had any narcortic effect on him but in light of the decision of Mzimba supra I should have sufficiently questioned accused on the degree of impairment and /or diminished status of his driving abilities."

- [3] The accused was charged with contravening the provisions of Section 65 (1) (a)/ (b) read with Section 1, 65 (3), 65 (4), 65 (8), 65 (9), 73 and 89 of the National Road Traffic Act 93 of 1996. Driving under the influence of liquor or drugs. The allegation is that upon or about 3 January 2016 and on N8 a public road in the District of Ladybrand the accused did wrongfully: (1) drive a vehicle, to wit Black Toyota, with Registration Number MC 802 FS, or (b) sit in the driver seat of a motor vehicle, to wit Black Toyota with registration number MC802 FS, the engine of which was running whilst he was under the influence of intoxicating liquor or a drug having a narcotic effect.
- [4] Section 112(1)(b) of the Criminal Procedure Act 51 of 1977 ("the Act") provides that the Presiding Judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention notice in the Gazette, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.
- [5] It does not appear from the record that the Magistrate questioned the accused sufficiently about his ability to drive or the impairment thereof. The Magistrate should have questioned the accused on the effect of alcohol on the accused's driving ability. The

conviction must be overturned since the accused failed to admit that the alcohol had an influence on his driving ability. It is trite that when an accused does not admit all the elements of an offence charged with, that a court cannot be satisfied with his guilt and that a plea of not guilty should be entered. In my view the learned Magistrate was obliged to inform the accused, who was unrepresented, of the provisions of section 35(1) and (2) of the Act, before imposing sentence. The Court did not hold an enquiry to determine whether it should suspend his driver's licence.

[6] As a result of an oversight my view is that the conviction and sentence imposed fall to be set aside.

[7] Accordingly the following order is made:

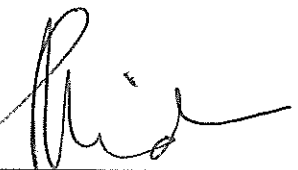
7.1 The conviction and sentence are hereby set aside.

7.2 The matter is remitted to the District for trial before another Magistrate.



E.K TSATSI. AJ

I concur.



S. NAIDOO. J