

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)



Case number: A192/15
Date: 30/3/15.

DELETE WHICHEVER IS NOT APPLICABLE

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

23/3/2015 *Pretorius*
DATE SIGNATURE

THE STATE

V

MODISE WILLIAM JOALE

MAGISTRATE SERIAL NO.: RC1/4

MAGISTRATE CASE NO.: 14/2024/2014

HIGH COURT REF NO.: 105/2015

JUDGMENT

PRETORIUS J.

- [1] This matter was placed before the court as a special review. The accused was charged with multiple counts under the Criminal Law Amendment Act 32 of 2007. During the course of the trial it became apparent that the complainant in counts 2, 3 and 4 attempted to testify in Zulu, although her home language is Sepedi. The regional magistrate submitted the part-heard criminal trial for special review to this court.
- [2] It is further clear from the record that the presiding magistrate found that the complainant was not fluent in Zulu, but testified in Zulu as her grandmother had told her to do so and the intermediary had addressed her in Zulu. The complainant had only a limited understanding of Zulu. She is a minor who had to testify in a different language from her home language pertaining to very serious allegations of a sexual nature against the accused.
- [3] There is no provision in the Criminal Procedure Act 51 of 1977 to deal with a matter where it is patently clear that the evidence of a witness is compromised as she could not fully understand the proceedings in court. This is obviously an irregularity as conceded by the representative of the Director of Public Prosecutions.
- [4] Section 35(3)(k) of the Constitution provides:
- “(3) *Every accused person has a right to a fair trial which includes the right-*

- (k) to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language”

Section 304(2)(c)(iii) of the Criminal Procedure Act provides:

“(c) Such court, whether or not it has heard evidence, may, subject to the provisions of section 312—

(iii) set aside or correct the proceedings of the magistrate’s court;”

This is in regard to conviction and/or sentences in the Magistrate Court and do not deal with the present circumstances. The court cannot find any reason why this court should not deal with the matter at this stage, before it has been finalised in the court *a quo*. The provisions of section 35(3)(k) of the Constitution should equally apply to a witness in a criminal trial, as to an accused.

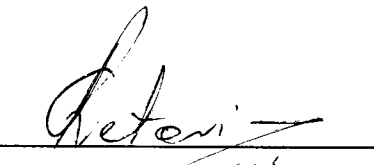
- [5] In **S v Ngubane 1995(2) SA 811 (TPD)** the court decided that the court has inherent power to intervene where the accused in that matter had not understood the language, irrespective of the stage reached in the trial court. Injustice will result if the magistrate proceeds with another interpreter, as the complainant’s evidence may differ if it is correctly interpreted into her home language. It would be difficult to decide which parts of the evidence are correct.

- [6] The fundamental right of the witness to give evidence in her own language has been breached. This is exacerbated by the fact that she

is a minor, giving evidence through an intermediary in a serious criminal case. The trial cannot proceed and the proceedings should be set aside.

[7] I make the following order:

1. The proceedings in the court *a quo* are set aside;
2. The accused is to be tried before another magistrate;
3. The complainant Lihle Motelele is to testify in Sepedi.


Judge C Pretorius

I agree.


Judge R G Tolmay