

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

Review Number : 23/2015

In the review of:

**THE STATE**

**and**

**HENRY MWALE**

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**CORAM:** NAIDOO, J et WILLIAMS, AJ

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**JUDGMENT BY:** WILLIAMS, AJ

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**DELIVERED ON:** 25 JUNE 2015

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[1] This is a special review under section 304(4) of Act 51 of 1977.

[2] The accused appeared before an acting magistrate in the Bloemfontein magistrate's court on a charge of contravening

section 59(4)(a) of Act 93 of 1996: Exceeding of General Speed Limit. After his rights to legal representation had been explained the accused elected to conduct his own defence.

- [3] He pleaded guilty to the charge and the magistrate invoked section 112(1)(b) of Act 51 of 1977. For reason that the accused testified that he did not intentionally exceed the speed limit, the learned magistrate found the accused to be negligent and convicted him of the charge of Negligent Driving. Such a conviction is not an alternative charge or competent verdict of the said charge.
- [4] To compound the error further, the accused was sentenced to a fine of R4 000,00 or 24 months' imprisonment, of which half was suspended for a period of five years, on condition that the accused not be convicted of contravention of section 65(1) (driving under the influence of intoxicating liquor) or 65(2) (driving while alcohol concentration exceeds the prescribed limit if 0,05g per 100ml) read with section 89(1) of the National Road Traffic Act, 93 of 1996, committed during the period of suspension. The rights to appeal were not explained to the accused.

[5] It is clear that the conviction and conditions pertaining to the sentence cannot stand. In view of these gross irregularities the control magistrate of Bloemfontein requested this court to set the proceedings aside and order that the case start de novo.

[6] I do not think that this is necessary. It will cause undue hardship to the accused should he have to return to Bloemfontein for a second trial, in which the same fine will probably be imposed. It is clear that the accused correctly pleaded guilty to having contravened section 59 of the National Road Traffic Act, in that he exceeded the general speed limit on the N1 Highway, and should have been convicted accordingly. I am satisfied with the sanction as it stands and exercises my inherent power in amending a patently incorrect order.

[7] I propose that the following orders be made:

1. The conviction and sentence imposed by the magistrate are set aside and replaced with the following:

The accused is convicted of contravening section 59(4)(a) of Act 93 of 1996; exceeding the general speed limit.

2. The accused is sentenced to a fine of R4 000,00 or 24 months' imprisonment of which half is suspended for a period of 5 years on condition that the accused is not convicted of contravention of section 59(4) of Act 93 of 1996 committed during the period of suspension.

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**A. WILLIAMS, AJ**

It is so ordered

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**S. NAIDOO, J**