

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review Number: 134/2014(B)

In the review of:-

THE STATE

and

LEFU ISAAC RASEU

CORAM: MOLEMELA, J *et* MBHELE, AJ

DELIVERED ON: 21 AUGUST 2014

MOLEMELA, J

- [1] This is a special review as contemplated in section 304(4) of the Criminal Procedure Act, Act 51 of 1977.
- [2] The accused was charged in the Magistrate's Court in Hoopstad with contravention of section 63(1) of the National Road Traffic Act, 93 of 1996 (Reckless or Negligent Driving). He was convicted and sentenced as follows:
- “Fine of R1 500,00 or two months imprisonment which is wholly suspended for a period of five years on condition accused is not convicted of contravention of Act 63 of 1966 committed during the period of suspension.”
- [3] The senior magistrate referred the matter to the High Court on special review with the request that the sentence be set aside. The magistrate stated as follows:

“From the transcription it transpired that the prosecutor put both charges of reckless and negligent driving in contravention of section 63(1) of Act 93/1996 to the accused. He was then asked what he pleads. Accused pleaded guilty and was summarily convicted. It was not established from the undefended accused whether he understood the charge and whether he pleads guilty to reckless or negligent driving. No question were put to the accused in adhering to section 112(1)(b) of the Criminal Procedure Act, nor was there any request from the prosecutor to dispose of the plea in terms of section 112(1)(a) of the last mentioned Act. It is still unclear on what charge the accused was convicted. Section 34/35 of Act 93 of 1996 was also not applied. The wording of the condition itself is vague, wide and ambiguous.”

- [4] Having perused the record, I agree with the senior magistrate on the aspects alluded to in the preceding paragraph. In addition to what the senior magistrate has alluded to, I noticed that the charge that was put to the accused was negligent driving, but its particularisation made reference to “reckless or negligent driving”. It would seem that the presiding magistrate was oblivious to this vagueness and in convicting the accused simply pronounced that he found the accused “guilty as charged”.

- [5] I am of the view that both the conviction, too, cannot stand. This is because of the summary manner in which the accused was convicted pursuant to his plea of guilty. The presiding magistrate did not even ask the accused whether his plea of guilty was voluntary. It is also evident from the record that the presiding magistrate at no stage, prior to conviction, satisfied himself that the offence was one that could summarily be disposed of without questioning as contemplated in section 112(1)(a).

- [6] The authors of the work *Hiemstra's Criminal Procedure* submit as follows at p 17-2 – 3: “For a court to convict without evidence, it must be obvious that the sentence will be less than a certain level and that a conviction can take place without the need for an address on sentence....Whether a sentence can be a fine of more than R5000.00

must not be decided lightly. There has to be information before the court which information makes a judicial discretion possible. The presiding officer must have regard to (i) the nature of the offence; (ii) any prescribed maximum punishment; and (iii) the particulars in the charge.” The authors also submit that where there is doubt about the seriousness of the transgression, questioning in terms of section 112(1)(b) ought to take place. I agree with all these submissions. In this matter, the record shows that the presiding magistrate did not embark on this exercise at all.

- [7] The irony is that after the accused’s conviction, the prosecutor, in his address described the offence as “very, very serious”. In response to the court’s question, he placed on record that the accused’s arrest and prosecution arose from the fact that he caused an accident by “bumping” two persons. The prosecutor then went on to submit that the appropriate sentence would be direct imprisonment, but wholly suspended.
- [8] It is also regrettable that even though the prosecutor had withdrawn the charge of driving under the influence of liquor or drugs, the presiding magistrate, in the process of sentencing the accused, insinuated that the accused had been driving while under the influence of liquor. Such remarks were completely unwarranted.
- [9] I am of the view that the presiding magistrate committed several misdirections that warrant the setting aside of both the conviction and sentence. The misdirections are of such a nature calling for the remittal of the matter to the magistrate’s court for a hearing *de novo* before another magistrate.
- [10] I would therefore make the following order:

1. The accused's conviction and the sentence imposed on him by the court *a quo* are set aside.
2. The matter is remitted back to the magistrate's court for a hearing *de novo* before another magistrate.

M.B. MOLEMELA, J

I agree.

N.M. MBHELE, AJ

/sp