

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

11/11/13

Case Number: A405/13

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES NO	☒ YES ☐ NO
(2) OF INTEREST TO OTHER JUDGES: YES NO	☒ YES ☐ NO
(3) REVISED: ✓	
DATE	SIGNATURE
	<i>P. F. F. F.</i>

In the matter between:

NDUMISO JOSHUA JACA

APPLICANT

And

THE MINISTER OF JUSTICE
THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS
THE PROSECUTOR IN CASE NUMBER:
14/805/12 IN THE REGIONAL COURT
MR. SCHOLTZ
THE PRESIDING MAGISTRATE
CASE NUMBER: 14/805/12 HELD AT
THE REGIONAL COURT
THE HONOURABLE MR. TRAVERS

FIRST RESPONDENT

SECOND RESPONDENT

THIRD RESPONDENT

FOURTH RESPONDENT

JUDGMENT

Fabricius J,

1.

This is a review application of proceedings in the Regional Court, which was heard together with Criminal Appeals set down at the same time. In this application, the accused in the Court a quo seeks the following relief:

1. "Review the judgment of the Regional Court under case number: 14/805/12 for the region of North Gauteng as conducted at the Regional Court of Pretoria under the stated case number: 14/805/12, in refusing, alternatively not upholding the Applicant's formal objections to the charge sheet, including refusing the quashing application on the stated charges as it was filed under case number: 14/805/12
2. Set same aside and uphold the Applicant's objection to the charge sheet and/or to correct same.
3. Order the first and/or second and/or third Respondents jointly and/or severally, to pay Applicant's costs..."

The first Respondent filed a notice that he would abide by the Court's decision and the second and third Respondents did not file notices to oppose. In any event, no Answering Affidavits by the Respondents are before me, and no Heads of Argument were filed on their behalf.

2.

The Applicant's legal representative filed written Heads of Argument. I have also read the argument before the Court a quo, and the very detailed reasons of the Magistrate, the fourth Respondent. The record is voluminous, but it is fortunately not necessary to refer thereto in the greatest possible detail in the light of the relevant principles pertaining to this type of application, which I will briefly deal with hereunder. The Applicant was charged with a number of counts, including fraud and various offences under the **National Road Traffic Act 1993 of 1996**, all relating to the fact that he was in possession of a BMW motor vehicle with false number plates and/or number plates to which he had no lawful right of use, or that he falsified such number plates, and that he operated this motor vehicle on a public road while it was not registered and licensed, according to the **Act**, and that he was further in possession of a Harley Davidson motorcycle without lawfully registered number plates, or that he falsified such plates or that he used such plates which were not applicable to the said motorcycle. There was also a charge relating to the unlawful use of the operation of a blue light, which can be an offence in terms of certain regulations of the **National Road Traffic Regulations** and **the Road Traffic Act**.

3.

The accused in the Court a quo, through his legal representative, asked for further particulars in respect of the various charges and did in fact so to the greatest possible extent. He had also asked that the applicable case docket be made available to him. The request for further particulars comprises some

14 pages. The prosecutor filed a reply in relation to a number of the questions asked, but in respect of others stated that the information sought would be a matter for evidence. An application to quash all charges, was filed on the basis that the State did not comply with the order of the Court that the further particulars be replied to, and that the further particulars were in any event "incomplete, void of any detail and substantial information and vague to the point that it does not constitute further particulars, which might allow the accused to be able to prepare for his trial and to plead to such charges, prepare for his defence and properly instruct his legal advisor and to ensure the guarantee of a fair trial."

4.

There was a very long argument before the Court a quo in this context and everything was dissected in the greatest possible detail. At the end of those proceedings the learned Magistrate gave a very detailed judgment on all the relevant aspects that needed to be considered by him. He refused the application. The whole question of further particulars in the relevant context is discussed in great detail in *Hiemstra's Criminal Procedure, Lexis Nexis, at 14 – 21*. It is stated that the purpose of further particulars is to inform accused persons of the case which is to be brought against them, so that they can prepare their defence. When considering whether particulars should be given, the question is whether the charge gives the accused sufficient information about what the State is going to allege. This depends obviously on the nature of the offence and, in the case of a statutory offence, on the wording of the section of the particular legislation. Several tests have been fashioned

throughout the decades, such as whether i) a refusal would prejudice the accused; ii) the giving of the particulars is in the interest of justice; and iii) it is pertinent to the points in issue. Ultimately the question is whether the accused reasonably needed the information. On appeal, the Court will only investigate whether a refusal of particulars prejudice the accused.

5.

The learned Magistrate dealt fully with the fact that the accused in the Court below had asked for disclosure of the docket, which was the equivalent in the Civil Courts of asking for discovery. He dealt with the charge sheet, the particularity thereof and the answers that were given to the request for further particulars. He also paid attention to the fact that an accused must not be denied his procedural rights, and his rights to have an opportunity to properly prepare a defence, call witnesses and test the evidence. He also added that an accused's rights are not absolute, and that on the other side the Court must look to what would be in the interest of justice, and weigh up all relevant factors and then make a decision. An analysis of his detailed judgment shows that all relevant factors were kept in mind. The question is in any event not whether I would have ordered further or better particulars on any specific item, but whether or not a failure of justice occurred in the Court a quo, which would result in the Applicant herein not receiving a fair trial.

6.

I can find no material misdirection in the learned Magistrate's judgment. In my view the charge is very particular and it would enable any accused to know

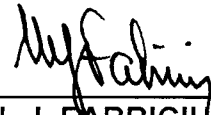
exactly what the State intends to do and why. If there is any deficiency of a less important nature, or any other uncertainty, that can be dealt with during the proceedings and no doubt the accused will be given an opportunity to consult his legal representative, if the need arises during the trial. In any event, an accused has sufficient time during the hearing, before it commences on any specific day and after it has concluded on any specific day, to consult his legal advisor about the day's proceedings and what can be expected on the next or other days. These are type of problems that arise everyday in a criminal trial and it is for the presiding officer to deal with them appropriately, according to the law.

7.

Having regard to all of the contentions, the charges, the further particulars, and the judgment of the Court, I cannot say that a failure of justice has occurred or that the learned Magistrate committed any material misdirection either on the facts, or in law. To the contrary, it is my view that any reasonable accused and reasonable legal representative will know exactly what he is being confronted with, what is required to be consulted about and how to prepare a proper defence.

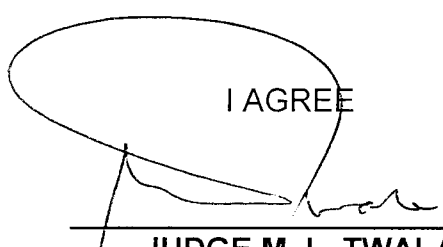
8.

In the light of all of the above, the application for review is dismissed.



JUDGE H. J. FABRICIUS

JUDGE OF THE HIGH COURT



I AGREE

JUDGE M. L. TWALA

ACTING JUDGE OF THE HIGH COURT