



A920/2013

**IN THE NORTH GAUTENG HIGH COURT, PRETORIA
(REPUBLIC OF SOUTH AFRICA)**

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / NO.
(2) OF INTEREST TO OTHER JUDGES: YES / NO.
(3) REVISED.

DATE

SIGNATURE

Magistrate: Ermelo

Date: ¹⁴~~15~~ Nov 2013

Case no: V2962/13

High court ref: 1015

In the matter between :

THE STATE

versus

BONGUMENZI SIPOSIHLE MCILONGO

JUDGEMENT

JANSE VAN NIEUWENHUIZEN AJ

- [1] This matter has been referred for review by the presiding officer in Ermelo Magistrates' court in terms of the provisions of section 16(2) of the Child Justice

Act, 75 of 2008 ("the Act") read with sections 303 and 304 of the Criminal Procedure Act, 51 of 1977.

- [2] The accused pleaded guilty and was found guilty of contravening regulation 59(8) read with Section 89 of the National Road Traffic Act, 93 of 1996, in that he exceeded the speed limit of 60 km/h by driving his vehicle at a speed of 105 km/h.
- [3] The accused's age was, according to the charge sheet, 18 years of age.
- [4] In the premises, the conviction proceedings in the court *a quo*, proceeded on the basis that the accused is an adult.
- [5] During sentencing, it however, transpired that the accused is 17 years of age and therefore a "*child*" as defined in the Act.
- [6] Section 16(2) of the Act, confers a discretion on a magistrate to refer the proceedings in the court *a quo* to the High Court, should the magistrate be of the opinion that the error regarding the age of a child has caused prejudice to the child.
- [7] I am satisfied that the incorrect recordal of the accused's age at the inception of the trial is prejudicial to the accused and that the matter should be remitted to the court *a quo*.

I propose the following order:

1. The conviction of the accused is reviewed and set aside.
2. The matter is remitted to the court *a quo*.


N Janse van Nieuwenhuizen
Acting Judge of the North Gauteng High Court, South Africa

I agree.

A A Louw


Judge of the North Gauteng High Court, South Africa