

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

Review No: 186/2013

In the review between:

**THE STATE**

*versus*

**PHERENKGWANE JOSEPH MOKOENA**

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**CORAM:**

KRUGER, J *et* NAIDOO, AJ

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**JUDGMENT:**

NAIDOO, AJ

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**DELIVERED ON:**

28 NOVEMBER 2013

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**REVIEW JUDGMENT**

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[1] The accused was sentenced as follows by the magistrate at Bethlehem on 30 April 2010:

“The accused is fined Ten Thousand Rand or Eighteen Months’ Imprisonment. Further that the accused pays a Further Ten Thousand Rand to the Complainant Naledi Stella Bikatedi, which amount is payable on 13 April (meaning today). Failure which the accused will be brought before court for resentencing.” (sic)

[2] The accused was convicted of fraud in that he induced the complainant to give him R10 000 as deposit for a Mercedes Benz

motor car costing R69 000, upon which payment she would get the car. She deposited the R10 000 but she never got the car. In passing sentence the magistrate's intention was that the accused pay back the R10 000 to the complainant in addition to the R10 000 fine.

- [3] The accused paid the R10 000 fine on 30 April 2010, the date he was sentenced but, according to the magistrate granted a postponement to the accused to pay the R10 000 to the complainant. The accused later paid R3 000. It would seem that in about January 2013 the complainant informed the clerk of the court that she had not received any money except the R3 000. R7 000 is still outstanding.
- [4] The magistrate then realised that his sentence contained no sanction to enforce payment of the full R10 000 to the complainant. He sent the matter on special review to this court asking resentencing or correction of his error.
- [5] On 5 September 2013 an enquiry was sent to the magistrate, asking whether the compensation order was made under section 297 or 300 of the Criminal Procedure Act No 51 of 1977.
- [6] The magistrate responded that he made the compensation order in terms of section 297. He says this is evident from the words, "upon failure to pay, the accused will be brought before the court for resentencing." Resentencing is allowed in very limited circumstances. Examples are where the accused has been declared a dangerous criminal in terms of section 286B(2) and

juveniles who were sentenced when they were under 21 years old (section 76(3)(c) of the Child Justice Act No 75 of 2008). It is clear that the magistrate did not want to postpone the passing of sentence as contemplated in section 297(1)(a).

- [7] The magistrate wanted to impose an order that payment be made to the complainant subject to a sanction. He did not impose a sanction for non-payment. This is a mistake which the magistrate says he will not make again.
- [8] In my view of a portion of the sentence imposed, (or possibly a further sentence in addition to the one imposed should have been imposed) and the operation thereof suspended on condition that payment of compensation, as envisaged, be made to the complainant. Sub-section (9)(a)(ii) would have then addressed the situation that has now arisen.
- [9] It would seem that the sentence which the magistrate wanted to impose was something like the following:
1. The accused is sentenced to pay a fine of R10 000 or undergo 18 months' imprisonment.
  2. In addition to the above, the accused is sentenced to three years' imprisonment, which is wholly suspended on condition that the accused pays R10 000 to the complainant, Naledi Stella Bikateli before 30 April 2010.
- [10] It appears from the record that the only reason why the magistrate did not impose direct imprisonment was because the accused was willing to compensate the complainant. The offence was serious

and in my view a proper sentence would have been three years' direct imprisonment. It now appears that the accused has paid the fine of R10 000 and he then paid R3 000 to the complainant via the clerk of the court, Bethlehem.

[11] In the circumstances the sentence imposed should be rectified.

[12] **ORDER**

In terms of section 298 of Act 51 of 1977 the order in the judgment dated 28 November 2013 is amended to read as follows:

1. The sentence imposed on 13 April 2010 (or 30 April 2010) is set aside and replaced with the following:

**1.1 The accused is sentenced to pay a fine of R10 000 or undergo 18 months' imprisonment.**

**1.2 In addition, the accused is sentenced to 18 (eighteen) months imprisonment, which is wholly suspended on condition that the accused pay R10 000 to the complainant, Naledi Steda Biketeli before 21 January 2014.**

2. It is recorded that the accused has already paid the R10 000 fine as well as R3 000 for the complainant. This means that, in order to avoid the coming into operation of the suspended sentence, the accused must pay R7 000 to the complainant before 21 January 2014.

3. Should the accused fail to pay the amount of R7 000 to the complainant via the clerk of the court, Bethlehem before 21 January 2014, the suspended sentence will come into operation, and the accused must report to prison within 48 hours after 21 January 2014.
4. The registrar is requested to send a copy of this judgment to the control magistrate at Bethlehem to assess reasons for the inordinate delays. There was no need to wait for the charge sheet – the charge appears from the judgment.

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**S. NAIDOO, AJ**

I agree.

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**A. KRUGER, J**

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