

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Special Review Number: 297/13

In the review between:-

K J MABOTE

Appellant

and

THE STATE

Respondent

CORAM:

VAN ZYL, J *et* REINDERS, AJ

JUDGMENT BY:

VAN ZYL, J

DELIVERED ON:

12 DECEMBER 2013

[1] This matter has been sent on special review in terms of Section 57 (7) of the Criminal Procedure Act, 51 of 1977, from the Fouriesburg Magistrate's Court. In a letter attached to the special review, Mr NJ Smith very eloquently set out the following summary of the relevant facts and circumstances:

“2. Mr Mabote the accused, paid admission of guilt to the amount of R1 200-00 (One Thousand Two Hundred Rand) after it was alleged that he on 05/05/2013 in the

district of Fouriesburg carried passengers for reward contrary to the conditions of a Cross Border Permit issued to him, by overloading his vehicle. The admission of guilt was confirmed on the 23rd May 2013 by a Magistrate deciding in the local court on the said date, to wit Mr K J Jikeka.

3. Mr Mabote in his application dated 16/05/2013 alleges that he was not overloaded on the day in question. He carried 15 passengers plus a baby less than two years of age. His load was in accordance with the passenger list which was verified by the Cross Border Road Transport Agency. He also alleges that loading a baby was permissible in terms of the Road Transportation Act. According to Mr Mabote he had no other choice than to pay the fine under protest in order to get his vehicle back, which was impounded.
4. Considering the above, it appears that there is well-founded doubt concerning the guilt of the accused. The Court is satisfied that the accused have shown that were the charge to go to trial, he would have a probable or arguable defence.
5. It is humbly submitted that the conviction and sentence be

set aside in order to afford the State the opportunity to proceed with the trial.”

[2] The aforesaid facts and circumstances have been set out in an affidavit deposed to by Mr Mabote in support of his application for special review. Having read the said contents of the affidavit, together with the supporting documentation attached thereto, I agree with Mr Smith’s view that the accused has a probable and arguable defence and that the conviction and sentence should therefore be set aside.

[3] Consequently the following order is made:

3.1 The conviction and sentence is set aside.

3.2 The matter is referred back to the Court *a quo* for trial purposes should the State decide to continue with the prosecution of the accused.

C. VAN ZYL, J

I concur:

C. REINDERS, AJ