

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No. : 56/2012

THE STATE

versus

CLIFFORD MZIMKHULU MOTAUNG

CORAM: RAMPAL, AJP *et* SNELLENBURG, AJ

JUDGMENT BY: RAMPAL, AJP

DELIVERED ON: 26 APRIL 2012

[1] The matter came to this court by way of a special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977 as amended. The two accused persons are on trial in the Heilbron district court. Their last appearance was on the 30 March 2012. On that day, the proceedings were stayed pending the outcome of this review.

[2] The record showed that accused 1 was arrested on the 16 July 2010. He first appeared on the 19 July 2010 on which day he was released on R2 500,00 bail. Initially he was charged alone under case 274/2010.

- [3] As regards accused 2 it appeared that he was arrested on the 29 September 2010. On the same day he was released from custody on R1 000,00 bail. Initially he was separately charged under case 356/2010.
- [4] On the 12 November 2010, the two cases were consolidated under the banner of case 274/2010. Since then Mr M C Motaung and Mr D J Mokoena were tried together as accused 1 and accused 2 respectively.
- [5] The prosecution alleged that accused 1, a public official, unlawfully accepted a benefit in the amount of R1 300 from Mr D J Mokoena, a member of the public, at Heilbron on 21 June 2010 for his personal benefit in order to have a driving licence improperly issued to the said giver in contravention of section 4(1)(a) of Act 12 of 2004 read with the related provisions thereof as well as those of section 265(A) of the Criminal Procedure Act, 51 of 1977. That was the first charge. It concerned accused 1, as the receiver only.
- [6] The prosecution also alleged that accused 2, a member of the public, unlawfully offered a benefit to the tune of R1 300,00 to Mr M C Motaung, a public official, for his personal

benefit, at Heilbron on the 21 June 2010 in order to have a driving licence improperly issued in his favour, in contravention of section 4(1)(b) of Act 12 of 2004 read with the related provisions thereof as well as those of section 269A, Criminal Procedure Act, 51 of 1977. That was the second charge. It concerned accused 2, as the giver, only.

[7] The third charge was one of defeating the ends of justice. Like the second charge, it too concerned accused 2 only. The prosecution alleged that accused 2 unlawfully made two contradictory statements to the members of the South African Police Service at Heilbron during the period commencing on the 7 July 2010 and ending on the 28 September 2010 with the intention to defeat the ends of justice.

[8] The hearing started on the 4 August 2011. On that day Mr J R Steyn presided, Mr Harrington prosecuted, Mr Schutte appeared for accused 1 and Mr T N Marabo for accused 2. The court interpreter was Mr N G Marabo and the assistant court clerk was Ms N G Mhlauli. The accused pleaded not guilty to the charges. The prosecution then led the evidence.

[9] The case was then remanded for further hearing. The hearing was set forth on 5 August 2011 and the 4 November 2011. On those two days, Mr T M Marabo appeared and represented accused 2. However, on the 14 November 2011 he did not appear. Questions were asked but seemingly not answered concerning Mr T M Marabo's legal or professional credentials.

[10] It would seem that on the 26 October 2011, Ms C Neyt, a district court magistrate at Sasolburg, who presided in the criminal trial of a certain Mr N Prechand and T Mokubung under case D79/2010 in which the same Mr T M Marabo was involved, emailed a query to: The Law Society of the Northern Provinces to enquire about Mr T M Marabo's professional standing, particularly his right to appear in a court of law on behalf of his principal and to legally represent clients of his principal.

[11] The aforesaid law society replied on 2 November 2011. The letter reads:

"Me C Neyt
Landros: Sasolburg
E-pos: Cneyt@justice.gov.za

Geagte Dame

INSAKE: TM MARABO [M30849]

Ons verwys na u e-pos van 26 Oktober 2011 gerig aan ons Me Estelle Jordaan en bevestig dat ons op die inhoud daarvan gelet het.

Volgens ons rekords het Mnr Marabo se leerkontrak in Junie 2010 verstryk en sal ons dit hoog op prys stel indien u aan ons kan vermeld in welke sake hy in u hof of ander howe verskyn het aangesien ons sodanige optrede in 'n baie ernstige lig beskou. Ons bevestig dat ons reeds 'n nota teenoor sy naam aangebring het om te verhoed dat hy as prokureur toegelaat word totdat hierdie aangeleentheid volledig ondersoek is.

Die uwe

GETEKEN
J FOURIE(MNR)
SENIOR REGSBEAMPTE"

[12] On 27 February 2012, again Mr T M Marabo did not attend court. Once again the case was remanded. The need to send the matter on special review was recognised. The trial proceedings were then stayed. The case was postponed to 12 March 2012. Since then nothing significant has happened concerning this matter.

[13] On the 1 March 2012 Mr Steyn, the trial magistrate addressed a letter to the registrar. The registrar received the letter on 20 March 2012. The letter reads:

"Die Griffier van die Hooggeregshof
Privaatsak X20612

BLOEMFONTEIN
9300

**INSAKE SPESIALE HERSIENING
STAAT VERSUS JONA D MOKOENA
HEILBRON SAAK 274/2010**

- i) Bogemelde saak is deelsverhoor in die Landdroshof te Heilbron.
- ii) Tydens die verhoor het dit aan die lig gekom dat Mnr M T Marabo wat namens Mnr Jonas D Mokoena optree nie toegelaat is as 'n prokureur nie (Sien brief gedateer 17/11/11 ontvang van Mnr J Fourie (Senior Regsbeampte) Prokureursorde van die Noordelike Provinsie.
- iii) In die lig hiervan versoek ek beleefd dat u die saak voor 'n Regter plaas wat 'n *de novo* verhoor voor 'n ander landdros kan gelas.

**LANDDROS: HEILBRON
JR STEYN"**

[14] The gentleman did not necessarily have to be an admitted attorney before he could appear in a district court on behalf of his principal to legally represent anyone. A candidate attorney with a valid certificate issued by a responsible law society, is entitled to appear in a district court for as long as such certificate of appearance remains valid. The law society's certificate which regulates a candidate attorney's right of appearance in a magistrate court expressly stipulates a specific date of which such right expires.

[15] In this matter, the law society advised the aforesaid magistrate that Mr T M Marabo's contract of employment as

a candidate attorney expired in June 2010. The precise date of expiry of the gentlemen's articles of clerkship was not specified in the letter. I could not ascertain it anywhere on the record. Accordingly, I assume, in favour of the candidate attorney, that his right of appearance which stemmed from his registered contract to serve his principal as an apprentice terminated on Wednesday the 30 June 2010, at the very latest. This then is the cut-off line I am proceeding to use in determine the lawfulness or otherwise of his alleged conduct.

[16] It appears from the record that the gentleman made his first appearance in the matter on the 4 August 2011. He disappeared three months later. He last appeared on the 4 November 2011. Overall, he appeared on four occasions during that period. When he first appeared, his contract had lapsed 13 months earlier. It follows, therefore, that all his appearances, all of which were after the expiry of his contract, were unlawful. Accordingly, he was not supposed to have appeared on behalf of accused 2 at all *ab initio*.

[17] By appearing as he did, he falsely represented to accused 2 and the trial court in particular as well as the public in general, that he was a lawyer, qualified to appear in court

and to legally represent accused persons whereas, in fact and in truth, he knew he no longer had such a right. In the premises, he *prima facie* defrauded the accused. On four different occasions he fraudulently projected himself as a lawyer and thereby prejudiced not only the accused but the proper administration of justice as a whole. He prejudiced all the stakeholders including accused 1.

[17] Last month this court had this to say about the lamentable state of affairs occasioned by the same gentleman:

“[30] The dominant impression I get upon my integrated reading of all these reviews, is that the accused know, (sic) as a candidate attorney, that he did not have an indefinite or absolute right of appearance in a court of law; that knowledge, notwithstanding, he projected himself as a qualified attorney with unrestricted right of appearance in the district courts on several occasions; that the accused in these matters regarded him as an attorney qualified to legally represent them; that each of the accused probably paid him or his principal to be legally represented; that they were not lawfully and fairly represented and that the false representation constituted an irregularity of such gravity that it virtually vitiates the proceeding in respect of each of these matters. I take a very dim view of this sort of

unethical conduct by a prospective attorney.”

See review number 36 of 2012 which was considered together with reviews number 37/2012, 38/2012 and 39/2012.

[18] This serious matter has to be referred to the police so that the unlawful plundering of the unsuspecting members of the society can be thoroughly investigated. Moreover, I once again recommend that the aforesaid law society should speedily investigate the gentleman as well as his principal in order to take a swift and appropriate disciplinary action against the culprit(s). Should anyone be found guilty of this seemingly misconducts, the sanction must include full compensation to the victims.

[19] I have come to the conclusion that there was miscarriage of justice in this matter, occasioned by the irregular, unethical, and *prima facie* fraudulent conduct of the gentleman, Mr T M Marabo. I am satisfied that a proper case has been made out for the relief sought.

[20] Accordingly, I make the following order:

- 20.1 The entire proceedings are set aside *ab initio*.
- 20.2 The matter is remitted to the Heilbron District Court for the *de novo* retrial of the two accused persons before a different magistrate.
- 20.3 The registrar is directed to forward a copy hereof to The Law Society: Northern Provinces.

M.H. RAMPAL, AJP

I concur.

N. SNELLENBURG, AJ

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