

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No.: 128/2011

In the review between:-

THE STATE

and

BENJAMIN SORO

CORAM: VAN DER MERWE, J *et* C.J. MUSI, J

JUDGMENT BY: VAN DER MERWE, J

DELIVERED ON: 21 APRIL 2011

[1] This is a review in terms of section 304(4) of the Criminal Procedure Act, No. 51 of 1977 (“the Act”).

[2] On 21 December 2010 the accused, who had been released on bail, did not respond when his name was called three times inside and outside the courtroom. A warrant for his arrest was accordingly authorised but held over and the accused’s bail provisionally cancelled and the bail money provisionally forfeited to the State.

- [3] However, later on the same day, the accused appeared on his own accord. Purportedly in terms of section 72(4) of the Act, the magistrate summarily enquired into the failure of the accused to appear earlier in the day and sentenced the accused to a fine of R300,00. The warrant of arrest was cancelled and the case was remanded with the accused on bail, from which follows that the provisional cancellation of the bail and forfeiture of the bail money lapsed.
- [4] The request before us that the proceedings and fine imposed in terms of section 72(4) of the Act be set aside, must be acceded to. Section 72 of the Act is not applicable to an accused person who had been released on bail. Section 67A of the Act provides for criminal liability of a person who has been released on bail and who fails without good cause to appear on the relevant date and this liability cannot be determined by summary enquiry.
- [5] In the result the proceedings and fine imposed in terms of section 72(4) of the Act are set aside.

C.H.G. VAN DER MERWE, J

I agree.

C.J. MUSI, J

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