

A270/09

/LVS

IN THE HIGH COURT OF SOUTH AFRICA

DELETE WHICHEVER IS ~~INAPPLICABLE~~ (NORTH-GAUTENG, HIGH COURT)

(1) REPORTABLE: YES/NO. ☒ YES

(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ YES

(3) REVISED. ☐ NO

DATE 24/3/09 SIGNATURE *[Signature]*

DATE: 23 MARCH 2009

31/3/08

NOT REPORTABLE

MAGISTRATE PRAKTISEER

Case No: A316/2007

Magistrate's serial no: 74/2007

High Court Ref No: 1081

THE STATE VS CONCLEY PHEHANE LEMAO

REVIEW JUDGMENT

BOTHA J:

The accused was sentenced to two years imprisonment on a charge of housebreaking with the intent to commit an offence unknown to the State and on a charge of assault with the intent to do grievous bodily harm.

When the matter was sent on automatic review I pointed out that the record was incomplete, there being no transcription of the accused's evidence.

The magistrate replied by explaining that the case was heard by an acting magistrate whose contract was terminated at the end of October 2008. The presiding officer, one advocate Seemela, was given my query, but he did not respond to it. The stenographer could not find the necessary evidence on the recording machine. He concluded his answer by saying that because advocate Seemela is not longer in the employ of the Department of Justice, the record cannot be reconstructed.

The state advocates point out that it seems that the evidence of a witness one Anea Serage, was also not transcribed. They point out that advocate Seemela should be available in the country and that he should be able to reconstruct the record.

I agree. The magistrate's attitude is, with respect, supine. Advocate Seemela is under an ethical obligation to render his assistance in the finalization of matter over which he presided. In any event he was not the only person who could assist in the reconstruction of the record.

The obligation to reconstruct the record rests on the clerk of the court and he may refer to various parties such as the magistrate, the prosecutor, the interpreter, the accused and witnesses. He should give both the State and the accused the opportunity to peruse his reconstruction and also submit their versions to the reviewing judge. See **S v Ntantiso and Others 1997(2) SACR 302 (ECD) at 303 I-304d**.

The following order is made:

1. **The matter is referred back to the clerk of the court, Praktiseer, with the instruction that he or she obtain the best secondary evidence of the portion of the evidence that was not transcribed.**
2. **Thereafter the reconstructed record must be submitted to the reviewing judge.**



C BOTHA
JUDGE OF THE HIGH COURT

I agree



S POTTERILL
ACTING JUDGE OF THE HIGH COURT