

A 279/09

IN THE HIGH COURT OF SOUTH AFRICA
(TRANSVAAL PROVINCIAL DIVISION)

DATE: 24 March 2009

Magistrate

FOCHVILLE

Review Case No: 56/2009

Supreme Court Ref No: 647

31/3/2009
NOT REPORTABLE

**THE STATE vs MATSEKO ELIZABETH GAZA AND MAPAKISO
MOTLOUNG**

REVIEW JUDGMENT

RAULINGA, J

- [a] The two accused have been charged in the Magistrate court Fochville, for the crime of assault (count 1- accused no 2) and assault with intent to do grievous bodily harm (count 2 – both accused)
- [b] It is alleged that accused 2 (Mapakiso Moutloung) on or about the 25th August 2007 and at or near Kokosi in the district of Fochville, did unlawfully and intentionally assault

Christina Matjala by hitting her with an open hand. It is further alleged on count 2 that both accused (on the same date and place) assaulted Christina Matjala by hitting her with stones or similar objects with the intent of causing her grievous bodily harm.

[c] As the proceedings were in progress it transpired that the complainant apparently experienced difficulty with her hearing. The complainant indicated that she has a hearing problem but she is not deaf, which may not necessitate a need for a sign language interpreter. The complainant has already testified quite substantially. She followed the proceedings up to the stage when the Magistrate postponed the matter because in his view she was tired, and not that she couldn't follow the proceedings.

[d] It would appear that the complainant suffers from a hearing impairment, but she is not deaf. This can be gleaned from the fact that she managed to make a statement to the police. She could hear the accusations which were hurled at her by the accused on a daily basis, and she could follow the

proceedings during the trial despite the fact that she developed hearing difficulties.

[e] When the matter was adjourned to the 8th February 2008 the complainant had indicated that she had a child who understood her when she spoke and the said child could interpret as she testifies. Alternatively, as the Magistrate reiterated, the complainant had already testified substantially, and it may be in the interest of justice that she continues with her evidence in chief without any assistance. However, the Magistrate was in doubt as to whether she could be sworn in as an interpreter as “she does not use the official sign language when communicating to the complainant”.

[f] In *S v Roux* 2007 (1) SARC 369 (C) at 383 G-I, Williams AJ adequately dealt with this aspect in a matter involving a child suffering from downs syndrome.

“Dit is duidelik uit die vooropgestelde dat ons hoewe oor die jare die afle van getuie ‘vica voce’ wyd interpreteer het. Ek glo dus nie dat die Wetgewer beoog het dat art 16 (2) van die Straf proses wet ‘n numerus clausus daarstel van die gevalle waar die uitdrukking ‘vica voce’ ander vorms van

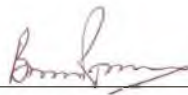
kommunikasie insluit nie. Dit is in elk geval my mening dat strafhowe nie onnodiglik deur nou interpretasies van wetgewing en/of regbeginsels struikelblokke in die pad plaas by die aanhoor van die getuienis van getuies wat nie op normale wyse hul getuienis kan voorle nie.

Die oogmerk met hierdie subartikel sou na my mening reeds wees om te verhoed dat getuienis bloot omdat dit nie op gewone wyse verstaanbaar is vir die hof beskuldige en hofaptene nie, uitgesluit word as daar wel 'n manier is om die getuienis verstaanbaar te maak”

- [g] In R v Ranikolo 1954 (3) SA 255 (O) Horwitz J elucidates this aspect by referring to a case in which a deaf mute gave evidence with his father acting as an interpreter.
- [h] It is indeed true that while superior courts have jurisdiction in review or appeal cases, it will be slow to exercise the power vested in them, whether by mandamus or otherwise. They may however do so in rare cases where grave injustice might otherwise result – Wahlhaus and Another v Additional Magistrate, Johannesburg and Another 1959 (3) 113 (A).
- [i] In casu, two approaches are available as solutions to this matter. The first is that the magistrate may proceed with the matter in the ordinary manner. The second is that the complainant's daughter may be sworn in as a special

interpreter for the mother. I say a "special interpreter" because this situation is not ordinarily provided for.

- [5] In the premises, the magistrate is directed to continue with the trial proceedings in the ordinary manner, should the hearing ability of Ms Christina Matjala deteriorate, then alternatively her daughter should be sworn in as a special interpreter, with the necessary cautionary rules applicable in the circumstances.



T.J. Raulinga

[Judge of the High Court]

I agree



G. Webster

[Judge of the High Court]