

Not reported

A 446/09

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

1/6/2009
DATE: 25-May-2009

MAGISTRATE: L. TSENGIWE

High Court Reference No. 241

Magistrate serial No. 02.09

Review Case No. 01/115/09

FOR CONTINUANCE
OF INTEREST TO OTHER JUDGES
REVISUO
2009/05/26

THE STATE VS VUYO MATYANA

REVIEW JUDGMENT

LEGODI (J):

When this matter was initially laid before me on automatic review, I raised certain queries with the magistrate regarding one of the condition of suspension of the sentence.

The accused was found guilty on his plea of guilty for contravention of section 65 (2), read with section 65 (3) of Act 93 of 1996, the allegations being that on or about the 15 February 2008 at or near Mongalaki and Kgotso street, a public road in the district of Klerksdorp the accused did wrongfully and unlawfully drive a vehicle to wit Mercedes

Benz FKS 935 NW whilst the concentration of alcohol in any specimen of the blood taken from any part of his body was not less than 0,05 gram per 100 milliliters to wit 0,20 gram per 100 milliliters.

Having been found guilty, the accused was sentenced to R4000-00 or six (6) months imprisonment which was wholly suspended for a period of five (5) years on condition that the accused is not found guilty of contravention of section 65 (1) 65 (2) and 65 (5) of Act 93 of 1996 committed during the period of suspension.

I raised the issue whether with a condition for suspension on the main count, being contravention of section 65 (1) was appropriate. In his response, the magistrate commented as following:

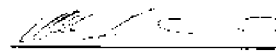
"I have realised that I omitted to delete 65 (1) as part of a condition for suspension. It was an oversight on the part of the court and that mistake is highly regretted?"

This is understandable because renoed form was used in recording the sentence.

I therefore make the following order:

- [1] A Conviction on Contravention of section 65 (2) (a) of Act 93 of 1996 is hereby confirmed.
- [2] A condition for the sentence on contravention of section 65 (1) (a) is set aside and sentence is substituted as follows:

"The accused is sentenced to R4000-00 or six (6) months imprisonment wholly suspended for a period of five (5) years on condition that the accused is not found guilty of contravention of section 65 (2) (a) of Act 93 of 1996 committed during the period of suspension."



F. M LEGODI

JUDGE OF THE HIGH COURT

I agree,



W. L SERITI

JUDGE OF THE HIGH COURT