

22/6/2009

AS41/2009

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

Magistrate: Lenyenye

High Court ref no.: 60

Magistrate Serial Number: 18/2008

Case no. A445/08

WHICHEVER IS NOT APPLICABLE

APPLICABLE ☒ YES ☐ NO

INTEREST TO OTHER JUDGES ☒

(3) REVISED.

2009/06/17
DAY

CLERK

STATE vs STUBBS MACHIMANA

REVIEW JUDGMENT

When this matter was initially laid before me, I raised certain queries with the magistrate regarding conviction.

The accused appeared in the magistrate court for the district of Lenyenye on a charge of driving a motor vehicle whilst under the influence of liquor.

In the alternative he was charged with driving a motor vehicle whilst the concentration of alcohol in any specimen of breath exhaled by him was not less than 0.24 milligrams per 1000 millilitres to wit 0.78 per 1000 millilitres.

He pleaded guilty to the charge and supposedly to the main charge.

Questioning in terms of section 112(1)(b) elicited the followings:

- that along the road he was stopped by the traffic officers,
- that the traffic officers were in possession of a machine or an equipment called breathalyzer,

- that the traffic officers tested alcohol in his breath by using a breathalyser and that he was told it exceeded the limit,
- that he did consume liquor on the date in question and that he drank six and half Hunters Dry.

The trial court then enquired from the accused if he knew that it was not allowed to drive while under the influence of liquor and the accused answered in the affirmative. The accused was then convicted based on the answers indicated above which were elicited during questioning.

I enquired from the magistrate if the accused had admitted all the elements justifying a conviction on driving a motor vehicle whilst under influence of liquor.

The magistrate as I understood her, held the view that conviction was in accordance with justice, that is, the accused admitted the elements of the offence.

The matter was referred to the Office of the Director of Public Prosecutions for comment. In their view, the accused did not admit all the elements of the main count nor the alternative charge. I share this view and I do not find it necessary to elaborate.

I would therefore make an order as follows:

1. Conviction and sentence are set aside.
2. The matter is referred to the trial court to proceed as follows:
 - 2.1 further question the in terms of section 112(1)(b) of the Criminal Procedure Act to establish if the accused admits all

the elements of the offence either on the main charge or alternative charge,

- 2.2 should the court find that the accused admits all the elements of the offence and finds the accused guilty, the court should impose such sentence as it may find appropriate, or
- 2.3 should the court find that the accused does not admit all the elements of the offence it being either on the main charge or alternative charge, the court should change the plea to that of not guilty in terms of section 113 of the Criminal Procedure Act 51 of 1977.


M F LEGODI
JUDGE OF THE HIGH COURT

I, agree it is so ordered


W/L SERITI
JUDGE OF THE HIGH COURT