

Reportable:	YES / NO
Circulate to Judges:	YES / NO
Circulate to Magistrates:	YES / NO
Circulate to Regional Magistrates:	YES / NO

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape High Court, Kimberley)

Case Nr: 50/2009

Date delivered: 11/09/2009

In the matter between:

THE STATE

PLAINTIFF

and

PEDRO VAN WYK

RESPONDENT

Coram: Majiedt J et Olivier J

JUDGMENT

OLIVIER J:

1. These two cases against the same accused (cases nr V156/08 and V237/08, Magistrate's Court, Groblershoop) have been submitted for special review.
2. The accused in these matters had on two different occasions been issued with summonses to appear in the Magistrate's Court, Groblershoop, on different dates on charges of having contravened certain provisions of the Road Traffic Act, 93 of 1996. He failed to appear on either of the two dates and warrants for his arrest were apparently issued.

3. The charge in the one case was that the accused had driven a motor vehicle without a valid driver's licence, while the charge in the other case pertained to the illegal conveying of passengers.
4. When the accused eventually appeared in the Magistrate's Court (apparently after police officials had confronted him with the warrants) the magistrate, mr L Willemse, dealt with both cases simultaneously, convicted the accused on both the traffic charges in the respective cases and then postponed both cases to afford the accused an opportunity to raise the money to pay fines in the amounts initially indicated in the summonses (as acknowledgement of guilt fines) as well as for his failures to appear in Court.
5. Mr Willemse has since retired and the matters have therefore been submitted (for review) by a different magistrate, mr S O Mazwi. This mr Mazwi was entitled to do, despite not having been the magistrate who convicted the accused (see **S v Klaase** 1998 (1) SACR 317 (C) at 321-322 and **S v Hlongwane** 1990 (1) SACR 310 (NC)).
6. I agree with mr Mazwi that the proceedings in both matters are not in accordance with justice and therefore reviewable and I have to commend mr Mazwi on the thorough manner in which these matters have clearly been analysed and submitted for review.
7. When the accused appeared before mr Willemse, he immediately proceeded to question the accused about his failures to appear.
8. The accused was never informed of his rights regarding legal representation, either in respect of the enquiry into his failures

to appear or in respect of the charges against him. Not only is it trite that this should be done, but the transcription of the proceedings in these matters clearly demonstrate the prejudice that the unrepresented accused suffered as a result.

9. Mr Willemse's note to the effect that no enquiry into the accused's failures to appear had been done, is clearly incorrect. It is contradicted by the record, which clearly reflects questions and remarks by Mr Willemse which could only have been intended to deal with the accused's failures to appear:

"HOF Ja, lyk my jy is 'n man wat nie Hof toe kom nie nê?

BESKULDIGDE Nee Edelagbare, laat ek Edelagbare verduidelik.

HOF Nee, wat se verduidelikings is daar aan?

BESKULDIGDE Edelagbare kan ek maar verduidelik?

HOF Ja"

"HOF Hoekom was jy nie die 20ste Mei by die Hof nie?"

"HOF Die dagvaardings het jy gekry ..."

10. When the matters were eventually postponed the accused was told to see to it that he had R240,00 available at his next appearance "*vir die versuim om Hof by te woon*".
11. The accused was, however, never formally convicted in respect of his failures to appear in Court and I therefore return to his convictions on the two traffic charges.
12. As already mentioned, he was never apprised of his right to legal representation in respect of these charges.

13. Moreover, the charges were never put to the accused by the prosecutor and the accused never formally pleaded to them. What happened was that the accused, when confronted with his failures to appear, offered to pay the fines in respect of both charges and admitted that "... *ek moet dit betaal en ek is verplig om dit te betaal*" and that, in respect of the one charge, "... *ek weet ek is skuldig*".
14. It is unnecessary to consider the effect of these "*admissions*". In the absence of a proper plea of guilty (in response to a charge properly put to the accused) it was not competent to convict the accused on any of the charges in these two matters (see **sections 112 and 105 of the Criminal Procedure Act**, 51 of 1977 and **S v Sithole and Others** 1999 (1) SACR 227 (T) at 230c-d).
15. In my view the convictions in both these matters therefore fall to be set aside on any of the grounds already mentioned.
16. Although it is therefore not necessary to decide whether it would not in itself have justified the rescission of these convictions, I feel compelled to refer to the familiar and sarcastic way in which mr Willemse addressed the unrepresented accused.
17. Apart from what already appears from the above-quoted passages, the following are also examples of the unacceptable tone and attitude adopted by mr Willemse:

"BESKULDIGDE ... Ek vra as Edelaagbare, dit vir my in paaiemente kan sit, dan sal ek baie bly wees.

HOF Nou wat dink jy is ons, 'n lay-bye stelsel hierso?"

"BESKULDIGDE ... as daardie mense vanoggend vir my by die huis gevat het, dan het ek daardie paar rand ook gekry. Dan het ek vir Edelagbare nou die paar rand gekom gee het. HOF Wat se paar rand is dit? Het jy Lotto gewen?"

"HOF ... O, jy het 'n sel foon. Jy het 'n sel foon. Ek het nie eens 'n sel foon nie, want ek kan dit nie bekostig nie."

18. When the accused pleaded for mercy, and for an opportunity to raise the money to pay his fines, mr Willemse responded as follows:

"Dink jy nie jy moet 'n bietjie gaan rus in die Upington Gevangenis nie?"

19. Mr Willemse's attitude and tone was not only degrading towards the accused, but also unworthy of a presiding officer in any Court.

20. In conclusion I make the following order:

The convictions in cases number V156/08 and V237/08 are set aside and the matters are remitted to the Magistrate's Court, Groblershoop.

**C J OLIVIER
JUDGE
NORTHERN CAPE DIVISION**

I agree:

**S A MAJIEDT
JUDGE
NORTHERN CAPE DIVISION**