

IN THE HIGH COURT OF SOUTH AFRICA
(ORANGE FREE STATE PROVINCIAL DIVISION)

Case No.: 191/2008

In the case between:

THE STATE

and

RASETSHEGO MAKOKO AND ANOTHER

CORAM: H. M. MUSI, JP *et* MOCUMIE, J

JUDGEMENT: MOCUMIE, J

DELIVERED ON: 26 JUNE 2008

REVIEW JUDGEMENT

[1] The matter was sent on special review by the presiding officer who presided in the matter. Although it was not sent in the prescribed manner with a covering letter from the Senior Magistrate, the latter subsequently sent one in which he indicates the following:

“The above stated case is submitted for Special Review to the Honourable Reviewing Judge, as the Magistrate who presided

expresses some doubts in respect of her conviction of the Accused on related charges.

The Magistrate(s) circumvention of the Head of Court will be addressed with her once she returns from leave and hopefully this will not recur.”

- [2] The two accused appeared in Thaba Nchu Magistrate Court on two counts of robbery – accused 1 pleaded guilty to both counts and accused 2 pleaded guilty to one count only. Both were convicted as charged on both counts on 4 January 2008 and sentenced to 18 months imprisonment wholly suspended on certain conditions.
- [3] The presiding officer correctly invoked section 112(1)(b) of the Criminal Procedure Act 51 of 1977 (“the CPA”) during which questioning both accused admitted all the elements of the charges preferred against them i.e. accused 1 in respect of both counts and accused 2 in respect of one count only. The admissions were in accordance with the State’s case. The prosecutor accepted the plea in respect of both counts as admitted by the accused. But then the presiding officer

convicted both accused in respect of both counts.

[4] This is clearly a mistake and an oversight on the part of the presiding officer which could and should have been corrected immediately when it came to her attention. But obviously judging from the date of conviction and the date on which the matter was sent for review to this Court, a lengthy period had lapsed forcing the presiding officer to refer the matter to this Court of intervention.

[5] Despite the presiding officer's view that she should not have convicted accused 1 of robbery, I am of the view that she was correct to convict him of robbery even in respect of count 2. See **Criminal Law**, Snyman, fourth edition at 506 for a definition of robbery. The definition covers even the so-called grab-and-run cases as in this case in count 2 to which accused 1 pleaded guilty and admitted all the elements of the offence.

[6] I however share the same view with the Presiding Officer with regard to count 2 in respect of accused 2. The prosecutor

accepted the plea as tendered. Count 2 naturally fell away and thus accused 2 could and should not have been convicted thereof.

[7] In the circumstances I make the following order:

Order:

- 1. The conviction in respect of count 2 in respect of accused 2 is set aside.**
- 2. The conviction and sentence in respect of count 1 in respect of accused 2 are confirmed.**
- 3. The convictions and sentence in respect of count 1 and 2 in respect of accused 1 are confirmed.**

B. C. MOCUMIE, J

I concur.

H. M. MUSI, JP

/em