

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

Review No. : 255/2006

In the review between:-

THE STATE

versus

TSHIDISO DAVID MOSIA

CORAM: VAN DER MERWE J *et* VAN ZYL J

JUDGMENT BY: VAN DER MERWE J

DELIVERED ON: 16 MARCH 2006

[1] Despite his plea of not guilty, the accused was convicted of robbery in die magistrate's court for the district of Witsieshoek held at Makoane and on 9 February 2005 sentenced to a fine of R2 000,00 or 12 (twelve) months imprisonment. As a result the matter was subject to automatic review in terms of section 302 of the Criminal Procedure Act.

[2] In a letter received by the Registrar of this Court only on 8 March 2006, the magistrate reported that due to defective recording apparatus, no recording of the proceedings was made. The magistrate further stated that her notes of the proceedings were stolen from her office during a burglary and that as a result it is impossible to reconstruct a record of the proceedings. There is no reason not to accept this statement.

[3] Automatic review in terms of the Criminal Procedure Act provides protection to undefended accused persons and is compulsory. Therefore, when in a case subject to automatic review, it is established that it is impossible to reconstruct a lost or materially defective record of the proceedings, the relevant conviction and sentence must be set aside. See **S v FREDERICKS** 1992 (1) SACR 561 (C). This accords with the position applicable to lost or defective records in criminal appeals. See **S v JOUBERT** 1991 (1) SA 119 (A) at 126.

[4] The conviction and sentence are set aside.

C.H.G. VAN DER MERWE, J

I agree.

C. VAN ZYL, J

/sp