

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

Review No: 759/2006

In the matter between:

THE STATE

and

MAKOELE WILLIAM MIYA

REVIEW JUDGMENT

CORAM: KRUGER, J

JUDGMENT BY: KRUGER, J

DELIVERED ON: 13 JULY 2006

[1] This is a special review, referred to this court on the grounds set out below:

[2] The accused failed to appear before court on 28/3/2006 in terms of a section 56(1) of the Criminal Procedure Act No 51 of 1977 notice. He had also not timeously paid the amount of R400,00 determined as admission of guilt fine by the

Traffic Officer who had issued the notice to him on 20/2/2006.

[3] However in his place appeared Mr Mafeka Sergeant Miya a relative and alleged owner of the vehicle which was on 20/2/2006 driven by the accused. The prosecutor had earlier been approached by the alleged owner saying that he was the accused driver. It was before the court commenced its session on 28/3/2006.

[4] When the names of the accused were called out by the court orderly, the alleged owner entered the court room and was directed to the dock. In all respects he indicated that he was the accused.

[5] The accused's rights were fully explained to him i.e. the charge and his right to legal representation including legal aid by the presiding judicial officer. The accused indicated that he understood and elected to conduct his own defence.

- [6] The prosecutor proceeded to read the charge to the alleged accused who tendered a plea of guilty. The court thereafter found him guilty in terms of section 112(1)(a) of the Criminal Procedure Act 51 of 1977. No previous convictions were proven by the State.
- [7] The stage of sentencing was commenced with. The accused's rights were fully explained and he elected to tender evidence under oath and to call a witness. When the alleged accused began his evidence on the witness stand, he revealed for the first time that he was not the real accused as depicted in the charge sheet or notice. He stated that he was in fact the owner of the vehicle and did not drive the vehicle on 20/2/2006. He added that the driver had left his employment. At that stage the court immediately discontinued the proceedings for the purpose of sending the record on a special review of the proceedings.
- [8] On the following day the real accused unexpectedly appeared before court and properly identified himself in

court. After his rights were fully explained the proceedings were remanded pending the special review of the proceedings in respect of the alleged owner of the vehicle.

[9] The presiding officer requests the reviewing judge to set aside the proceedings which involved the alleged owner in order that the case against the real accused may be continued with. It is the presiding officer's view that this would be the correct procedure to follow and that a plea of not guilty could not be recorded against the wrong accused in the dock on 28/3/2006.

[10] In the result the following order is made:

The proceedings on 28 March 2006 in case no. DT290 in the magistrates' court for the district of Witsieshoek held at Phuthaditjhaba are set aside.

A. KRUGER, J

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