

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

Review No. : 29/2006

In the review between:

THE STATE

and

SIPHO ZONDI

CORAM: CILLIé, J *et* EBRAHIM, J

JUDGMENT: CILLIé, J

DELIVERED ON: 12 OCTOBER 2006

This is a special review in terms of section 304(A) of article 51 of 1977 forwarded by the magistrate Bloemfontein. The reason for the submission thereof is set out in the magistrate's accompanying letter as follows:

“The Honourable Reviewing Judge is humbly requested to set aside the proceedings on the ground that the proceedings in respect of which the court brought in a conviction are not in accordance with

justice. The accused was cross examining the first state witness, the complainant, when the matter was remanded for further trial. On the next occasion, the state called the second state witness and the matter proceeded. Given the time lapse, the court bona fide believed the cross examination to have been completed and continued with the proceedings and subsequent handed down its judgment. After informing the accused of his rights in mitigation of sentence, the accused brought the courts attention, that he was not given the opportunity to finish his cross examination of the complainant. After listening to the cassettes (record of proceedings) the court found that the accused did indeed not complete his cross-examination of the first state witness.

It is this courts submission that it bona fide erred thus rendering the proceedings irregular and not in accordance with the justice.”

For the reasons set out by the magistrate the conviction is set aside. If the state decides to prosecute the accused again the proceedings must be before a different magistrate.

C.B. CILLié, J

I agree.

S. EBRAHIM, J

/em