

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

IN THE HIGH COURT OF SOUTH AFRICA (Northern Cape Division)

Case no: **C3151/04**
High Court Ref: **227/05**
Date Delivered: **10/03/2006**

In the matter between:

THE STATE

and

GERHARDUS VAN WYK

Coram: Kgomo JP et Tlaletsi J

JUDGMENT ON REVIEW

TLALETSI J

- 1) This matter came to us by way of automatic review. The accused was convicted on 27 September 2005 in the Magistrate's Court, Upington, on a charge of contravention of Section 63(1) of the National Road Traffic Act 93 of 1996 (Negligent driving). He was sentenced to a fine of R 1000-00 or

6 months imprisonment which was wholly suspended for 5 years on condition that the accused is not found guilty of contravening Section 63 of Act 93 of 1996. His drivers' license was suspended for a period of 12 months with immediate effect. He was not legally represented as his application to the Legal Aid Board was unsuccessful.

- 2) Having read the record of the proceedings, I had some doubts that the proceedings were in accordance with justice, or that the accused had been correctly convicted. I requested full reasons for conviction from the magistrate. Upon receipt of the reasons, I caused the record as well as the reasons to be forwarded to the Director of Public Prosecutions, Northern Cape, for his opinion. I have to express that my appreciation for the valuable memorandum supplied by the office. of the Director of Public Prosecutions.
- 3) The essential averments in the charge were that the accused unlawfully drove a motor vehicle recklessly, alternatively negligently. The accused pleaded not guilty and in his verbal plea-explanation raised a defence that appears to be sudden emergency caused by mechanical defect.
- 4) The state tendered the evidence of Martha Steenkamp and

Magriet Julies. Both these witnesses were passengers in the microbus taxi that was driven by the accused. In brief they both testified that they were picked up by the accused along the way and they sat on different seats in the middle and rear of the microbus respectively. The accused drove at high speed and did not stop behind another taxi that had stopped at a T-junction intersection. The accused overtook the stationary taxi and only stopped thereafter. The accused's version which does not differ much from the state's case, is that when he approached the intersection his brakes failed and the only option available to him was to overtake the stationary taxi. He once again pumped the brakes without success and he chose to drive over the road until the motor vehicle was stopped by the bull bars that stuck onto the ground.

- 5) What I found incongruous is what the magistrate did after she was addressed by the prosecutor and the accused at the close of the defence case. She summarily convicted the accused, who could hardly put up an argument on the merits as he confessed not to understand the procedures in court, without giving any reasons for her decision. What follows is a full judgment as recorded:

"PRESIDING OFFICER: Thank you sir. Mr. van Wyk, ok, this Court has

listened to both your version (sic), and the witness versions (sic). This Court will also find you guilty, under the following circumstances. You drove negligently, you intended to endanger the lives of the people who were your passengers.

STATE: As the Court pleases. Your Worship. The State hasn't (sic) proof of any previous convictions. "

- 6) In my view it is improper for a court to merely find an accused, in particular an unrepresented accused guilty, without furnishing reasons. An accused person has a right to know during the trial facts upon which the conviction is based. This will enable him/her to be in a position to reconsider his/her position regarding legal representation and further to decide which facts or factors should be placed before court in mitigation of sentence. For a trial to proceed further without the accused being aware of the basis for a conviction may, in my view, result in violation of the accused's right to a fair trial. The magistrate did not even advise the accused that he has a right to request reasons for conviction, before she proceeded to the sentencing stage of the trial. In ***Kiewiet Batlaping and two Others v The State***: case no: CA&R 151/98 delivered on 13/09/1999 (Northern Cape Full Bench) unreported, **Kgomo J**, as he then was, with **Kriek JP** and **Van der Walt J** concurring, expressed himself as follows at page 3 thereof:

“There cannot be any justification for this conveyerbelt – type administration of justice. It does not matter whether the court rolls are clogged and heavy or that the Magistrate acted as he did because of the effluxion of the court hours. The Magistrate ought to have reserved judgment to be delivered at an appropriate occasion. The accused had an inherent right to know why they were convicted.”

In the ***Kiewiet Batlaping*** case the magistrate only told the five unrepresented accused’s that he is not providing reasons for his judgment and will only be provided upon request, and convicted them of stock theft and proceeded to sentence them.

See also ***Rex v Majerero and Others*** 1948(3) SA 1032 (A) at 1033; ***R v Van der Walt*** 1952(4) SA 382(A) at 382H-383A. ***Botes and Another v Nedbank Ltd*** 1983(3) SA 27 (A) at 27H-28A. These principles are applicable to both civil and criminal cases.

- 7) The practice of not giving reasons for the decision, be it to convict or to acquit, after evidence has been presented should in my view, be discontinued. A verdict is not an interlocutory decision, and should at all times be preceded by an indication of considerations, findings and conclusions, of both law and fact

deliberated by the court to substantiate its final judgment. In *casu* the accused was kept in the dark without knowing what conduct he was being punished for.

- 8) In the reasons for the decision in response to my enquiry, the Magistrate relied on the fact that both state witnesses testified that the accused drove the motor vehicle at a high speed and were corroborated by the fact that the two witnesses were injured. She further remarked that the accused admitted that he intentionally drove a vehicle with mechanical fault which caused the brakes to fail, and his failure to maintain or drive a motor vehicle with mechanical faults, she continued, amount to negligence on his part.
- 9) The Magistrate's conclusion that the accused was driving at a high speed which is in excess of 60km/h is not well founded. Both witnesses for the state were not able to state the speed at which the motor vehicle was driven, at the time when it failed to stop at the intersection. This should be expected in view of their sitting positions in the microbus at the time. The accused's version that he drove at a speed of between 30 - 40 km/h which is why it was possible for him to turn the motor vehicle until it stopped was not challenged. The fact that the witnesses sustained injuries is not in itself, under circumstances, proof that

the motor vehicle was driven at a high speed. Ms Steenkamp testified that the only injury she sustained was a scratch on the knee and Ms Julies sustained a broken patella which was removed. These injuries were sustained as a result of the motor vehicle coming to an abrupt stop as a result of the bull bars hitting the ground is not surprising. No reference to the record is made where the accused admitted that he intentionally drove a vehicle with a mechanical fault. This is the opposite of what he said in his evidence.

- 10) None of the state witnesses could dispute the fact that the brakes suddenly failed. No evidence was presented to suggest that the motor vehicle had a mechanical defect or faulty brakes, which the accused knew or ought to have known about before driving the motor vehicle. The uncontested evidence is that the brakes had been in a working condition and only failed at the moment when the accused was behind the stationary taxi, and that the motor vehicle only came to a stand still as a result of the bull bars and not by its brakes. It is clear from what the magistrate is saying that she accepted that the accused experienced brake failure, but blames him for not having detected the failure before embarking on the trip. This is a trap that the magistrate set for herself by not allowing herself time to consider the evidence and legal principles applicable, resulting in no room for afterthought or changing her mind in accordance

with the dictates of the evidence.

- 11) In my view the state failed to rebut the defence raised by the accused. It cannot be said, considering the totality of the evidence, that the state proved the guilt of the accused beyond a reasonable doubt, and that his explanation is reasonably possibly not true. By overtaking the stationary taxi and driving across the road to avoid further collisions to his left or right are in my view, reasonable steps under the circumstances to avoid the imminent danger. On the facts of the case alone, I am unable to find that the proceedings were in accordance with justice. The conviction and sentence must be reviewed and set aside.

In the result the following order is made.

The conviction and sentence are set aside.

L P TLALETSI

JUDGE

(Northern Cape Division)

I concur

F D KGOMO
JUDGE PRESIDENT
(Northern Cape Division)