

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

Review Case No.: 901/2005

In the case between:

THE STATE

and

TSHEDISO PETRUS MOSIPILI

CORAM: CILLIé J *et* H.M. MUSI J

JUDGEMENT: H.M. MUSI J

DELIVERED ON: 1 SEPTEMBER 2005

[1] When this matter initially came before me for review in terms of Section 304(4) of the Criminal Procedure Act, I raised a query as follows:

“Trespass is a recognised offence under our law and I do not follow why it is sought so have the proceedings reviewed. The magistrate must give a full explanation of what transpired necessitating a review.”

In response, the magistrate points out that the real problem

is that the charge sheet was vague in that it did not contain a reference to the relevant statute under which the accused was charged, this being a statutory offence. The charge sheet as framed alleges a common law offence of “trespassing” against the accused.

- [2] Now, it is so that where an accused is charged with a statutory contravention, the requirements of Section 84(3) of the Criminal Procedure Act will not have been complied with if the charge sheet does not mention the number of the Act creating the offence. See Hiemstra’s Suid-Afrikaanse Strafproses, 6th edition by Kriegler and Kruger at 240. It has also been held that omission of certain details of an offence that would normally be mentioned, such as the number of the section that creates the offence, will be overlooked provided that particulars of the contravention still remain clear. See Du Toit *et al* Commentary on the Criminal Procedure Act at paragraphs 14-15. However, this applies to omission of sections of the relevant statute and not the omission to mention the Act itself. *In casu*, the charge sheet

omitted to mention the Act creating the offence of trespass, thereby rendering the charge sheet *excipiable* on the basis that it does not disclose an offence. It was fatally defective, as there is no common law offence such as “trespassing”. The accused was therefore wrongly convicted and punished.

[3] Accordingly the conviction and sentence are set aside.

H.M. MUSI, J

I concur.

C.B. CILLIÉ, J

/em