

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

Review No. : 1360/2005

In the review between:-

ISAAC MATHEBULA

and

THE STATE

CORAM: H.M. MUSI J *et* MATSEPE AJ

JUDGMENT BY: MATSEPE AJ

DELIVERED ON: 03 November 2005

The accused, Isaac Mathebula, was served with a summons to appear in the magistrates court Winburg on 26 August 2005, on a charge of negligent driving in contravention of the provisions of section 63(1) read with section 1, 63(2), 63(3), 69, 73, 89(1) and 89(5) of the National Road Traffic Act, No. 93 of 1996, in that:-

On 31 March 2004, on the N1 public road, in the district of

Winburg, he unlawfully drove a Toyota Cressida vehicle with registration number DVC 383 GP recklessly or negligently. The accused paid an admission of guilt fine of R3 000,00 on 12 September 2005, which fine was determined and fixed by the prosecutor.

The admission of guilt as per form J175 was referred to the magistrate for confirmation. The magistrate requested the prosecutor to give reasons for the amount of the fine. The prosecutor provided reasons to the magistrate on 15 September 2005 and stated as follows:

“Op 31 Maart 2005 om ongeveer 18h20 het beskuldigde met ‘n Cressida motorkar teen ‘n hoë spoed agter in ‘n ry stilstaande voertuie vasgery. Die laaste voertuig in die ry was ‘n wit bakkie en voor hom was ‘n Interlink. Dit het plaasgevind by ‘n beheerde robot stop waar padwerke aan die gang was. Drie voertuie is beskadig en drie persone was beseer. Die ongelukstoneel is op ‘n lang reguit deel van die pad. Daar was nie enige remmerke op die pad nie. Beskuldigde het nie assuransië nie en beskik nie oor enige fondse om skade en/of

beserings te vergoed nie. Beskuldigde kan hom uiters gelukkig ag dat geen persone in die ongeluk gesterf het nie. Die pad gaan gebuk onder vele motorbotsings en padsterftes. Beskuldigde was grof nalatig en na my mening sou 'n redelike hof nie 'n ligter straf oplê nie.”

Thereafter the magistrate confirmed the admission of guilt.

The magistrate now refers the matter to this Court for special review in terms of section 304(4) of the Criminal Procedures Act, No. 51 of 1977, as she realised that the fine exceeds the jurisdiction of the magistrates court of R1 500,00.

It has been held that a magistrate acting in terms of section 57(7) of the Criminal Procedures Act, No. 51/1977, is exercising a judicial review function and once he/she has decided to take the steps set out therein, or declined to take them, he/she becomes *functus officio*. If there is any corrective steps to be taken in connection with such decision, only the High Court can do it and hence the matter has to be referred to it for special review. See **S v COETZER** 2002 (1) SACR 174 (TPD) and the authorities cited

there in .

In casu, the amount of the admission of guilt fine imposed, exceeded the jurisdiction of the magistrates court and therefore such court was not competent to impose or confirm it.

It stands to reason that the fine has to be set aside and replaced with the amount falling within the jurisdiction of the magistrates court, namely R1 500,00, in which event the balance of the R1 500,00 should be refunded to the accused.

The following order is made:-

1. The fine of R3 000,00 is set aside and replaced with a fine of R1 500,00.
2. The balance of R1 500,00 to be refunded to the accused.

V. MATSEPE, AJ

I agree.

H.M. MUSI, J

/sp