

Circulate to Magistrates: Yes / No

IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Date delivered: **2002-03-27**

In the review matter of:

THE STATE

versus

PIET DE KOKER ACCUSED IN REVIEW CASE 79/02

TEFO AMOS MOLEFE ACCUSED IN REVIEW CASE 78/02

Coram: **BUYS J et MAJIEDT J**

JUDGEMENT ON REVIEW

MAJIEDT J:

1. For the sake of convenience I shall deal with the abovementioned matters together in this judgement. On review I had queried in both matters the adequacy of the questioning by the magistrate in terms of sec 112(1)(b) of the Criminal Procedure Act.

2. In the De Koker matter I had questioned:

“Whether the conviction was in order given the fact that:

- a) The accused was never asked, nor did he admit that he had in fact assaulted the accused;

b) The question of unlawfulness and knowledge of unlawfulness was never raised with the accused?"

3. In the Molefe matter I put the following question to the magistrate on review:

"1. Ad Conviction:

The accused indicated during questioning in terms of sec. 112(1)(b) of Act 51 of 1977 that he did not know that it was unlawful to insult the complainant. Is the conviction tenable in law, given this aspect?"

4. In the De Koker matter the accused had been charged with assault and the magistrate, after the accused had pleaded guilty, questioned him as follows:

"In terms of sec 112(2)(sic)

Q: Do you agrees (sic) incident took place on 26.11.01

A: Yes, though not so certain with the date.

Q: But would you accept that it was on 26.11.01.

A: Yes.

Q: At Boipelo Location.

A: Yes.

Q: How did you assault Goitsemanang.

A: By slapping her once.

Q: How is she related to you.

A: She is my wife.

Court satisfied accused admits all allegations of charge.

Verdict: Guilty as charged."

5. I had pointed out to the magistrate that the wrong section of the Criminal Procedure Act had been quoted [sec 112(2)] and she has acknowledged that this was indeed the case. Be that as it may, it is clear from the abovementioned extract from the record that the questioning failed to cover all the essential elements of the offence of assault, namely:

- a) whether the accused had in fact perpetrated an assault on the complainant;
- b) whether the accused acknowledged that he had no justification in law for perpetrating an assault on the complainant;
- c) whether the accused knew that he was acting unlawfully in slapping the complainant.

6. In the Molefe matter the accused was charged with a contravention of the provisions of the Domestic Violence Act, No 116 of 1998, in that he was alleged to have sworn at the complainant in contravention of a Court order. The questioning after the plea of guilty went as follows:

“Q: You agree you insulted complainant.

A: Yes.

Q: Why did you insult her.

A: I was angry over a person who stole a cellphone.

Q: Do you know it is unlawful to insult her.

A: No not at all.

Q: Did the incident take place on 13.10.2001.

A: Yes.

Q: Here in Vryburg district.

A: Correct.

Q: Do you agree Magistrate Vryburg has issued an order against you in terms of Domestic Violence Act 116/1998 not conduct yourself as you did on 13.10.2001.

A: Correct.

Public Prosecutor: I accept the version.

Court is satisfied that accused admits all allegations of the charge.

Accused is found guilty as charged.”

7. Apart from the fact that the magistrate had erred in commencing the questioning with a blatantly leading question, it is abundantly clear from the aforementioned extract from the record that the accused specifically denied knowledge of unlawfulness. In these

circumstances a plea of *not guilty* should have been noted.

8. In responding to my queries in these two matters the magistrate has conceded that the questioning has failed to elicit admissions on all the essential elements of the respective offences from the respective accused in each case. While the concessions are correctly made, they are of some considerable disquiet to me. In the overwhelming majority of cases which come before us on automatic review, the unrepresented accused invariably advance pleas of guilty. It is therefore essential that the presiding officers in the lower courts should fully understand the purpose, nature and ambit of the provisions of sec 112(1)(b). There are numerous reported judgements to be found in the law reports on this aspect which provide guidelines to presiding officers. Emanating from this court such guidelines are for example to be found in:

S v Serumala 1978(4) SA811(NC) at 815A.

S v Mbova en andere 1996(1) SACR 239(NC) at 241 h-i.

9. In the present two matters the magistrate, disconcertingly so, stated that she is having difficulty in questioning accused persons properly as sec 112(1)(b) requires. She has also made a concession that mistakes similar to those made in the Molefe matter have been made in two other cases. She also appears to suggest that not all the spontaneous explanations proffered by accused persons in the sec 112(1)(b) questioning are taken down by longhand. She does, however, readily concedes that it is necessary that the record fully reflects which answers are being advanced by an accused during such questioning.

An urgent revisiting of the purpose, nature and ambit of sec 112(1)(b) is required on the part of the magistrate to correct the matter.

10. The convictions in both matters cannot stand and both matters should be remitted to the magistrate.

In the premises the following orders should be issued in my view:

- A. In the matter of STATE versus PIET DE KOKER the conviction and sentence is set aside and the matter is remitted to the magistrate for proper compliance with the provisions of sec 112(1)(b) of Act 51 of 1977.**
- B. In the matter of STATE versus TEFO AMOS MOLEFE the conviction and sentence is set aside and the matter is remitted to the magistrate in order that the provisions contained in sec 113 of Act 51 of 1977 be applied.**

**SA MAJIEDT
JUDGE**

I concur and it is so ordered :

**AJ DU P BUYS
JUDGE**

