



**IN THE HIGH COURT OF SOUTH AFRICA,  
FREE STATE DIVISION, BLOEMFONTEIN**

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|------------------------------|--------|
| Reportable:                  | YES/NO |
| Of Interest to other Judges: | YES/NO |
| Circulate to Magistrates:    | YES/NO |

Review no: R 12/2024

Magistrate court no: B 1358/22

In the matter between:

**THE STATE**

and

**MOEKETSI JOHANNES RAMANTSHANE**

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**CORAM:** MHLAMBI, ADJP et, MAJOSI, AJ

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**JUDGMENT BY:** MAJOSI, AJ

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**DELIVERED ON:** 09 MAY 2024

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- [1] This matter serves before us as a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977(CPA) as amended. The accused was charged with contravening the provisions of section 65(1)(a) read with further provisions of sections 1,33,34,35,65,69(1) of the National Road Traffic Act 93 of 1996 (NRTA), driving under the influence of liquor or drugs.
- [2] He was legally represented and tendered a plea of guilty and was convicted as charged on the strength of his statement in terms of section 112(2) of the Act and sentenced to three (3) months' imprisonment which was wholly suspended

for a period of five (5) years on condition he not be convicted of the same offence during the period of suspension. In terms of section 3 of NRTA, his licence was suspended for 60 days from the date of sentence, the 25<sup>th</sup> of April 2023.

- [3] On the 30<sup>th</sup> of January 2024, the Acting Senior Magistrate, Bloemfontein, received a charge sheet from the clerk of Botshabelo Magistrate's Court requesting that the Acting Magistrate who convicted and sentenced the accused, endorse the charge sheet to reflect that not only was a plea noted, but that a conviction and sentence followed after a written statement was tendered in terms of section 112 (2) of the CPA.
- [4] Upon further perusal of the charge sheet, she caused a letter to be sent to the Acting Magistrate to enquire firstly, if plea proceedings indeed took place and if the accused was convicted and sentenced on the charge and if the statement by the accused was accepted and marked as an exhibit.<sup>1</sup> Secondly, if the accused's statement admitted all the elements of driving under the influence of liquor. Lastly, if the sentence imposed was competent given the vague condition of suspension and lastly, if the provisions of section 35 of NRTA were correctly applied.
- [5] The said magistrate, on a date unknown, indicated<sup>2</sup> that plea proceedings did take place and were recorded that the accused admitted all the essential elements of the offence (though he erroneously referred the offence to be that of contravention of 61(1)(a) ) and made specific reference to page 4 , line 10 – 13 of the transcribed record and that his order in terms of section 35 of the NRTA was incorrectly recorded and should have referred to application instead of licence and he deemed a period of sixty days appropriate for that purpose.
- [6] In light of the response received, and the transcribed record, the matter was sent on special review to set aside the conviction, sentence and subsequent

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<sup>1</sup> Annexure A, Acting Senior Magistrate letter dated 30 January 2024

<sup>2</sup> Annexure B, Comments of Acting Magistrate.

order in terms of section 35 of the NRTA. It was submitted that the proceedings did not take place in accordance with justice<sup>3</sup> as the accused's statement did not admit that the liquor he consumed had a narcotic effect, the sentence imposed was vague and the provisions of section 35 were incorrectly applied. I must mention at this stage that it is undesirable for a presiding officer, being a court of record, not to note an accused person's plea to the charge, the verdict and if a conviction followed, the sentence imposed and for that matter, not mark exhibits which were received as evidence.

- [7] The provisions of section 65(1)(a) of NRTA state that no person shall drive a vehicle or occupy the driver's seat of a motor vehicle where the engine is running while under the influence of an intoxicating liquor or a drug having a narcotic effect. This entails that should an accused person plead guilty to such a charge, one of the essential elements of the offence is that he or she must admit that the intoxicating liquor had a narcotic effect. The accused's statement is silent on this aspect and the magistrate did not exercise his discretion as allowed in section 112(2) of the CPA and clarified whether this element of the offence was admitted or not. In the absence of an admission on such an essential element of the offence, the proceedings cannot be said to be in accordance with justice.
- [8] After further perusal of the transcribed record, I deem it necessary to delve into the condition of the suspended sentence imposed and how the provisions of section 35 of the NRTA ought to have been applied. In *Rex v Cloete, Reynolds*, J said the following:

"While the words of sec. 360 (b) of Act 31 of 1917 are wide and the discretion of the judicial officer should not be lightly interfered with, it does seem that two principles at least should be observed in the imposition of the conditions. The first is that the condition imposed should bear at least some relationship to the circumstances of the crime which is being punished by the imposition of the suspended sentence. It need not be closely related but should be related to it in some degree at least, even though slightly related, and not divorced from it, or remote from it. The second is that the condition be stated with such precision that the convicted person may understand the ambit of the condition."

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<sup>3</sup> Annexure A, paragraph 6

- [9] It must be remembered that once an accused person is convicted of a statutory offence, there is always a penalty clause which prescribes the sanction or put differently, what sentence may be imposed upon conviction. *In casu*, this can be found in section 89 (2) of NRTA which prescribes a fine or a period of imprisonment not exceeding six (6) years imprisonment. It thus stands to reason that should any sentence be imposed, more specifically a suspended sentence which has a prohibition, the condition of suspension must reflect the exact statutory provision which the accused must not contravene as it is improper to use the term "same offence". It thus follows that the sentence imposed was not in accordance with justice either.
- [10] Section 35 of the NRTA dictates that should a conviction follow in terms of section 65(1) and other listed offences, the court shall suspend the accused driver's licence for a certain period or if the person is not the holder of a driver's licence or permit, disqualify him or her for a certain period from obtaining a driver's licence or permit or alternatively, order that the suspension shall not take effect or shorten the period of suspension. Section 35(3) directs that this enquiry can only be done by hearing evidence under oath. The order must also specify if the person is the holder of a driver's licence or permit or if he or she is prevented from obtaining one.
- [11] Upon the accused person entering the witness box, his full name and surname was not placed on record as he was just asked if he has an objection to taking the prescribed oath, he indicated that he does have an objection.<sup>4</sup> Ordinarily, if a witness objects to taking the prescribed oath, it is the duty of the presiding officer to enquire what the objection is and to establish if he ought to proceed into section 163 of the CPA and have the witness admonished *in lieu* of the oath. Alarming, this was not done and the result thereof can only be construed as further irregularity in the proceedings not to mention that the "evidence" of the accused person revealed that he was not the holder of a driver's licence or

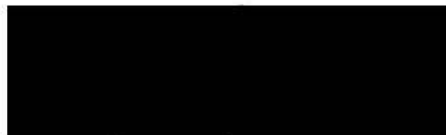
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<sup>4</sup> Transcribed record, P 11, line 10.

learner's licence. This solidifies my view that the proceedings were not in accordance with justice.

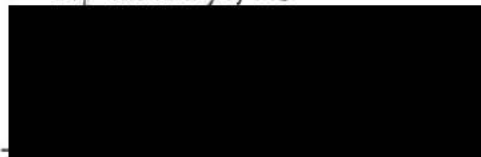
[12] Accordingly, the following order is made:

1. The conviction and sentence are set aside.



O.R. MAJOSI, AJ

I concur



J.J. MHLAMBI, ADJP