

**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

Case No. CA&R 104/2024

THE STATE

and

TOCHUKWU ONYEDIKA CHUKWUMAKA

ADIKI SOLOMON

SPECIAL REVIEW JUDGMENT

HARTLE J

[1] This matter came before me by way of special review in terms of the provisions of section 304 (4) of the Criminal Procedure Act, No. 51 of 1977.

[2] The circumstances are quite bizarre and permit of no remedy other than that suggested by Magistrate, Mr. Nqumse, who convicted and sentenced the accused on 3 November 2023 in a sitting of the district court at Venterstad, namely that those putative criminal proceedings should be set aside in their entirety.

[3] Before the putative plea and conviction of the accused aforesaid, it appears that they were arraigned before the district court on the same charge, under case No. 36/2023. The first court appearance was on 2 May 2023.

[4] In the ordinary course and flow of the proceedings thus commenced, both pleaded guilty on 12 September 2023 to a charge of being in possession of drugs (*“crystal meth and mandrax”*) before the Magistrate, Mr. Khaketla. They were unrepresented and clearly at a disadvantage because they are not proficient in the English language. Aside from the language issues, the magistrate was also not satisfied with their plea explanation and entered a plea of not guilty.

[5] The matter stood down to allow them to apply for Legal Aid and inevitably it was postponed for trial and to obtain the services of a Cebuano interpreter.

[6] At some point the original charge sheet was misplaced. In the result the matter was postponed on a few occasions on a duplicate charge sheet in order to trace the original court record.

[7] The duplicate charge sheet unfortunately gave the appearance that the matter was being postponed for purposes of both plea and trial.

[8] This misconception was repeated by both the State and defence counsel when the matter came before Magistrate Nqumse on 3 October 2023. Indeed, the accused’s legal representative confirmed their readiness to plead to the charge, missing the fact that they had already pleaded thereto.

[9] Magistrate Nqumse duly took their plea, convicted both accused on their pleas of guilty and sentenced each to three years’ imprisonment.

[10] Approximately six months after sentence, a newly appointed attorney applied on their behalf for leave to appeal against sentence and in the course of transcribing the court record it came to light that the accused had previously pleaded not guilty to the same charge before Magistrate Khaketla and that those proceedings, commenced by their pleas, are by obvious implication still pending.

[11] The parties agree that the best course of action in all the circumstances is to have Magistrate Nqumse's convictions and sentences set aside. I am persuaded that the putative proceedings are indeed not in accordance with justice and fall to be set aside on such a basis.

[12] I am grateful to the parties and Magistrate Nqumse for the initiative shown in addressing the anomaly.

[13] I had in mind to direct that the proceedings commence *de novo* given the obvious fact that the accused were not assisted by an interpreter when they pleaded before Magistrate Khaketla, but that issue has been overtaken by the event that the court entered a plea of not guilty. The accused also presently enjoy the benefit of legal representation. It goes without saying that they will require to continue to be assisted in the proceedings going forward by Legal Aid SA and by a Cebuano interpreter until finalisation of the matter.

[14] In the result I issue the following order:

1. The putative proceedings entailing the conviction and sentence of the accused by Magistrate Nqumse on 3 October 2023 in the Venterstad District Court under Case No 36/2023 are set aside in their entirety.
2. The matter is remitted to the court to complete and finalise the trial on the basis of the proceedings which commenced on 12 September 2023.
3. The accused are to be afforded legal representation by the Legal Aid SA.
4. Suitable arrangements must be made for the availability of a Cebuano interpreter to assist the accused in the proceedings.

B HARTLE
JUDGE OF THE HIGH COURT

I AGREE,

S COLLETT
ACTING JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 13 June 2024