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

Not reportable

CASE NO. CA&R15/2025

In the matter between:

THE STATE

and

HENRICO ROOY

Accused

REVIEW JUDGMENT

LAING J

[1] This is a matter from the Magistrates' Court for the District of East London that was referred to the High Court for special review in terms of section 304(2) of the Criminal Procedure Act 51 of 1977 ('CPA').

[2] The accused was charged with the contravention of section 17(a), read with sections 1, 5, 6, 7, and 17 of the Domestic Violence Act 116 of 1998. The charge sheet indicated that a protection order was issued against him on 13 June 2024, at East London, in terms whereof he was ordered not to abuse, assault, threaten, harass, or stalk the complainant, or to enter the house situated at 1[...] G[...] Street, Buffalo Flats. It was alleged that the order was served on the accused and was still in force. The state further alleged that the accused wrongfully and unlawfully contravened the order on 15 August 2024 by threatening to assault the complainant and by entering the house in question.

[3] At the commencement of trial proceedings, the accused tendered a verbal plea of guilty to the charge. His legal representative also tendered a written statement in terms of section 112(2). The court *a quo* confirmed with the accused, in general terms, that he admitted all the elements of the offence, and subsequently convicted him as charged. During an oversight inspection of finalized cases, including the present matter, the Acting Senior Magistrate discovered several deficiencies in the accused's statement: no mention was made of the nature of the order, the date when and place where it was issued, whether or when the order was served on the accused and that he understood the contents thereof, and whether it was still in force on the date of the alleged contravention. The statement forms the subject of the special review.

[4] Under section 112(2) of the CPA, the accused is required to set out the facts that he or she admits and on which he or she has pleaded guilty. The court may, in lieu of questioning the accused in terms of section 112(1)(b), convict the accused on the strength of the statement and sentence him or her accordingly. The court must also be satisfied that the accused is guilty of the offence to which he or she has pleaded.

[5] It is trite that the facts averred in the statement must cover all the elements of the offence with which the accused has been charged. See, in this regard, *S v Gases*¹ and

¹ 2016 (4) NR 980 (HC), at paragraph [5].

S v Mkhwebane.² There must be a proper factual basis for a plea of guilty, justifying the conviction of the accused. The subject was addressed by the Supreme Court of Appeal in *Director of Public Prosecutions, Gauteng Division, Pretoria v Hamisi*,³ where Dambuzza JA remarked that:

‘...a court considering a statement made in terms of s 112(2) exercises its discretion to determine whether the statement admits all the elements of the offence in question. If it is not satisfied that this is so, it must question the accused as set out in s 112(1)(b) to clarify a matter raised in the written plea. If it determines that the statement is satisfactory and admits all the elements of the offence, it shall convict the accused on the plea of guilty. When the written plea detailing the facts on which the plea is premised is accepted by the prosecution, it constitutes the factual matrix on the strength of which an accused will be convicted and the sentence imposed. The written plea is aimed at ensuring that the court is provided with an adequate factual basis to make a determination on whether the admissions made by an accused support the plea of guilty tendered.’⁴

[6] In the present matter, there were clear deficiencies in the statement, as pointed out by the Acting Senior Magistrate. Consequently, it was the duty of the court *a quo* to have clarified: (a) why there were such deficiencies; (b) whether they would have had any bearing on the accused’s plea of guilty; and (c) whether, ultimately, there was a proper factual basis upon which to convict and sentence the accused. Absent such clarification, it cannot be said that the court *a quo* could have been satisfied that the accused was indeed guilty of the offence charged, notwithstanding his plea to that effect.

[7] The following order is made:

² 2024 (1) SACR 415 (ML), at paragraphs [4] and [5].

³ 2018 (2) SACR 230 (SCA).

⁴ At paragraph [8].

- (a) the conviction and sentence of the accused are set aside; and
- (b) the matter is remitted to the District Court for the magistrate to:
 - (i) clarify the discrepancies between the details of the charge and the contents of the written statement;
 - (ii) permit the parties to make further submissions, as may be necessary; and
 - (iii) further deal with the matter as will promote the ends of justice.

JGA LAING
JUDGE OF THE HIGH COURT

I agree

H ZILWA
ACTING JUDGE OF THE HIGH COURT

Date delivered: 11 February 2025