



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

Case No. CA&R 1/2026

Case reference. RCZ 247/2024

Magistrate's serial No. 4/2025

OF INTEREST

THE STATE

and

PURITY MARAVA

CRIMINAL REVIEW JUDGMENT

HARTLE J

[1] The matter came before us as a special review in terms of the provisions of section 304 (4) of the Criminal Procedure Act, No. 51 of 1977 (“CPA”).

[2] A magistrate of the Regional Court, Zwelitsha, convicted the accused (a first time offender) of contravening the provisions of section 3 (1) of the Criminal Matters Amendment Act, No. 19 of 2015 (“CMAA”) on the basis of his guilty plea.

[3] The sub-section, read with sections 1 and 3 (2) of the CMAA, criminalizes the tampering with, or damaging or destruction of, essential infrastructure. In this instance the accused was alleged, quite unspecifically, to have tampered with or damaged or destroyed a MTN cell phone tower to the value of R60 000.00.

[4] The charge read:

“IN THAT upon or about the 25/4/2024 and at or near Tolofiyeni in the District/Regional Division of Eastern Cape, the accused did unlawfully and intentionally tamper with and/or damaged and/or destroyed essential infrastructure, to wit MTN Tower the property of MTN value R60 000.00 whereas he/she/they knew or ought to have known or suspected that the said MTN Tower were essential infrastructure.”

[5] Apart from creating a new offence relating to essential infrastructure, it is quite evident from the object of the CMAA and preamble respectively that the statutory offence of damaging or interfering with essential infrastructure is regarded in a serious light.

[6] Essential infrastructure is the wherewithal through which basic services relating to energy, transport, water, sanitation and - in this context, communication, are provided to the public. The CMAA recognises that any interference with these basic services by the loss or damage to the applicable installation, structure, facility or system constituting the infrastructure, will be deleterious to the public's interest and to the economy of our country. The act gives recognition in its preamble to the harmful consequences to the livelihood of the public, their well-being, and the daily operations and economic activity in our country in scenarios where the enumerated basic essential services cannot be rendered due to loss, damage, or disruption caused by essential infrastructure-related offences. The preamble also recognises the unacceptably high incidence of crime relating to essential infrastructure, compounded by the fact that such offences are becoming increasingly more organised and perpetrated by armed and dangerous criminal groups.

[7] As an aside, it was never suggested by the State that this was one of those grave situations leaning towards organized crime, but the CMAA also recognises that even minor offences in relation to essential infrastructure can cause considerable damage to the particular installation, structure, facility, or system, leading by ripple effect to other harmful negative impacts to the economy and society, and ultimately possibly even affecting peace and stability in our country.¹

¹ See for example *Mokoena v S* (A139/2023) [2025] ZAGPPHC 132 (18 February 2025) at [9] in which the point is made that the gravamen of the offence is in the potential harm that can be caused by its mere commission, especially recognized in the preamble to the CMAA. See also *Buthelezi & Others v State* [2022] ZAGPPHC 444 as to the serious nature of the offence, at paragraph [15] of the judgment.

[8] It is therefore quite unsurprising that a person's conviction of an essential infrastructure-related offence attracts the imposition of the discretionary minimum sentences for convictions under the acts' provisions.

[9] The CMAA labels the offence as a "*serious*" one resorting under Part II of Schedule 2 to the Criminal Law Amendment Act, No. 105 of 1977 ("CLAA") which provides, concerning the imposition of the minimum mandatory sentences applicable to the relevant class of serious offence concerned, as follows:

"51. Discretionary minimum sentences for certain serious offences

(1)

(2) Notwithstanding any other law but subject to subsections (3) and (6), a regional court or a High Court shall sentence a person who has been convicted of an offence referred to in—

(a) Part II of Schedule 2, in the case of—

- (i) a first offender, to imprisonment for a period not less than 15 years;
- (ii) a second offender of any such offence, to imprisonment for a period not less than 20 years; and
- (iii) a third or subsequent offender of any such offence, to imprisonment for a period not less than 25 years;

(b) ...

(c) ...

(d) ...

Provided that the maximum term of imprisonment that a regional court may impose in terms of this subsection shall not exceed the minimum term of imprisonment that it must impose in terms of this subsection by more than five years."

[10] The accused was evidently properly informed of the import of the discretionary minimum sentencing provisions before pleading to the charge as appears from a transcript of the plea proceedings. The magistrate sentenced him to eight (8) years imprisonment, but in terms of the provisions of section 276 (1)(i) of

the CPA. One gets the impression that he did so hoping to minimize the total period of direct imprisonment that the accused would be expected to serve after recognizing that substantial and compelling circumstances existed in his favour which justified an appropriate deviation from the minimum mandatory sentence he was expected to impose upon him for such a serious offence.

[11] Thereupon he referred the matter to this court as a special review to set aside the sentence. The reason for doing so was recorded by him in the submissions giving cover to the record of the proceedings as follows:

“3. REASONS FOR SENTENCE

The proceedings were also mechanically recorded and in passing sentence I considered the Zinn triad and considered the interests of the accused; interests of the society and also considered the seriousness of the offence.

Also looking at the circumstances of this case I was of the view that it will not be in the interests of justice that the minimum sentence be imposed and further considered that here were compelling and substantial circumstances warranting the court to deviate from the

prescribed minimum sentence and I then invoked the provisions of Section 51 (3)(a) of Act 105 of 1997² and sentenced the accused to an effective term of eight years imprisonment in terms of Section 276 (1)(i) of Act 51 of 1977.

It is in respect of this sentence that I am now bringing this review application that the said sentence be set aside and that the matter be remitted back to the Regional court so that an appropriate sentence be considered as I later learnt that a sentence in terms of *that section* cannot exceed a period of five (5) years.”

² Section 51 (3)(a) of the CLAA provides as follows:

(a) If any court referred to in subsection (1) or (2) is satisfied that substantial and compelling circumstances exist which justify the imposition of a lesser sentence than the sentence prescribed in those subsections, it shall enter those circumstances on the record of the proceedings and must thereupon impose such lesser sentence. (There is a proviso to this sub-section, but it does not apply to the facts of this review.)

(Emphasis added.)

[12] Whilst one can discern from the record what factors influenced the magistrate in the direction of finding the existence of substantial and compelling circumstances, he appears to have been under the mistaken impression that a sentence of correctional supervision pursuant to the provisions of section 276 (1)(i) of the CPA was a competent sentence to impose upon the accused, the only issue arising in his perception bearing upon the limitation on the period for which such a sentence could be imposed.

[13] Section 276 (1) of the CPA provides for the kinds of sentence that are passed upon a person convicted of an offence. The section includes the option of:

“(i) imprisonment from which such a person may be placed under correctional supervision in the discretion of the Commissioner or a parole board.”

[14] Section 276 A (3) (a) of the CPA provides that such a sentencing option can only be imposed in circumstances where the period of imprisonment imposed by the sentencing court does not exceed five years.

[15] It is presumably on this basis that the magistrate thought he had erred, but he appears to have missed the more important provisions of sections 276 (3) of the CPA relative to the peculiar circumstances of this matter that has its own unique proviso in mind. This sub-section provides as follows:

“(3) Notwithstanding anything to the contrary in any law contained, *other than the Criminal Law Amendment Act, 1997 (Act 105 of 1997)*, the provisions of subsection (1) shall not be construed as prohibiting the court—

- (a) from imposing imprisonment together with correctional supervision; or
- (b) from imposing the punishment referred to in subsection (1)(h) or (i) in respect of any offence, whether under the common law or a statutory provision, irrespective of whether the law in question provides for such or any other punishment: *Provided that any punishment contemplated in this paragraph may not be imposed in any case where the court is obliged to impose a sentence contemplated in section 51(1) or (2), read with section 52, of the Criminal Law Amendment Act, 1997.*”

(Emphasis added)

[16] What is evident from the proviso above is that the sentence option made possible by the provisions of section 276 (1)(i) of the CPA is not a sentence for purposes of section 3 of the CMAA by virtue of the fact that such an offence resorts firmly under the minimum sentencing provisions of the CLAA. The starting proposition is that such an offence by its accepted statutorily endorsed gravity must attract a minimum sentence of not less than 15 years *direct imprisonment* (in the case of a first offender at least), unless substantial and compelling circumstances exist which justify a departure from that benchmark.³

[17] For this reason the sentence falls to be set aside.

[18] Ideally such an irregularity would warrant the referral of the incompetent sentence back to the magistrate to re-engage with what an appropriate sentence is in all the circumstances, in this instance with a reminder to him of the obligation cast upon a court by the provisions of section 51 (3) of the CLAA to “*enter*” those substantial and compelling circumstances found “*on the record of the*

³ See *S v Malgas* (117/2000) [2001] ZASCA 30; [2001] 3 All SA 220 (A); 2001 (2) SA 1222 (SCA); 2001 (1) SACR 469 (SCA) (19 March 2001).

proceedings”.⁴ Another irregularity, however, appears from the record that requires a different outcome.

[19] A statement in terms of the provisions of section 112 (2) of the CPA was tendered by the accused and accepted without reservation by the State.

[20] In it the accused acknowledged being aware of the charge and agreed that the consequences of his pleading guilty had been explained to him by his attorney, no doubt confirming an appreciation that the minimum sentencing provisions were of application.

[21] He asserted in his plea that the offence had been committed under the following circumstances:

“On the day of the incident, I was called by my friend to come assist him with something. I did not ask what at the time, he then told me his location. I then went to him and on my arrival he was near the MTN tower and was carrying (an) iron bar. He then asked me to assist him in entering the tower. We then use the iron bar to break the gate of the tower. As we were doing that the security guard came and we were arrested. At the time the security guard arrived, we had already damaged the gate of the tower.”

[22] His plea concludes with the statement that: “*At all material times I knew my actions were unlawful and wrongful.*”

[23] The magistrate expressed his satisfaction that the accused in his plea had admitted to all the allegations as contained in the charge sheet which was at the

⁴ *Malgas, Supra*, at [9].

same time tantamount in his view to an admission of all the elements of the offence.

[24] Section 3 (1) of the CMAA provides as follows in respect of the offence relating to essential infrastructure:

“Offence relating to essential infrastructure

3. (1) Any person who unlawfully and intentionally—

(a) tampers with, damages or destroys essential infrastructure; or

(b) colludes with or assists another person in the commission, performance or carrying out of an activity referred to in paragraph (a), and who knows or ought reasonably to have known or suspected that it is essential infrastructure, is guilty of an offence and liable on conviction to a period of imprisonment not exceeding 30 years or, in the case of a corporate body as contemplated in section 332(2) of the Criminal Procedure Act, 1977, a fine not exceeding R100 million.”

[25] This must in turn be read with the definitions in section 1 of the CMAA as follows:

“Definitions

1. In this Act, unless the context indicates otherwise—

“basic service” means a service, provided by the public or private sector, relating to energy, transport, water, sanitation and communication, the interference with which may prejudice the livelihood, well-being, daily operations or economic activity of the public;

“essential infrastructure” means any installation, structure, facility or system, whether publicly or privately owned, the loss or damage of, or the tampering with, which may interfere with the provision or distribution of a basic service to the public; and

“tamper” includes to alter, cut, disturb, interfere with, interrupt, manipulate, obstruct, remove or uproot by any means, method or device, and “tampering” shall be construed accordingly.”

[26] Section 3 (2) of the CMAA also requires mention as it goes to the issue of the offender’s guilt:

“(2) For the purposes of subsection (1), a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both—

(a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and

(b) the general knowledge, skill, training and experience that he or she in fact has.”

[27] It is immediately evident from the foregoing that the plea did not engage fully with all the essential elements of the statutory offence more especially the question whether the gate to the tower constituted essential infrastructure within the meaning of the definition and whether the accused had the requisite knowledge when making himself complicit with the undisclosed co-perpetrator in breaking the gate that he knew that he was damaging a functional part to the essential infrastructure, or that he ought reasonably to have known or suspected as much.⁵

[28] Whereas the proviso to section 112 (2) of the CPA permits a court engaging with a statement submitted to it under its provisions in support of a plea of guilty to put any question to the accused in order to clarify any matter raised therein, it was highlighted during sentencing arguments for the first time that the accused “*only damaged the gate of the tower*”.

[29] The court seized upon this aspect during the State’s submissions, noting that the charge sheet did not reflect upon the damage to the gate itself. Indeed the prosecutor noted in this respect that he had made a mistake.

[30] The court prised open the uncertainty as follows:

⁵ See, for example, *Cetyiwe v S* [2025] ZAECKMHC 27 at [24] and [26].

COURT : ... from the statement by the accused with regards to the fence under which the offence was committed it is said that the gate was damaged and unfortunately we do not have a value of the damage, only the value of the tower which was not even damaged.

PROSECUTOR : We do not have the value of the gate, Your Worship. We only have the value of the tower that was about to be damaged by the accused person. They were inside the tower, already damaged the gate.

COURT : So, do you think now ten years' direct imprisonment will be proportionate to damage to a gate which we do not even having the value of the damage"

PROSECUTOR : No, Your Worship. I would invite the Court with the intention that they intended to so. The sentence ... [intervenes]"

COURT : Through it was not fulfilled.

PROSECUTOR : The sentence, Your Worship, is to deter the other members not to commit the same offence.

COURT : But must he be sacrificed to that while ... [indistinct] deterrence?

PROSECUTOR : Your Worship, the sentence is on the court to decide, but the State would submit that it attract ... [intervenes]

COURT : Yes, but you have to assist the Court to come to a just sentence.

PROSECUTOR : Your Worship, this offence attract a minimum sentence of fifteen years for the first offender, so if the Court deviate it would deviate at least five years is being a deviation from that, but now it has to consider the whole circumstances under which the offence was committed, because if the accused, if one member was never the alarming the security officer worst have happened, so the whole community would have suffered. At those towers must be mind that they are for cell phone benefits. They affect everyone. They affect the network. That is my submission, Your Worship."

[31] In the court's sentencing judgment the magistrate prefaced his verdict by the remark that the accused would be sentenced based on what was contained in his section 112 (2) statement "*which was accepted by the State*". One of the implications thereby is that the charge sheet had inaccurately reflected the damage to the infrastructure to be in the sum of R60 000,00 which quite plainly is the value of the cellular tower itself. Even though the accused's plea said nothing of the extent of the damage or what part of it he was prepared to take responsibility for, the discrepancy immediately highlighted an anomaly, which is that the State and the accused were at cross purposes regarding both the subject of the damage

and the accused's intention by assisting his co-perpetrator in breaking the gate. The magistrate picked up on the import of this predicament as follows:

“We know that the offence that the accused person has been convicted of is a very serious offence and the Court has to consider that. Although the accused has been found guilty of tampering with essential infrastructure, looking at the circumstances the accused person never tampered with that infrastructure, but he had intentions to do so and therefore it would be absurd to convict someone for what he has intended to do but not sentencing him for his actual act, because if the accused person actually committed the offence as alleged the minimum sentence in respect of a first offender is fifteen years.”

[32] Although the magistrate ultimately reckoned with the fact that the nature of the damage caused by breaking open the gate reduced the accused's moral blameworthiness materially when compared to direct interference with operational infrastructure, it is clear from the excerpt above that he entertained doubt whether a complete offence had been committed in the circumstances, prompted by the reality of a distinction between the gate and the cellular tower itself.⁶ In such an instance he should have invoked the power available to him in terms of the provisions of section 113 (1) of the CPA to order that the plea no longer stand and that this issue (and indeed the question of the guilt of the accused which was not dealt with adequately in the statement) be proven by the State upon trial.

[33] In the magistrate's reasons for the conviction, which he set out in his submissions upon review, it appears that he assumed that the gate that was damaged formed part of the essential infrastructure. While such a proposition is arguable, namely that the gate forms a functional part of the essential

⁶ See *Buthelezi, Supra* at [7] in which the court found that the appellants had *attempted* to contravene section 3 (1) of the CMAA by digging a hole above a Telkom cable.

infrastructure, the accused must have known this, or reasonably knew or suspected that he damaged “*essential infrastructure*” (within the definition in section 1 of the CMAA), which might interfere with the provision or distribution of a basic service to the public. This does not appear from the admitted facts in his section 112 statement.

[34] As reflected in *Mokoena v S*⁷ the gravamen of the offence is less about the value of the objective damage than it is concerned with the potential for serious harm by the commission of the offence. It is the tampering alternatively damaging alternatively destroying of *essential infrastructure* that constitutes the crime as appears from the reasons for the enactment of the CMAA. That damage could be objectively minimal, yet devastating in the whole scheme of things.

[35] It is important that an accused pleading guilty to such an offence must be clear that that he knew (or ought reasonably to have known or suspected) that essential infrastructure within the meaning of the definition in section 1 of the CMAA was in the reckoning, and that his acquiescence of such fact, regardless of the extent of the damage caused, is what is going to bring him within the purview of the minimum sentencing provisions. All of these essential elements of the statutory offence must be cohesively addressed in the section 112 (2) statement.⁸

[36] In my view it is appropriate that the matter be referred back to the magistrate for the matter to take its course pursuant to the provisions of section 113 (2) of the CPA.

⁷ *Supra*, at [9].

⁸ See *Sele v S* [2025] ZANWHC 159 for an example of such a plea at [2], and further comment at [6].

[37] In the result the following order issues:

1. The conviction and sentence imposed by the Regional Court magistrate against the accused on 21 November 2024 are set aside.
2. The matter is referred back to the Magistrate for the trial to proceed on the basis provided for in section 113 (2) of the Criminal Procedure Act, No 51 of 1977.

B. HARTLE

JUDGE OF THE HIGH COURT

I AGREE:

T NKELE

ACTING JUDGE OF THE HIGH COURT

DATE OF JUDGMENT: 10 February 2026