

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
LIMPOPO DIVISION, POLOKWANE

CASE NO: REV 109/2026

- (1) REPORTABLE: YES/NO
(2) OF INTEREST TO THE JUDGES: YES/NO
(3) REVISED.

G.C MULLER

DATE: 28/6/26 SIGNATURE: [REDACTED]

In the matter between:

THE STATE

and

SILAS MOATSHE

REVIEW JUDGMENT

MULLER J:

[1] This case was submitted for special review in terms of section 304A of the Criminal Procedure Act¹ by the acting regional court magistrate sitting at Thabazimbi pursuant to the case being transferred to the regional court for sentence in terms of section 114(1)(b) of the CPA.

[2] The accused is charged with theft. It is alleged that he stole a motorbike, on or about 13 December 2024 at or near Swartklip. The charge put to him in court was as follows:

"PROSECUTOR: The accused is before court facing the offence of theft. In that on or about 13 December 2024, and at or near Swartklip in the District of Northam the accused did unlawfully and intentionally take the following items to wit motorbike to the value of R40 000,00."

The accused who was represented by an attorney pleaded guilty to the charge. His legal representative handed in a statement in terms of section 112(2) of the CPA which stated that the accused pleads guilty to the charge of theft in that he was arrested on 27 January 2026 for the crime of theft of a motorbike, on the date mentioned. The police found him in possession of the motorbike. He stated that he stole the motorbike where it was next to a fence. He knew it belonged to someone before he took physical control of the motorbike which he took to his home without the owner's consent.

[3] The statement was confirmed by the accused after it was read into the record of the proceedings.

[4] The magistrate enquired from the prosecutor if the plea is accepted by the prosecution. The prosecutor replied as follows:

"Your worship the state we accept that the, all the elements of theft Your Worship are there but the, it is not in accordance with the state case only a slight difference. It was not taken from the bush it was stolen from a plot."

¹ Act 51 of 1977. (Hereinafter called "the CPA".)

[5] The legal representative of the accused informed the court that the accused maintains that he found the motorbike in the forest and that he does not dispute that it belonged to someone else.

[6] The magistrate was satisfied that the accused admitted all the elements of the offence of theft and convicted the accused in terms of his plea.

[7] The charge (annexure A) which is attached to the J15 in the magistrates' court does not allege who the owner of the motorcycle is or who the person in possession was on 13 December 2024 when the motorcycle was taken by the accused.

[8] It is noted that a typed charge sheet (J15) together with a typed charge (annexure A) accompanied the papers submitted on review. The J15 contains a regional court case number, which is intended to serve as a record of the sentence proceedings in terms of section 114(1)(b) in the regional court. The typed annexure A alleges that the motorbike, the property of or in the lawful possession H Dreyer was stolen on 13 December 2024 from at or near Swartklip.

[9] The typed annexure A differs from the charge put to the accused in the magistrates' court where no allegation was made who the owner or person in lawful possession of the motorbike was.

[10] In a memorandum that accompanied the record submitted on review, the regional magistrate pointed out that it is alleged that the offence was committed on 13 December 2024 and that the charge as put to the accused does not state whether the accused had consent or not to take the motorbike. He expressed doubt if the accused admitted that he committed the offence as alleged in the charge put to him.

[11] Section 35(3)(a) of the Constitution guarantees that an accused has a fair trial which includes the right to be informed of the charge with sufficient detail to answer it. Theft is defined by Snyman CR *Criminal Law* 6th ed 475² as:

"A person commits theft if he unlawfully and intentionally appropriates movable, corporeal property which (a) belongs to and is in the possession of, another; (b) belongs to another but is in the perpetrator's own possession; or (c) belongs to the perpetrator but is in another's possession and such other person has a right to possess it which legally prevails against the perpetrator's own right of possession provided that the intention to appropriate the property includes an intention permanently to deprive the person entitled to the possession of the property of such property."

[12] The charge of theft should, therefore, contain all the essential allegations to be proved by the prosecution to sustain a conviction. It is essential that an allegation be made that the accused unlawfully and intentionally appropriated movable property belonging to or in the possession of another. Section 84(1) and (2) provides that:

"(1) A charge sheet shall set forth the relevant offence in such a manner and with such particulars as to the time and place at which the offence is alleged to have been committed and the person, if any, against whom, and the property, if any, in respect of which the offence is alleged to have been committed as may be reasonably sufficient to inform the accused of the nature of the charge.

(2) Where any of the particulars referred to in subsection (1) are unknown to the prosecutor it shall be sufficient to state that fact in the charge sheet"

[13] This provision requires that the prosecution should allege who the owner or person in possession of the motorcycle was when it was appropriated by the accused. If the owner or person in possession is unknown to the prosecution such allegation should have been included in the charge.

² Fn 1. The writer refers to the definitions of Gardiner and Landsdown and Hunt-Milton as well as definitions in cases.

[14] No averment is made that the motorcycle when it was appropriated by the accused belonged to somebody or that it was in the possession of anybody. It was simply put to the accused that he unlawfully and intentionally took a motorbike to the value of R40 000,00. The charge accordingly does not disclose a crime of theft.

[15] Section 114 provides:

"(1) If a magistrate's court, after conviction following a plea of guilty but before sentence, is of the opinion –

- (a) that the offence in respect of which the accused has been convicted is of such a nature or magnitude that it merits punishment in excess of the jurisdiction of a magistrate's court;
- (b) that the previous convictions of the accused are such that the offence in respect of which the accused has been convicted merits punishment in excess of the jurisdiction of a magistrate's court or
- (c) that the accused is a person referred to in section 286A(1)

the court shall stop the proceedings and commit the accused for sentence by a regional court having jurisdiction."

(2) Where an accused is committed under subsection (1) for sentence by a regional court, the record of the proceedings in the magistrate's court shall upon proof thereof in the regional court be received by the regional court and form part of the record of that court, and the plea of guilty and any admission by the accused shall stand unless the accused satisfies the court that such plea or such admission was incorrectly recorded.

(3)(a) Unless the regional court concerned –

- (i) is satisfied that a plea of guilty of the offence or an admission by the accused which is material to his guilt was incorrectly recorded; or
- (ii) is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence, the court shall make a formal finding of guilty and sentence the accused.

(b) If the court is satisfied that a plea of guilty or any admission by the accused which is material to his guilt was incorrectly recorded, or if the court is not satisfied that the accused is guilty of the offence of which he has been convicted and in respect of which he has been committed for sentence or that he has no valid defence to the charge, the court shall enter a plea of not guilty and proceed with the trial as a summary trial in that court; Provided that any admission by the accused of the recording of which is not disputed by the accused, shall stand as proof of the fact thus admitted.

(4) The provisions of section 112(3) shall apply with reference to the proceedings under this section"

[16] Once the proceedings are stopped in the district court and the accused is committed to the regional court for sentence in terms of section 114, that court becomes seized with the case. I share the view of Mamosebo AJ (as she then was) in *S v Oliphant*³ that:

"As an illustration, if the conviction of guilty by the district magistrate is erroneous the regional court 'shall enter a plea of not guilty and proceed with the trial as a summary trial'. The implication is that, upon considering the mitigating and aggravating factors, the regional magistrate would be at large to impose any competent sentence, including a caution and discharge."

[17] The regional magistrate correctly entertained doubt as to the sufficiency of the charge put to the accused in the district court. A plea of not guilty should have been entered in terms of section 114(3)(b) by the regional magistrate. The trial must continue as a summary trial in the regional court.

ORDER:

- 1. The regional court magistrate is ordered to enter a plea of not guilty and thereafter proceed with the trial as a summary trial.**

³ 2014 (2) SACR 98 (NCK) par 17.

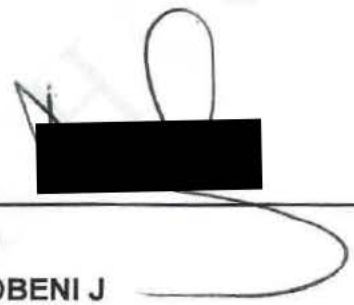


G.C MULLER

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE

I, concur



J. NGOBENI J

JUDGE OF THE HIGH COURT

LIMPOPO DIVISION, POLOKWANE