

IN THE HIGH COURT

(BISHO)

CASE NO.: CC57/2003

DATE: 10 JUNE 2003

In the matter between:

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THE STATE

versus

SIMPHIWE NIVATHI

ACCUSED NO. 1

NOABA MABHOZA

ACCUSED NO. 2

VUSUMZI MSUTHU

ACCUSED NO. 3

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MAKHWENKWE SONYASHE

ACCUSED NO. 4

EX TEMPORE JUDGMENT: (Trial-within-a-trial)

EBRAHIM J:

A trial-within-a-trial has been held in which the Court is required to determine whether or not the record of the bail proceedings in respect of accused nos. 1, 3 and 4 held at the Magistrate's Court at Peddie on 8 and 9 January 2003 shall form part of the record of the instant trial. Accused no. 2 did not object to the aforesaid record being handed in to form part of the record of this trial and has therefore not been an interested party in the trial-within-a-trial.

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Accused no. 1 disputed that the provisions of section 60(11B)(c) of the Criminal Procedure Act, 51 of 1977 were conveyed to him by the magistrate who presided at the bail proceedings. He disputed therefore that he was informed, that if he elected to testify in support of his application for bail, that anything he said might be used against him at his trial and such evidence would become admissible in any subsequent

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proceedings.

Accused nos. 3 and 4 were not as direct in contesting that the said provisions were conveyed to them. They merely alleged that they had no recollection that this had ever occurred.

In seeking to discharge its *onus* that these provisions had been 5
duly conveyed to all four accused the State tendered the evidence of James Jeffrey Fritz the magistrate who presided over the bail proceedings.

Neither accused no. 1, nor accused no. 3, nor accused no. 4
elected to testify in response to the evidence tendered by the State, nor 10
did they tender any other evidence. The relevant extract from the record of the bail proceedings which indicates that the presiding magistrate conveyed the provisions of section 60(11B)(a)(c)(d) to the accused and explained same was, at the request of this Court, handed in with the consent of the State and the legal representatives for accused nos. 1, 3 15
and 4.

I do not intend detailing the evidence of the magistrate Mr Fritz, but suffice to say that his evidence related to the manner in which he had explained the provisions to the accused and the replies he received from each of the accused. I should mention that at the bail proceedings 20
there were 8 accused who appeared before Magistrate Fritz and accused nos. 1, 2, 3 and 4 formed part of the group of 8 accused. His evidence further indicated, as reflected in the relevant portion of the bail proceedings, that each accused had indicated that he understood what had been conveyed. 25

Mr Fritz was cross-examined by Mr Lalla on behalf of accused no. 1 and by Mr Manjezi on behalf of accused no. 3, as well as by

Mr Mazwi on behalf of accused no. 4. Their cross-examination sought to suggest that Mr Fritz, the magistrate, had not sufficiently explained to each of the accused the provisions of the relevant section. The implication of this cross-examination was that, on the basis of what he had recorded contemporaneously during the course of the bail proceedings, it did not enable one to conclude that he had properly informed the accused of the relevant provisions.

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In addressing the Court Mr Kruger submitted that the State had discharged the *onus* which rested on it. Mr Lalla and Mr Mazwi, on the other hand, in respect of accused no. 1 and accused no. 4, made no submissions at all. They conveyed to the Court that they left the determination of the issue entirely in the hands of the Court.

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Mr Manjezi, on behalf of accused no. 3, in his submissions, which were of a limited nature, conceded that the record of the bail proceedings and the evidence of the magistrate Mr Fritz confirmed that the accused had been informed of the relevant provisions.

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It is evident from what I have said before that the only evidence before this Court is that of Mr Fritz. It is correct as Mr Kruger has submitted that there is no evidence at all to gainsay his testimony. It is the unanimous view of this Court that the relevant portion of the record of the bail proceedings reflects that all the accused were duly informed of the relevant provisions and in particular section 60(11B)(c) of the Criminal Procedure Act, 51 of 1977. In his testimony Mr Fritz has substantiated what he recorded during the bail proceedings. His evidence corroborates what he had recorded has transpired at the bail proceedings and stands completely uncontested.

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In our unanimous view the manner in which the magistrate

conveyed these provisions to the accused, and the content of what he conveyed to them, cannot be faulted. This applies equally in respect of all four accused. The State has established that there has been proper compliance with the provisions of section 60(11B)(c) of the Criminal Procedure Act, 51 of 1977. It is clear furthermore that the accused understood the provisions which were conveyed to them.

In the circumstances the record of the bail proceedings which took place in the Magistrate's Court Peddie under case no. 872/2002 shall be admitted to form part of these trial proceedings and the evidence therein shall be admissible as evidence in this trial. It must be noted, however, that any evidence, if there be such, which relates to any previous convictions or any other charges pending against the accused shall, as stated in section 60(11B)(c) of the Criminal Procedure Act, be inadmissible.

Further, in so far as it may be necessary, the Court will provide full reasons for this decision when judgment is given in the main trial.

Y EBRAHIM

JUDGE, BISHO HIGH COURT