

IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN

Review No.: 135/2014(B)

In the review between:

THE STATE

versus

KEDIBONE JUEKA LEKAOTA

Accused 1

MAMIKI GLORIA SESEDI

Accused 2

CORAM:

KRUGER, J *et* WRIGHT, AJ

JUDGMENT BY:

WRIGHT, AJ

DELIVERED ON:

14 AUGUST 2014

- [1] This matter comes before the High Court on special review. Accused 1 and Accused 2 stood trial in the Hoopstad magistrate's court on one count of assault with the intent to do grievous bodily harm. Another person, Shimanyana Piet Dinre, was similarly charged, but the case against him was withdrawn. There is no need to further refer to Mr Dinre.
- [2] On 14 May 2014 the case was called before magistrate S.S. Mmushi. The prosecutor indicated that investigations are complete and that the matter can in due course be set down

for trial. Both accused appeared in person, after previously indicating their decision not to appoint a legal representative.

- [3] The magistrate proceeded to enquire from the accused as to what plea they intend to offer. Both indicated that they intended pleading guilty. Hereafter the prosecutor indicated that he accepts the plea and that section 112(1)(a) of the Criminal Procedure Act is applicable as “it is not so serious”. The magistrate then gave a judgment comprising of one sentence only, namely “. . . both accused 1 and 2 you are hereby found guilty as charged of common assault”.
- [4] The procedure followed by the magistrate thus far into the proceedings contains at least the following irregularities:
- (i) The charge was never put to the accused (as provided for in section 105 of the Criminal Procedure Act);
 - (ii) The charge was not explained to the accused in any way, this notwithstanding the fact that it should have been explained in an adequate and reasonably comprehensible manner to the unrepresented accused (See **R v Mohapi** 1954 (1) SA 573 (O));
 - (iii) Even though they were charged with assault with the intention to commit grievous bodily harm, they were convicted of common assault, but as if they had indeed been charged with common assault;
 - (iv) The magistrate did not give any reasons for his decision to deviate from the charge contained in the charge sheet.

- [5] After finding the accused guilty, the magistrate disposed with the sentencing procedures by asking only one question, namely: “Are you suppose to pay a fine?” It is not clear which of the two accused then responded with “On Friday”. Thereafter the magistrate immediately proceeded with his sentencing judgment. This “judgment” only comprised of the actual sentence that the magistrate imposed. The accused were sentenced to a fine of R200,00 or one month imprisonment (wholly suspended for a period of 12 months).
- [6] In regard to sentencing the magistrate committed the following irregularities:
- (i) No reasons were provided for the actual sentence imposed;
 - (ii) He did not assist the accused in placing relevant facts and circumstances before the court so as to be able to decide on the appropriate sentence. (See **S v Dlamini** 1991 (2) SACR 655 (A) at 666 h – 667 f.)
 - (iii) The accused were not asked if they wish to say anything regarding sentence. (See **S v Bresler** 1967 (2) SA 451 (A) at 456 E – G.)
- [7] In performing his duties it is imperative that a presiding officer should see to it that justice is done. This is even more so in cases where the accused have to get along without legal representation. The Constitution contains the all-embracing injunction that a criminal trial must be fair. (See also **S v Ntuli** 1996 (1) SA 1207 (CC).)

[8] The magistrate failed to ensure that the procedural rights of the accused were complied with. The irregularities committed by the magistrate constitute such gross departure from the settled procedural rules of elementary justice that no proper trial took place.

[9] In the result the following order is made:

1. The convictions and sentences of both accused are set aside.

G.J.M. WRIGHT, AJ

I concur.

A. KRUGER, J