



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

Reportable:	YES/NO
Of interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

Case number: 271/2014

In the matter between:

THE STATE

and

THABANG NTAKATJANE

CORAM: LEKALE, J *et* MOTIMELE, AJ

DELIVERED ON: 30 MARCH 2017

REVIEW JUDGMENT

MOTIMELE, AJ

- [1] The accused was convicted of assault with the intent to do grievous bodily harm and sentenced to 18 months imprisonment on the 11 December 2014.

- [2] The record in this matter served before my brother Moeng AJ on the 04th of March 2015. He remarked as follows to the Registrar

"Will you kindly convey the following remarks to the Magistrate in this matter and return the record to him for his comments:

- 1. The review cannot be considered by a High Court Judge because there is not an original charge sheet in the file (sic).*
- 2. The Judge also requested a typed version of the original charge sheet."*

- [3] The above remarks were forwarded by the Registrar of this Court, promptly to the Magistrate-Zastron.
- [4] The case record was only resubmitted to the Registrar on 16 February 2017, a period of more than two years later.
- [5] The clerk of the court one **K. Phayane**, writes that the delay was occasioned by "poor filing from our office," and that the delay was regretted.
- [6] I am satisfied that the proceedings in this case appear to me to be in accordance with justice.
- [7] There is however, a matter of grave concern to me. The inordinate delay herein is unacceptable. It leads to a failure of justice.
- [8] The responsible officer at Zastron Magistrate Court is directed to put systems in place to avoid the recurrence of delays of this nature in review matters.

[9] I further direct that a copy of this judgment be forwarded to both the Judge President of this Division as well as the Director-General of the Department of Justice and Constitutional Development for information and to consider any steps they might deem meet.

[10] The magistrate explained the accused rights as follows:

"The matter is reviewable and the court will have his matter transcribed within five or within a reasonable period of time/ and the transcript thereof to be send to the reviewing judge to consider whether the proceedings in this matter were in accordance with the law (sic) time and the transcript thereof to be send to the reviewing judge to consider whether the proceedings in this matter were in accordance with the law."

[11] Section 303 of the Criminal Procedure Act 51 of 1977 reads as follows:

"303 The Clerk of the court in question shall within one week after the determination of a case referred to in paragraph (a) of section 302 (1) forward to the registrar of the provincial or local division heaving jurisdiction the record of the proceedings in the case or a copy thereof certified by such clerk, together with such remarks as the presiding judicial officer may wish to append thereto, and with any written statement or argument which the person convicted may within three days after imposition of the sentence furnish to the clerk of the court, and such registrar shall, as soon as possible, lay the same in chambers before a judge of that division for his consideration."

[12] It is clear from section 303 that what the magistrate was supposed to explain to the accused is:

- that the matter is reviewable;
- that it would be sent to the High Court in one week;
- that the magistrate may include a statement by himself/herself; and
- (most importantly) that the accused has the right to make representations and submit same to the clerk of the court within 3 days after sentence.

[13] The magistrate did not explain the accused rights adequately. He omitted the most important part. He rather promised the accused that he would be informed about the outcome of the review. Section 303 contains no such requirement.

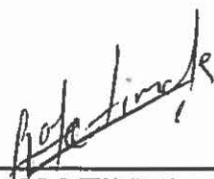
[14] It is not advisable for the magistrate to overpromise or make promises he could not deliver on.

[15] None of the above happened. The least said about what happened the better, suffices to say it (the inordinate delay) detracts from the purpose of the section and defeats the intention of the legislature.

[16] Accordingly I propose the following order:

16.1 The review is confirmed.

16.2 The registrar is directed to send copies of this judgment to the Director General & Constitutional Development and the Judge President of this Division.



A.M.M MOTIMELE, AJ

I agree



L. J LEKALE, J