



**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

Review No: R40/2019

In the matter between:

**THE STATE**

and

**NKOSINATHI GAMA**

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**CORAM:** MOLITSOANE, J *et* MOROBANE, AJ

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**JUDGMENT BY:** MOROBANE, AJ

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**DELIVERED ON:** 18 JULY 2019

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- [1] The matter was sent on automatic review by the Magistrate, Kroonstad. She convicted the accused of contravening section 59 of the National Road Traffic Act 93 of 1996 (“the Act”), exceeding the general speed limit, and sentenced him as follows: “R4 000.00 (four thousand rand) fine or to undergo eight (8) months imprisonment, ½ (half) suspended for 3 years on condition that Accused is not convicted of contravening s 59 of Act 93 of 1996 committed during the period of suspension.”

- [2] The brief facts are that, the accused was driving on the N1, a public road in the magisterial district of Kroonstad. He was caught on a speed trap driving at 130 km per hour. The traffic officer measured the speed at 177 metres. He pleaded guilty to the charge and was not legally represented during the proceedings.
- [3] My sister Opperman J caused a query to be sent to the Magistrate, formulated as follows, among others:
- “1.1 The record is not proper. The typed version does not correlate with the hand written version. Please ensure that the record is in order before it is re-send.
  - 1.2 Is conviction of the contravention of section 59 correct since section 59 has in the least four subsections, some of which are irrelevant to the offence. The charge sheet only refers to section 59, was the charge sheet correct in the first place?
  - 1.3 The certificate of veracity indicates that some parts of the record were not audible and others could not be understood by the transcriber. What is the effect of thereof on the administration of justice?
  - 1.4 The presiding officer must supply reasons for the application of section 112(2) of the Criminal Procedure Act 51 of 1977. Were the proceedings in accordance with the prescribed law? If not, what is the effect thereof on the conviction?
- [4] The Magistrate has responded to the query to which we are grateful. She conceded that the typed record differs with the original one and regrets the oversight. We are satisfied that the insertion of R4000.00 (*ten thousand rand*) in the J4 Form was an oversight.

[5] In regard to the charge, the Magistrate confirmed that the correct charge should read 'section 59(1) of Act 93 of 1996 read with regulation 292 of the National Road Traffic Regulation, 2000.' Other subsections, she accepted, should have been clearly stated at the time when the charge was put to the accused.

[6] The charge to which the accused pleaded guilty was not specific. He was charged of contravention of s 59 of the Act which deals with speed limit and has four subsections. The charge was not clearly stated when it was put to the accused. In her response to the query, the Magistrate stated that:

'The charge should have expressly provided that the charge is in terms of section 59(1) read with regulation 292 for the applicable speed limit. Other subsections like 59(4) and 89(1) that relate to the prohibitive and the creation of an offence respectively should have been clearly stated when the charge was put to the accused.'

[7] In view of the above, section 54(1) reads:

'(1) The general speed limit in respect of –  
(a) every public road or section thereof, other than a freeway, situated within an urban area;  
(b) every public road or section thereof, other than a freeway, situated outside an urban area; and  
(c) every freeway,  
shall be prescribed.

[8] If the subsection is properly analysed, there can be no contravention on the part of the accused. Surely the authorised bodies have caused the road signs to be displayed in a prescribed

manner. The provisions of subsection (4) is the most relevant in this case. The manner in which the charge was formulated and put to the accused casts doubt as to whether or not he was correctly charged in the first place. To what exactly did he plead guilty. Did he contravene the whole section 59 of the Act or certain subsections thereof? Such an ambiguity affects the accused person's right to a fair trial.

[9] In ***S v Pelser***<sup>1</sup> the court referred to the exceeding of a speed limit as a criminal offence that attracts heavy sentences and should be regarded as serious. The seriousness of the offence required strict adherence to the criminal procedural requirements. In *casu*, the latter was indeed lacking. It then follows that the accused person's right to a fair trial was infringed.

[10] Again, the unrepresented accused was questioned in terms of s 112(2) instead of s 112(1)(b) of the Criminal Procedure Act ("the CPA"). In ***DPP, Gauteng, Pretoria v Hamisi***<sup>2</sup> Dambuza JA pointed out that 's 112(2) regulates guilty pleas made in writing, whereas s 112(1) governs the conviction and sentence of an accused on a verbal plea of guilty'. The Magistrate confirmed in her response that the explanation of rights was in accordance with s 112(1)(b) which was wrongly recorded as s 112(2) in the record. I accept her explanation.

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<sup>1</sup> *S v Pelser* 1974 (4) SA 400 (T) at 402C

<sup>2</sup> *Director of Public Prosecutions, Gauteng Division, Pretoria v Hamisi* 2018 (2) SACR 230 (SCA) at para 7

[11] In ***The State v Enoc Phuzi***<sup>3</sup>, Musi AJP summed up at para 39 as follows:

‘When an accused is questioned in terms of section 112(1)(b) the magistrate must ascertain whether the accused admits:

- (i) the recorded speed;
- (ii) the proper functioning of the speed measuring device; and
- (iii) the competence of the traffic officer to set up and operate the speed measuring device.’

[12] The Magistrate did not ask whether or not the traffic officer was competent to set up and operate the speed measuring device; and whether or not he was satisfied that the device was functioning properly. As a result, the Magistrate could not have been satisfied that the accused properly admitted all the allegations in the charge. There was no proper basis for her to accept that the accused was guilty of contravening section 59 of Act 93 of 1996.

[13] The proceedings were not in accordance with justice. The conviction and the sentence stand to be set aside. It is upon the Director of Public Prosecutions to decide whether to charge the accused again or not.

[14] I propose the following order

1. The conviction and sentence are set aside.

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<sup>3</sup> (R254/2018) [2018] ZAFSHC 213 (28 December 2018)

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**V.M. MOROBANE, AJ**

I concur, and it is so ordered.

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**P.E. MOLITSOANE, J**