

IN THE HIGH COURT OF SOUTH AFRICA

(WITWATERSRAND LOCAL DIVISION)

JOHANNESBURG

CASE NO A1947/04

2006/10/25

In the matter between

JOSEPH MANZINI
and
STATE

Applicant
Respondent

JUDGMENT

TSHIQI, J: The appellant in this matter was convicted and sentenced in the Regional Court, Orlando East, on a count of murder, and a count of attempted murder. The appellant appeals against both the convictions and sentences. On a previous occasion, the appeal was postponed *sine die* to afford counsel an opportunity to submit supplementary heads of argument with regards to the quality of the interpretation during the trial. This preliminary issue could resolve the appeal before us.

The appellant's trial started before Regional Magistrate Olivier on 24 June 2002. The proceedings were recorded in English. Because the appellant is Zulu speaking, the proceedings were interpreted to the appellant by a court appointed Interpreter. The appellant was convicted on 9 October 2002. In the

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course of giving evidence in mitigation of sentence, Regional Magistrate Olivier's attention was drawn to the appellant's complaint that the Interpreter had not properly interpreted any of his evidence.

Because of the seriousness of the complaint, the court *a quo* ordered that the whole record of the proceedings be referred to the court's chief Interpreter, who was directed to furnish the court with a report. The appellant's trial was postponed to 13 November 2002, and then to 21 July 2003.

What happened between these two dates is that Regional Magistrate Olivier died. On 21 July 2003, the appellant's trial resumed before Regional Magistrate Nienaber. The chief Interpreter's report was handed in. He identified 25 instances of "erratic interpretation." He then said that, "There are many other such instances that may be pinpointed if necessary. Conclusion: An alarmingly poor performance by the Interpreter, which can be ascribed to a precarious lack of command in both the source, and target languages, (English/Zulu)"

A M.B. Matabane, a senior Interpreter with the Department of Justice, filed a 19 page report, in which he referred to a large number of errors of interpretation throughout the record. He expressed no opinion.

After listening to argument, Regional Magistrate Nienaber postponed the appellant's trial to 18 August 2003, on which date he gave the following judgment. "Die hof het die rekord nagegaan, en ook die verslae van die vertolking. Die hof is van oordeel dat die vertolking, waar dit verskil, nie wesenlik bygedra het tot die beregting van hierdie saak nie, en dat ongeag die hele dele waar die vertolking verskil, dit nie van so h aard is dat dit enigins h

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verskil sou gemaak het, of aan die wyse waarop die verdediging hulle saak sou gelei het nie, of aan die uitspraak aan die einde van die dag nie, en dat die verrigtinge dus volgens die reg sou plaasgevind het. Die hof is dus tevrede dat hierdie hof kan voortgaan in terme van Artikel 275 van die Strafproseswet wat betrek die vonnis van hierdie aangeleentheid."

What Regional Magistrate Nienaber appears to have done, is to have confined himself to these two reports. What he did not enquire into were the other instances that the chief Interpreter offered to pinpoint. He also did not enquire into the chief Interpreter's conclusion that the record showed "an alarmingly poor performance by the Interpreter." Furthermore, no reasons are given for the finding that the quality of the interpretations would not have affected the outcome of the trial.

The role of an Interpreter is a vital and crucial element of a fair trial. In the majority of criminal trials, courts rely on the quality of interpretation from an indigenous language to either English or Afrikaans, the languages in which most trials are recorded. What has been interpreted by the Interpreter, is what appears in the record of the proceedings. If what has been interpreted is incorrect, the record of the proceedings is therefore incorrect. See *S versus Mpopo*, (2), SA 424,(A) at 426G. A Presiding Officer also relies on the Interpreter to interpret correctly what is being said by a witness. If what is being conveyed to the Presiding Officer is incorrect, then the Presiding Officer may not be in a position to make correct findings on contradictions and credibility of

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witnesses. This would in turn affect the reliability and the evaluation of the evidence of the witnesses as a whole. The respective legal representatives, who may not be conversant with the language of the witness, will also not be in a position to conduct proper examination of the witnesses, and may in the end make incorrect submissions to the court.

In the South African context, the task of interpretation needs considerable skill and training. The use of words, and the meaning attached, sometimes depends on the context in which they are used. Furthermore, some African indigenous languages, may fall within the same family, and yet have totally different meanings, i.e. the Nguni languages. It is therefore very crucial that the Interpreter not only understands the language, but is also so conversant with the language of the witness that he is able to convey to the court, and for the record, the meaning and the context as if it was conveyed by the witness.

Section 35 (3) of the Constitution of the Republic of South Africa, Act 108 of 1996 provides as follows: "Every accused has a right to a fair trial, which includes the right, (a) To be informed of the charge with sufficient detail to answer it. (b) To adduce and challenge evidence. (c) To be tried in a language that the accused understands, or if that is not practicable to have proceedings interpreted in that language.

The chief Interpreter who was tasked to compile a report in this matter, has clearly stated that the interpretation was alarmingly poor, and has stated that this could be ascribed to a lack of command in both the source and target languages. The defects in the quality of the interpretation were material, and impacted on the rights of the appellant as enshrined in Section 35 (3) (a) (b) and (c) of the Constitution. Consequently, the appellant was not afforded a fair trial. The convictions and sentences cannot stand.

The issue of whether the appellant may be recharged or not on the same charges, is left open for the State. In the circumstances, I would make the

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following order:

The convictions and sentences are set aside.

SCHWARTZMAN, J: I agree, and it is so ordered.