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No

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IN THE HIGH COURT OF SOUTH AFRICA

(Northern Cape Division)

Case No: 1393/2000 High Court Review Case No: 593/2002

Date delivered:

In the review matter of:

THE STATE

versus

GEORGE MARORO

ACCUSED

Coram: **MAJIEDT J et SONNAJ**

JUDGEMENT ON SPECIAL REVIEW

MAJIEDT J:

1. This matter was placed before me on special review by the Magistrate with a request that both the conviction and sentence

be corrected. The accused was charged with reckless or negligent driving in terms of the relevant provisions of the Road Traffic Act. After evidence was adduced, the Magistrate noted in his judgement that "*the accused is guilty as charged*". The conviction is quite obviously not in order, since the accused had to be convicted either of reckless or of negligent driving. Reckless driving entails *dolus*, whereas *culpa* forms the basis of negligent driving. This mistake was identified by the Magistrate in the course of an inspection which had occurred at his office. It is accordingly clear that the conviction ought to be set aside and substituted with one of guilty of negligent driving, as the evidence had quite clearly and beyond reasonable doubt established this offence. In any event, the accused had under cross-examination admitted that he had driven negligently.

2. The problem with the sentence is that the Magistrate, in addition to imposing a fine of R1000.00 and an alternative of suspended imprisonment, had also issued an order for compensation in terms of the provisions contained in sec 300

of the Criminal Procedure Act of 1977 (*"the Act"*). The said compensatory order reads as follows: *"Accused is ordered to compensate the complainant for his damages of repairing the vehicle by paying him a sum of one thousand three hundred rands to the clerk of the court, Kathu on the 29th of June 2001 in terms of section 300 of Act 51 of 1977"*. The Magistrate has correctly pointed out that that part of the order which reads: *"to the clerk of the court Kathu on the 29th June 2001"* is incorrect.

3. A court may not lay down a date before which compensation should take place unless it is a condition of suspension;

See: **S v Nyati 1978(4)SA 26 (T)**.

In this matter the magistrate had indeed suspended the alternative term of imprisonment for a period of three years and the usual remedy to cure the deficiency in the sentence would be to amend his order to read *"within three years of date of sentence."* The magistrate's proposal therefore that the date be deleted in its entirety is not correct. Furthermore, it is not

correct to order that the compensation should be paid to the clerk of the court at Kathu. A compensatory order in terms of sec 300 of the Act has the effect of a civil judgement (see sec 300(3)). The compensation is payable directly to the complainant and in default of such payment the remedies relating to a civil judgement would follow *ex lege*.

4. The correct course to follow would be to delete the words "*to the clerk of the court Kathu*" from the Magistrate's order and to substitute the words "*on the 29 June 2001*" with the words "*within three years of the date of sentence (19/6/2001)*". I have noted the Magistrate's comment that the accused has in the meantime paid the compensation as ordered. It is, however, imperative that the order be corrected for future reference and proper recordal on the SAP 69.
5. **In the premises the conviction is set aside and the accused is convicted of negligent driving in terms of the provisions contained in section 63 of Act 93 of 1996. The sentence is set aside and substituted with the following:**

The accused is sentenced to a fine of R1000.00 (one thousand Rand) and in default of payment the accused is to undergo 3 (three) months imprisonment which is wholly suspended for 3 (three) years on condition that the accused is not convicted of contravening section 63 of Act 93 of 1996 (reckless or negligent driving) committed during the period of suspension and on further condition that accused pays to the complainant compensation of R1300.00 (one thousand three hundred Rand) as ordered hereafter. The accused is ordered to compensate the complainant for his damages of repairing his vehicle in the sum of R1300.00 (one thousand three hundred Rand) within 3 (three) years from the date of the imposition of the sentence (19/6/2001) in terms of the provisions contained in section 300 of Act 51 of 1977.

SA MAJIEDT

JUDGE

I concur:

PHF SONN
ACTING JUDGE