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Circulate to Magistrates: ~~Yes~~/ No

IN THE HIGH COURT OF SOUTH AFRICA
(Northern Cape Division)

Date delivered: **29/09/2006**

Case no: **177/06**

In the matters:

THE STATE

versus

PIET TANGA

Accused

Coram: **Tlaletsi AJP et Molwantwa AJ**

JUDGMENT ON SPECIAL REVIEW

Tlaletsi AJP:

- 1] This matter is placed before us by way of special review at the request of the Senior Magistrate, Upington. The accused appeared before a Magistrate who was appointed on contract on a charge of failure to comply with an order made by court to make monthly maintenance contributions of R 1550-00 being for the period 1 October 2002 to 29 April 2005. He was not legally represented. He pleaded guilty but as the trial Magistrate was not satisfied that he admitted all the elements of the offence, she changed the plea to not guilty in terms of Section 113

of the ***Criminal Procedure Act 51 of 1977*** (“the Act”).

He was convicted and sentenced as follows:-

“gWarned not to commit this offence (Contravene S.31 Act 99/89) Court order that he pays R 30.00 towards arrears, from 1.09.2005 on monthly basis only towards R 600.00 from April to July 2005.”

- 2] The only reason why the Senior Magistrate placed this matter before us for special review is for the sentence to be altered to read “cautioned and discharged” and to delete the condition that the accused must pay R 30-00 towards the arrears.
- 3] This is one of the many matters that have been sent to us for special review due to a number of procedural and substantive irregularities committed by the same Magistrate in the maintenance court, Upington. The Magistrate’s contract has not been renewed and is therefore not available to respond to any of the queries that may be forwarded to her. It is unfortunate that a number of these trials have to be set aside due to these irregularities, resulting in a failure of justice to the vulnerable recipients of the maintenance contributions.
- 4] In this matter as well, upon my reading of the record I came across a number of irregularities, the cumulative effect whereof put to doubt whether the proceedings were in accordance with justice. I will deal with a few of these irregularities which I found fundamental. The first

of these is that it is not shown on the record that the accused's rights to legal representation were adequately explained to him. What the record reveals is that the accused was told that he has a right to apply for legal aid or that he can conduct his own defence. See in this regard ***S v Tilo*** 2006(2) SACR 266 (NC) at 270h – 274h.

- 5] The other irregularity that I found on the record is that the Magistrate allowed the state to lead inadmissible hearsay evidence. The complainant who was the only witness for the state did not know if the accused was employed and for which months he paid or did not pay. She only heard from other people that he was employed at Checkers stores. Some of the information was suggested to the witness even though it was not common cause. Should the hearsay allegations be struck from the record it would mean that the state presented no evidence to prove the guilt of the accused even though the accused did not testify.
- 6] The judgment of the Magistrate is very brief and does not disclose the facts found to be proved to sustain a conviction. In fact I am being too generous to say that it is a judgment as the Magistrate only told the accused as follows word by word:

⁴gThis court will find you Guilty for the period April up until that is four months. As much as this court appreciates what you have done and the court admits that you have a sense of

responsibility. As you were not working in 2003 and 2004, but though you managed to try and make payments, but that does not mean that now when you got a job you must stop paying."

I have already expressed myself on the failure by a Magistrate to deliver a judgment at the conclusion of a trial in ***S v Van Wyk*** 2006(2) SACR 22 (NC) at 23g – 24g. The remarks I made are fully applicable in *casu*.

- 7] The above irregularities are in my view sufficient and weighty for this court to interfere and set the conviction aside. It is not necessary to proceed to deal with the many other irregularities and the floppy manner in which the Magistrate conducted the trial. The conviction should be set aside and it be left to the prosecution to decide on what cause to follow to recover arrear maintenance if necessary.

In the result I make the following order:

- 1. The conviction and sentence are set aside and the matter is referred back to the Magistrate Court, Upington for trial de novo if need be, before another Magistrate.**

L P TLALETSI
ACTING JUDGE PRESIDENT
Northern Cape Division

I concur.

B C MOLWANTWA
ACTING JUDGE
Northern Cape Division