

IN THE HIGH COURT OF SOUTH AFRICA
(BOPHUTHATSWANA PROVINCIAL DIVISION)

In the matter between:

THE STATE

and

BILLY LUCAS MOKWENA

REVIEW

HENDRICKS J:

This is an automatic review from the Magistrate Court for the district of Mankwe. The accused was convicted of ***crimen injuria*** and was sentenced to an effective term of imprisonment of nine (9) months.

In a letter attached to the record of proceedings in that court, the presiding Magistrate pointed out an irregularity committed by himself during the trial. The irregularity is to the effect that although the Magistrate informed the accused of his right to testify in his defence, he did not afford him the opportunity to do so when the matter was proceeded with on the remand date. That is so, despite the fact that the accused indicated that he want to testify in his defence.

In his judgment the Magistrate stated that accused has testified, and that he called a witness to testify on his behalf. (**See:- Record page 20.**) This is not what transpired during the trial.

The denial of an accused person's right to testify is in my view such a serious irregularity that it amounts to an unfair trial. I am therefore of the view that the proceedings should be set aside.

The accused is presently serving his sentence in Mogwase Prison.
I am of the view that he should be released immediately.

Conclusion:

I make the following order:-

1. The conviction and sentence is set aside.
2. The accused must be released immediately from Mogwase Prison.

R D HENDRICKS
JUDGE OF THE HIGH COURT

I agree.

SAMKELO GURA
ACTING JUDGE OF THE HIGH COURT

16 SEPTEMBER2004