

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

**CA NO.: 174/04**

**In the matter between:**

**THE STATE**

**AND**

**BARENG MOKOTEDI**

**MMABATHO**

**REVIEW JUDGMENT**

**MOKGOATLHENG AJ**

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**JUDGMENT**

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**MOKGOATLHENG AJ:**

- [1] This is a review of case A190/2003 referred in terms of section 304 of Act 51 of 1977 emanating from the Magisterial district of Mankwe. The case was heard before Magistrate W R Mosito at Mogwase District Court.
- [2] The accused was on the 22 July 2004 fined R3000.00 or four (4) months imprisonment for failing to comply with section 72

read with section 170 in that on the 30 April 2003 the accused was warned to appear on the 10 June 2003, but failed to do so.

[3] On the 10 June 2003 when the case was called, the accused was in default, a warrant for his arrest was authorised. On 22 July 2003 the accused appeared before court on a warrant of arrest.

[4] The court held a summary enquiry regarding the accused's failure to attend court. The accused proffered an explanation why he was in default on 10 June 2003. This explanation was not accepted by the Magistrate. The accused was found guilty of contravening section 170(1) and was sentenced to a fine of R3000.00 or four (4) months imprisonment.

[5] When the matter was submitted for review Gura AJ requested the Magistrate to furnish reasons for imposing a sentence of R3000.00 or four (4) months imprisonment for contravening section 170(1).

[6] On the 31 August 2004 I made an order in terms of section 304 (2) (c) (vi) and ordered that the accused should forthwith be released from jail, as it appeared he was incarcerated unlawfully.

[7] The reason for the order releasing the accused from jail is as follows:-

[8] It is patent that the maximum competent sentence a Magistrate may impose for the contravention of section 72(4)

and section 170 (2) respectively is a fine not exceeding R300.00 or imprisonment for a period not exceeding three months.

- [9] The Learned Magistrate concedes that the sentence he imposed is not competent. The Learned Magistrate misdirected himself and imposed an incompetent sentence.

In the premises the conviction is confirmed but the sentence imposed by the Learned Magistrate is set aside and substituted with the following:

“The accused is sentenced to R300.00 or three months imprisonment”.

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R D MOKGOATLHENG  
ACTING JUDGE OF THE HIGH COURT

I agree

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A A LANDMAN  
JUDGE OF THE HIGH COURT

DATED : 4 NOVEMBER 2004