



IN THE HIGH COURT OF SOUTH AFRICA  
BOPHUTHATSWANA PROVINCIAL DIVISION

CA 80:08

In the matter between:

**THE STATE**  
and  
**DICHABA MOHUMI**

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**REVIEW JUDGMENT**

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**KGOELE AJ:**

- [1] This matter came before me on special review. The presiding Regional Court Magistrate asked this court to set aside the conviction he had pronounced in this matter because of the error he made.
- [2] The accused in this matter was charged with rape read with the provisions of section 51(1) of the Criminal Law Amendment Act 105 of 1977 in that he raped a 12 year old child.

- [3] The presiding officer however submitted in his reasons for sending the matter on review that the evidence tendered by the State proved that the rape committed is an offence referred to in **Part I of Schedule 2** of the said Act because the complainant was by then a girl under the age of 16 years old and she was raped twice. He further indicated that he had made that finding in his judgment, but that when he gave the verdict he inadvertently found the accused guilty of rape which is referred to in **Part III of Schedule 2** of Act 105 of 1977.
- [4] He maintained that the reference to **Part III of Schedule 2** of Act 105 of 1977 which he made when he was trying to explain what he meant by “**guilty as charge**” in his judgment was a mere slip of the tongue as he intended to say “**Part I**” of **Schedule 2** of Act 105 of 1977. He realised this mistake some time later when the trial resumed for arguments in respect of sentence. He further conceded that at the time he realised this mistake he was of the view that it was too late for him to correct his mistake as provided for in sec **176** of the Criminal Procedure Act.
- [5] The general principle is that once a judicial officer has given judgment he is **functus officio** and it follows that he cannot alter or revoke an order that he might have made. (**Firestone SA Ltd v Gentiruco A G 1977 (4) SA 298 (A)**).
- [6] **Section 176**, however, allows for amendment of judgments in prescribed circumstances. The section can only be invoked where there is a mistake inherent in the judgment which does not relate to the merits (**S v Wandrag 1970 (2) SA 520 (O)**; **R v Mthembu 1959 (1) SA 129 (N)**). The mistake

must either consist of the judicial officer saying something different to what he intended or where he had passed an incompetent sentence (**R v Armoed 1936 EDL 214**). The realisation of the mistake must also occur within a reasonable time. What is reasonable depends on the circumstances of a particular matter.

[7] Having considered the explanation given by the presiding officer and having read the record of proceedings, I am satisfied that, the verdict that was pronounced by the presiding officer was erroneously meted out and does not reflect what the presiding officer intended. I am also of the view that in the circumstances of this case, a reasonable time has lapsed before the mistake could be detected and therefore agree with the presiding Magistrate that it became impossible for him to correct his mistake as provided by section 176 of the Criminal Procedure Act.

[8] Consequently the following order is made:

1. The conviction of the accused of rape as referred to in Part III of Schedule 2 to Act 105 of 1997 as pronounced by the court *a quo* is set aside and is substituted by the following:

**“Accused is found guilty of rape as referred to in Part I of Schedule 2 to Act 105 of 1997.”**

2. The matter is referred back to the trial court to proceed with the determination of a proper sentence for the accused.

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A M KGOELE  
ACTING JUDGE OF THE HIGH COURT

I agree

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R D HENDRICKS  
JUDGE OF THE HIGH COURT