



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST HIGH COURT, MAFIKENG**

HC . 18/2012

In the matter between:-

MOLUTSI SAMUEL MOTLOGELWA

Appellant

and

THE STATE

Respondent

REVIEW JUDGMENT

KGOELE J.

[1] This matter came before me on special review in terms of Section 304 A of the Criminal Procedure Act 51 of 1977 (CPA) under cover of the following minute:-

“The above case has been referred to you in terms of Section 304 A of CPA.

The accused pleaded guilty of the offence of contravening the provisions of section 63(1) of Act 93 of 1996 and a statement i.t.o. Section 112(4) of the Criminal Procedure Act 51/1977 was submitted in which he admits the elements of the offence of reckless or negligent driving.

It is not clear whether accused pleads guilty of reckless driving or negligent driving. The learned magistrate erred in her judgment by finding accused guilty of reckless and negligent driving (as charged).

The case was then sent on special review to the High Court.

The transcribed record was not available due to technical problems on recording device in D court. It has since been send for transcribing. The charge sheet was submitted to the Magistrate on 05/11/2012.

Herewith the transcribed record which were handed to the Magistrate on 13 November 2012 and a copy of charge sheet.”

[2] It is indeed correct that from the proceedings it is not clear whether:-

- The accused pleaded guilty on reckless or negligent driving
- The presiding officer convicted the accused of reckless or negligent driving.

- [3] It is trite law that section 63(1) of the National Road Traffic Act 93 of 1996 (Road Traffic Act) creates two separate crimes, namely:- reckless driving and negligent driving. If X is charged with contravening the subsection, she is in fact charged with reckless driving, and alternatively with negligent driving. See **Snyman, Criminal Law, Fourth Edition, page 394 par. (e); Van Zyl 1969(1) SA 553 (A) 557; Cordozo 1975(1) SA 635(T) 638 – 639; Richter 1966(1) SA 534 (T) 356.**
- [4] This proposition is also derived from the penal section of this Act, section 89(5), which provides that for reckless driving the punishment is any fine or imprisonment for a period not exceeding 6 years, and for negligent driving the punishment is any fine or imprisonment for a period not exceeding 3 years.
- [5] It is therefore paramount that when presiding officers deals with the contravention of this section, Section 63(1), a proper enquiry should be made whether the accused pleads guilty on the main charge, reckless or alternative charge, negligent driving. It is further of utmost importance that the presiding officer when convicting the accused pronounce whether the conviction is on the charge of reckless driving or on negligent driving, as this conclusion usually comes after a factual enquiry of the matter as to how the driving was.

[6] To convict the accused “**as charged**”, like the words used by the presiding officer in this matter amounts to an irregularity. The proceedings are therefore bound to be interfered with.

[7] The following order is therefore made:-

7.1 The conviction of the accused is hereby set aside.

7.2 The matter is sent back to the Magistrate office Molopo to start *de novo* before another presiding officer different from the one who presided in this matter.

A.M. KGOELE
JUDGE OF THE HIGH COURT

I agree

N. GUTTA
JUDGE OF THE HIGH COURT

DATED : 04 December 2012