



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

HC . 03/2013

In the matter between:-

THE STATE

AND

TSHEPO BENNET MODISAPODI

REVIEW JUDGMENT

KGOELE J.

[1] When the matter came before me on review I forwarded the following concerns to the presiding officer:-

“1. Looking at the inquiry that was made by the presiding officer in terms of section 112 (1) (b), I am of the view that:-

- *the presiding officer’s questions consists of merely repeating, in a form of leading questions, allegations contained in the charge sheet;*

- *questions that could establish that the accused did not have a defence to wit: “And at that time when you acted so, your life was not in danger”? So you did not act in self defence”? were just put to him as leading questions instead of eliciting this from a factual inquiry.*

2. *The presiding officer is requested to read the following cases”*

- *Mkhize v The State and Another 1981 (3) SA 585 (H);*
- *Heugh, Dingle, Mlindeshweni, Mtyalelwa 1998 (1) SACR 83(E);*
- *S v Gwenya 1995 (2) SACR 522 (E), and thereafter comment on whether the questions he/she posed do not fall short of the standard required in the application of section 112(1)(b) properly.”*

[2] The presiding officer replied and his response was couched as follows:-

“(1) I must start by sincerely acknowledging the fact that I indeed put leading questions to the accused and same is short fall of what is intended by Section 112(1) (b) of the Criminal Procedure Act 51 of 1977 as amended.

(2) I will like to add that it only came to my attention and subsequent knowledge after I was referred to the case of S v Gwenya 1995 (2) SACR 522 E, by the Honourable Judge Landman A.A. in one of the matter that was send for review, and I must say ever since I have allowed the accused to adumbrate on what transpired that led him/her into entering a guilty plea.

(3) I once again appreciate the query, and aver that same mistake will not be repeated again, and also acknowledge the fact that, it is these queries that shape and build a good magistrate in future.

I hope that the query has been replied to satisfactorily, however, if I omitted anything, please advice.

[3] I am of the view that the concession made by the presiding officer is correctly made. It is quite clear from his response that

the same concerns were also raised by my colleague Landman J in another review. I will therefore not deal with the issues I raised any further to avoid repetition.

[4] The following order is thus made:-

4.1 The conviction and sentence of the accused are hereby set aside.

4.2 The matter is referred back to the Magistrate Taung to start the matter *de novo* before a presiding officer different from the one that presided in this matter.

A.M. KGOELE
JUDGE OF THE HIGH COURT

I agree

A.A. LANDMAN
JUDGE OF THE HIGH COURT

DATED : 22 MARCH 2013