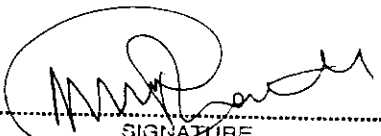


A833/12

NORTH GAUTENG HIGH COURT, PRETORIA
REPUBLIC OF SOUTH AFRICA

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|--------------------------------------|--|
| DELETE WHICHEVER IS NOT APPLICABLE | |
| REPORTABLE: YES/NO. | |
| OF INTEREST TO OTHER JUDGES: YES/NO. | |
| REVISED. | |
| 14/11/2012 DATE |  SIGNATURE |

High Court Reference Number: 1001/2012
Magistrate Serial Number: H37/2012
Case Number: 14/02589/2009
Date of judgment: ~~27~~ November 2012
20

In the matter between:

THE STATE

Respondent

And

ALEXANDER ALBERTO RAPTIS MARQUES
MARIUS DE KOCK

First Accused
Second Accused

SPECIAL REVIEW JUDGMENT

PHATUDI J:

[1] This matter comes before me as a special review referred by
the office of the Regional Court Co-ordinator: Pretoria at the instance

of the Regional Magistrate Pretoria¹ who is presiding in a criminal matter.²

[2] The presiding officer indicates in the memorandum to the Regional Court Co-ordinator that the accused before him are charged with murder read with the provisions of section 51(2) of the Criminal Law Amendment Act 105 of 1997. Director of Public Prosecutions³(the prosecutor) is representing the state much as accused 1 and 2 are enjoying legal representation.⁴ The presiding officer further states that it transpired from the cross examination of Mr Theodorus Ernest Stokes, one of the state witnesses, that the witness consulted with the prosecutor at the prosecutor's home two days before he was called to take the stand. It appears that during such consultation, the prosecutor asked the witness to make a second statement in which mention of a suspect with red hair is mentioned and implicating the suspects by positioning them during the fight. It appears that he also helped the witness with the drafting of Exhibit "P"

¹ K.H. Bosch, Regional Magistrate: Pretoria

² Case Number: 14/2589/2009 Regional Court: Pretoria

³ The public prosecutor's name is concealed due to an anticipated disciplinary action

⁴ Adv Ferreira SC for Accused 1 and Adv S Joubert SC for Accused 2.

[3] The presiding officer then summoned the parties to his chamber. He later referred the matter to the Chief Prosecutor and the Regional Co-ordinator resulting in this review.

[4] Section 35 (3) (o) of the Constitution of Republic of South Africa provide that 'every accused person has a right to a fair trial, which includes the right of appeal to, or review by, higher court'. Grounds for review are provided in the criminal procedure Act 51 of 1977, and the Supreme Court Act 59 of 1959.

[5] On perusal of the record including the memorandum, it is clear that neither the automatic review provisions encapsulated in section 302 nor the special review provisions under section 304 (4) of the Criminal Procedure Act 51 of 1977 apply to the present situation, because, in the first instance, both accused are legally represented, secondly no sentence was passed.⁵ Sections 302 and 304 (4) can only be invoked after the sentence has been passed.

⁵ S v Mametja 1979(1) SA 767 (T)

[6] The ground of review upon which the Regional Co-ordinator and Presiding officers apparently rely on is provided in terms of section 24 (1) (c) of the Supreme Court Act 59 of 1959. The section provides for 'the grounds upon which the proceedings of an inferior court may be brought under review before a provincial division or before the local division having review jurisdiction, [which] are:

- (a) ...
- (b) ...
- (c) Gross irregularity in the proceedings...'

[7] A gross irregularity in lower court proceedings means an irregular act or omission by the presiding judicial officer in respect of the proceedings. Van Dijkhorst AJ (as he then was) penned in **S v Mametja**⁶ that circumstances where the High court may exercise its inherent power to review lower court proceedings are only 'where grave injustice might otherwise result or where justice might not by other means be attained'.⁷

⁶ Ibid

⁷ Ibid page 768 F - G

[8] Section 24 of the Supreme Court Act can be invoked in instances where there is a complaint against the method of proceedings conducted by the presiding judicial officer.

[9] The Presiding Officer's "gross irregularity" complaint is not, in the first place, covered by section 24. Section 24 is clearly a ground of review which ought to be employed before the High Court by one of the parties to the proceedings sought to be reviewed.

[10] The complaint of "gross irregularity" relied on is not a mistake of law or an incorrect application of the law. Applying the principles set out above to the presiding judicial officer's complaint, I am of the view that the complaint does not amount to an irregularity in the proceedings.

[11] The evidence led by the witness is correctly tested under cross examination. The purpose of the cross examination is, among others, to test the credibility and reliability of the evidence led by a witness

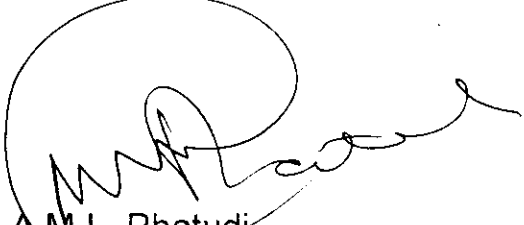
[12] The presiding officer's duty is to evaluate the credibility and reliability of the evidence tendered. The presiding judicial officer presides over cases before him as an "adjudicator" who has to be seen to be objectively impartial to finality. In *casu*, the presiding officer must, in my view, proceed with the hearing of the matter to finality.

[13] In my consideration of all the principles set out, I am of the view that this is not a case where this court should exercise its inherent jurisdiction to review and or set aside the proceedings. I am further of the view that the matter has been erroneously submitted to this court for review.

[14] I noted that the presiding officer lodged the complaint with the Chief Prosecutor. The Director of Public Prosecutions is indeed at liberty to institute any action they deem appropriate.

In the result I make the following order:

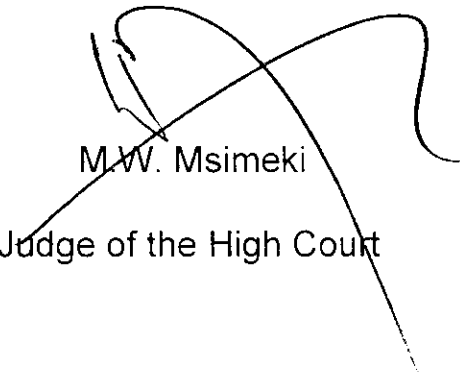
The matter is remitted back to the Regional Court Pretoria for hearing of the matter to finality.



A.M.L. Phatudi

Judge of the High Court

I agree.



M.W. Msimeki

Judge of the High Court

On Behalf of the 1st Accused: Efstratiou & Visagie Attorneys
Suite 12, Avocet
Haseldene Office Park
Silver Lakes Drive
Tijger Valley

Adv. Ferreira SC

On behalf of 2nd Accused: J.W. Wessels & Partners Inc
811 Schoeman Street
Arcadia
Pretoria

Adv. S Joubert SC

On Behalf of the Respondent: The State Prosecutor
Regional Court 3