



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISIO, PRETORIA

A322/14
13/5/2014

High Court Ref:- 308/14

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: ~~YES~~/NO
(2) OF INTEREST TO OTHERS JUDGES: ~~YES~~/NO
(3) REVISED

6/5/2014 *[Signature]*

DATE

SIGNATURE

In the matter between

THE STATE

and

LAWRENCE MAHLAULE

JUDGMENT

MOTHLE J:

- [1] This matter came to me by way of special review.
- [2] The accused, Lawrence Mahlaule was charged with theft of tables in the Magistrate Court, Giyani, Limpopo. On 27 March 2014 he pleaded guilty to the charge and was convicted as such. He appeared in person.
- [3] It came to the attention of the Magistrate during sentencing that the accused suffers from mental illness. The Magistrate stopped the proceedings in terms of Section 304A of the Criminal Procedure Act 51 of 1977 (“CPA”). The accused was informed accordingly and referred to hospital for observation.
- [4] Section 304A of the CPA provides:
- “304A (a) If a Magistrate or Regional Magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of proceedings, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as practicable, lay the same for review in Chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of Section 303.”*
- [5] Section 303 of the CPA provides that the Court shall receive and consider in Chambers a matter referred by the clerk of the Magistrates Court to the provincial division for review. Section 304 (2)(c)(i) empowers a Judge in Chambers on consideration of the review to confirm, alter or quash the conviction.

- [6] The Magistrate is of the view that the sentencing of the accused should not proceed because the accused has indicated to Court that he is mentally ill. He stated to the Court that he has been taking pills from Mushakeng hospital since 2008. The accused, while testifying in mitigation of sentence, stated the following on page 3 line 18 of the record:

“EXAMINATION BY COURT: Are you employed, sir?--- Not employed.

How do you survive?--- I am getting pension.

For what?--- I am not well your worship I am ill.

Is it something physical or is it something mental? --- The head, your worship.”

- [7] The accused had already pleaded guilty and found guilty of the offence in terms of section 112(1)(a). Consequently, there was no need to inquire from the accused whether indeed he intended to plead guilty. The accused was found guilty without any such inquiry. As a result, it did not occur to the magistrate at that time that the accused is mentally ill.

- [7] It seems to me that the conviction was not in accordance with justice and it will therefore prejudice the accused if the sentence proceedings should continue. The magistrate was thus correct in stopping the proceedings and referring the accused to the hospital and the record of the proceedings to the High Court. The conviction under the circumstances cannot stand.

- [8] In the premises I make the following order:

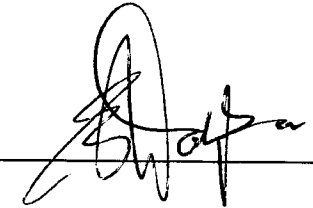
The conviction imposed on the accused by the Magistrate Court on 27 March 2014 is set aside and the matter is referred back to the Magistrates Court.


S. P. MOTHLE

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA.

I AGREE.



EM MAKGOBA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA