

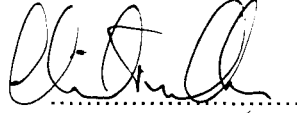
IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

A 792/16
15/11/16
CASE NO: 332/16

In the matter between:

The State

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
	10/11/16 DATE	 SIGNATURE

LEBOGANG ISAAC MANGALISO

JUDGMENT

Tuchten J:

- 1 This case was sent on special review by the regional magistrate sitting at Oberholzer. The accused is facing a charge of robbery under case no. SH17/16. The case has not yet been finalised.
- 2 The regional magistrate reports that an attorney who came on record after several witnesses had testified requested that the case be sent on review on the ground that the rights of the accused regarding

prescribed sentences had not been explained to him. The accused was 9 February 2016 admitted to bail in the sum of R1 000.

- 3 According to the charge sheet read with its annexures, the accused was charged with assaulting the complainant, Ms Dlamini, by pushing and kicking her, intimidating Ms Dlamini (it seems by the utterance of certain words) and robbing her of certain alleged property described as "ANC DATA".
- 4 The charge sheet in fact refers in its heading to Act 105 of 1977, presumably an error. Section 51(2) of the Criminal Law Amendment Act, 105 of 1997 provides for prescribed sentences for certain serious offences. The submission of the attorney for the accused is that the heading to the charge of robbery places the accused at risk in relation to a prescribed sentence. If that were in this case the correct position, the only possible such prescribed sentence applicable would be the sentence imposed after a conviction for robbery with aggravated circumstances as defined in s 1 of the Criminal Procedure Act, 51 of 1977.
- 5 However, as the regional magistrate correctly points out, there is no reference in the body of the charge to any facts which if proved would constitute aggravated circumstances. The charge was thus, despite

the reference to a statute, one of what is known as common robbery. The offence of robbery without aggravating circumstances (ie common robbery) is not one which attracts a prescribed sentence. There were thus no possible such sentences to explain to the accused. The prosecutor would do well to apply for the deletion from the charge of robbery of the words “(read with the provisions of s 51(2) of the Criminal Law Amendment Act, 105 of 1997)”. Furthermore, the courts are slow to intervene on review in uncompleted criminal cases because the accused might be acquitted or sentenced only on the basis of its “normal” jurisdiction.

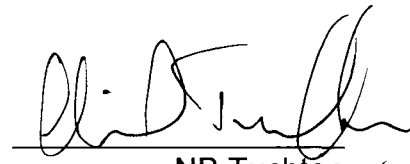
6 Finally, the remedy for an omission to explain rights is, as the regional magistrate once again points out, that the accused if convicted is liable only to be sentenced by the court in accordance with its normal jurisdiction in that regard.

7 For all these reasons, I see no good ground on which this court should intervene at this stage in this uncompleted criminal trial.

8 I make the following order:

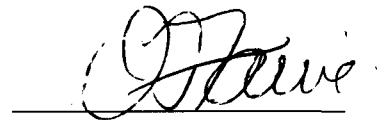
1 The court declines to exercise its special review jurisdiction at this stage.

- 2 The case is remitted to the regional court, Oberholzer for the continuation and completion of the trial of the accused.



NB Tuchten
Judge of the High Court
10 November 2016

I agree.



DS Fourie
Judge of the High Court
10 November 2016