



24/05/2016

A334/2016

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG, PRETORIA).

Magistrates Ref No: 8/2014
High court ref no: 511/14

In the matter between:

The State

And

Johannes Cornelius Pretorius

REVIEW JUDGMENT

Maumela J.

1. This matter came before court as a special review. Before the magistrates court for the district of Springs, sitting in Nigel, the accused; Johannes Cornelius Pretorius, who was legally represented, was charged with Failure to Pay Maintenance, in contravention of section 31 of the Maintenance Act 1998: (Act No 99 of 1998) "Maintenance Act".
2. The accused was convicted and sentenced to 4 (four)

months imprisonment. The whole sentence was suspended for 5 (five) years on the following conditions:

- 2.1. That the accused is not convicted of an offence of contravening section 31 of the "Maintenance Act", which offence would have been committed during the period of suspension.
 - 2.2. That the accused continues to pay maintenance on a monthly basis, at an amount of R1500-00, in compliance with the order made against him on the 19th of May 2010, and
 - 2.3. That the accused pays an additional amount of R200-00 towards the arrears accumulated in terms of section 40 (1) of the "Maintenance Act".
3. Mr Pretorius's legal representative questioned the validity of the above order. As a result, the magistrate who presided was requested to explain the order he made on the 7th of September 2010. A need then arose for the record of proceedings before the magistrate Springs to be transcribed. It was then discovered that technical problems prevented recording of the proceedings before the magistrate. As a result, the record of proceedings before the magistrate could not be retrieved. Various efforts to overcome the technical problems and to obtain a record of the proceedings in the case came to naught.
4. It also came to light that both the presiding magistrate, and the accused's legal representative, destroyed their respective notes on the case. It was stated that on the 21st of May 2010, the parties in the case before the magistrate entered into an agreement. The presiding magistrate could not recall whether or not that agreement between the parties on the 21st of May 2010 was made an order of the court. The fact that the record of proceedings could not be retrieved is the reason why the presiding magistrate sent this matter on special review, with a request for the proceedings that unfolded before him, to be set aside.

5. The Magistrates' court is a creature of statute¹. It is a court of record². In the event where any of the decisions or orders by a Magistrates court came into question, the record of proceedings becomes vital in order to assess the correctness or otherwise thereof. The senior Magistrate under whom the presiding officer serves is supportive of the application for the setting aside of the proceedings.
6. This court views that it is not possible for this matter to be taken forward in any manner in the absence of the original, or the re-constructed record of the proceedings before the Magistrate. In the result, the request for the record of the proceedings before the Magistrate Nigel to be set aside stands to be granted. The following order is made:

ORDER.

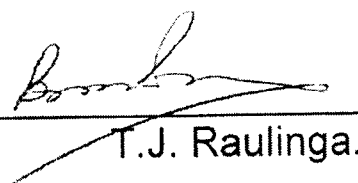
The record of proceedings of Nigel Magistrate's, case number 151/2010 is ordered to be set aside.



T. A. Maumela.

Judge of the High Court of South Africa.

I agree.



T.J. Raulinga.

¹ . It was created through the enactment of the Magistrates Court Act 1944: Act No 32 of 1944.

² . See section 4 (1) of the Magistrates Court Act

Judge of the High Court of South Africa.