



**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

**HIGH COURT REF NO: R23/2021
MAGISTRATE CASE NO. A698/2020**

In the matter between:

THE STATE

And

MCEBISI WISEMAN NDLANGAMANDLA

REVIEW JUDGMENT

RATSHIBVUMO J

[1] This matter was laid before me as a review case in terms of section 302 of Act 51 of 1977 (the Criminal Procedure Act) from the District of Chief Albert Luthuli, sitting at Elukwatini. The accused was charged for contravening section 31 of Act 99 of 1998 (Maintenance Act) after he failed to comply with a court order to the effect that he should make monthly payments of R600.00

(totalling R6 000.00) towards the maintenance of his child. On the 7th of May 2021, he was found guilty as charged but for only in respect of arrears of R1 200.00 and sentenced to one year' imprisonment which was conditionally suspended for five years.

[2] Upon perusal of the trial record, it was conspicuously incomplete. The record was accompanied by a report from the presiding Magistrate who asked that the conviction and the sentence be set aside as they were not in accordance with justice. According to the Magistrate, the missing parts in the record were due to the interpreter's failure to interpret parts of the trial. She wrote,

“The court on the day in question had only one interpreter who was also not regularly interpreting the proceedings accordingly in court. Mr. Ndlangamandla had the rights to follow and understand all the proceedings in court, hence the court had to use both language that is vernacular (isiZulu) and translate such in English immediately after such communication.”

[3] The impression created from the above paragraph was that the trial was fully conducted in one or two of the official languages except that sometimes the Magistrate would communicate with either the witnesses and/or the accused in isiZulu and that part of the trial was not interpreted into English. There is nothing wrong in having a trial conducted in any of the official languages as all of them are equal and need to be given equal treatment. But where the trial is conducted in any language other than the court language of record, being English, the presiding officer has a duty to see to it that the record that is submitted to the High Court is translated into English.¹ It is incumbent upon every judicial officer, before embarking on a trial in any other language to make sure that there are resources to take care of the translations without

¹ See *S v Feni* 2016 (2) SACR 581 (ECB)

causing the wheels of justice to grind to halt and thereby prejudicing any of the parties involved.

[4] In *S v Mathebula*², this court held that court language of record is English and it should be adhered to uniformly. Witnesses are free to give evidence in any language (not limited to 11 South African official languages), provided the same is interpreted into English which is the court language of record. This is not aimed at accommodating particular judicial officers presiding over cases at a particular time, but it is for smooth running of the court and administration of justice. One may be conversant in all the 11 South African official languages, but judicial officers on the next hierarchy of the judicial system who may have to deal with the same matter on appeal, may not be conversant in those languages. Where the trial is conducted in any language other than the court language of record, the presiding officer has a duty to see to it that the record that is submitted to the High Court is translated into English.

[5] For reasons set out above, I requested the Magistrate to cause the record to be transcribed and translated so that this court would be able to have a meaningful review of the matter. In response, the Magistrate indicated that the missing parts were not recorded at all and could not be retrieved from the system. An affidavit by the Clerk of Court was also made available in which she confirms that the missing parts could not be retrieved from the recording machine. It became pointless to ask the Magistrate to reconstruct the record given her first report that she could not do so and instead, asked that the conviction and the sentence be set aside.

² 2020 (1) SACR 534 (ML) at para 17-18.

[6] In *S v Nkhahle*³, the court gave clear guidelines to both the judicial officers and the stenographers in ensuring that the recording machines are working before trials can be recorded as failure to have the trial record often results in miscarriage of justice. In that matter, the conviction and sentence were set aside for reason that the record was incomplete and could not be reconstructed.

[7] In view of miscarriage of justice and time wastage that went into this matter, only for it to be submitted to the High Court for setting aside, I can only echo what Henney J said in *S v Nyumbeka*⁴ to wit,

“The functions of a magistrate go beyond merely adjudicating matters in court. Magistrates have a duty in terms of the Constitution and the law to make sure that the orders of their court and matters relating thereto are implemented and given effect to. They should not sit idly and take it for granted that the administrative component and the clerk of the court at the various magistrates' offices will implement and give effect to their orders. They should supervise and make sure that effect be given to it. Their judicial authority is founded in terms of s 165 of the Constitution of the Republic of South Africa Act 108 of 1996... [They must ensure] that no incomplete or incorrect record is sent on review, because this would lead to delays, as has happened in this matter. Should this happen, the magistrate would be clearly negligent in executing his/her duties and functions imposed by the law, especially s 303 of the Criminal Procedure Act 51 of 1977.”

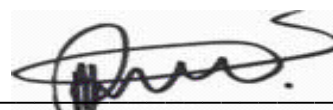
[8] The court is therefore of the view that the proceedings were not in accordance with justice for lack of the proper trial record to be reviewed.

[9] In the result, the following order is made:

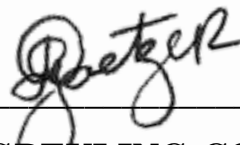
³ 2021 (1) SACR 336 (FB)

⁴ 2012 (2) SACR 367 (WCC) at para 20-21

[9.1] The conviction and sentence are set aside.



T.V. RATSHIBVUMO
JUDGE OF THE HIGH COURT



D GREYLING-COETZER
ACTING JUDGE OF THE HIGH COURT

Date: 02 December 2021