

IN THE HIGH COURT

(BISHO)

CASE NO: CA&R 1/97

In the matter between:

MABELANDILE ZIBI

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and

THE STATE

JUDGMENT

EX TEMPORE:

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EBRAHIM AJ:

The Appellant has approached this Court against his conviction in the court a quo of contravening Section 11(1) of Act 23 of 1963 in that he failed to pay maintenance. The charge is that during the period December 1994 to 30 September 1996 and at or near Magistrate's Court in Peddie the accused did wrongfully and unlawfully fail to make periodical payments of sums of money, to wit, R300,00 per month towards the maintenance of his child and thereby contravened the said section of the Act and is now in arrears with R7 800,00.

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I do not propose for the purposes of this judgment to detail all the problems that have arisen in this matter. Suffice to say that it is clear from the record of proceedings that there are a number of problems. The main problems that

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have arisen in the hearing in the court a quo is that it is not at all clear whether the Appellant had the necessary means financially of meeting the periodically payments that he had been ordered to pay. In addition, from the record it is clear that there is no indication as to when the original order was made. There is no record either as to what the precise amount is that he is in arrear with. In this regard it is clear, however, that he is in arrear by his own admission in terms of the plea that he tendered and the questioning that took place in terms of Section 112(1)(b) of Act 51 of 1977. Be that as it may, the conviction cannot stand in view of the number of errors that have arisen in respect of the evidence tendered to the Court and the lacunae in this evidence.

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In my view, since the conviction and sentence cannot stand it should be set aside. In my view, further it requires that the matter be remitted to the magistrate's court for an inquiry to be held in terms of the Maintenance Act. I should mention here that Mr Langeveld has informed the Court that the records in this matter have been destroyed. Be that as it may, the matter needs to be dealt with in terms of the maintenance that the Appellant admits that he had been ordered to pay. Further, whatever other evidence is available could be presented to the Court a

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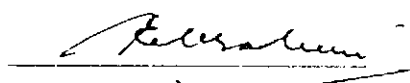
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quo so that a proper inquiry may be held. In the circumstances the conviction and sentence, as I have indicated, should not stand and should be set aside.

I accordingly hold that it be set aside and the matter remitted to the magistrate's court for the proper inquiry to be held in terms of the Maintenance Act 23 of 1963.

PICKARD JP: I agree. An order is made in those terms.

EBRAHIM AJ: At this stage I would like to convey to Mr McCune that the Court is very appreciative of the amount of work that he has done in this matter. On the face of it, it may appear to be a matter which might not have required the depths of research that he has done but this Court is certainly appreciative of that. I trust at the same time that he will not take my comment amiss if I indicate to him that perhaps with the passage of time brevity may also be an aspect to be considered.


EBRAHIM AJ

I agree



PICKARD JP

DELIVERED ON: 2 MAY 1997