

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSVAAL PROVINCIAL DIVISION)

NOT REPORTABLE

A507/2005

In the matter between :

DATE: 25/4/2005

STATE

v

REGINAH MYAKAYAKA

Magistrate Standerton
Magistrates' Case No A720/04
High Court Reference No 57

REVIEW JUDGMENT

BASSON, J

The accused was convicted by the magistrate, Standerton on a charge of contravening section 170(2) of Act 51 of 1977, contempt of court and sentenced to a fine of R250,00 or 25 days' imprisonment. This matter came before me on automatic review after a report by the Office of the Director of Public Prosecutions for which they are thanked.

The accused was summonsed to appear in the Standerton court on 30 September 2004 on a charge of contravening section 3(1) of the Maintenance Act, 90 of 1998, that is, failing to pay maintenance.

On 30 September 2004 the accused failed to attend court and a warrant was issued to be held over until 25 November 2004. On 30 September 2004 no reason was noted why the accused did not attend court.

The magistrate held a summary enquiry in terms of section 170(2) of Act 51 of 1977 into the failure of the accused to attend court after a warrant had been issued. The magistrate was not wrong to hold such enquiry although in his response he stated the mistaken belief that such enquiry should not have been held as the warrant was held over. The magistrate must still establish why the accused failed to appear and, unless the court is satisfied that that the accused's failure to appear was not due to fault on his or her part, convict the accused.

In casu, the accused did not simply ignore the summons but made arrangements with the prosecutor. Further it appears that the accused's failure to attend was not due to

fault on her part. In the event, the accused was wrongly convicted of a contravention of section 170(2) of Act 51 of 1977.

In the event, the conviction and sentence are set aside on review.

D A BASSON
JUDGE OF THE HIGH COURT

I agree:

R D CLAASSEN
JUDGE OF THE HIGH COURT