

**IN THE HIGH COURT OF SOUTH AFRICA
(WITWATERSRAND LOCAL DIVISION)**

**High Court Ref No: 496/06
Magistrate's Serial No: 159/06
Review Case No: 68/01146/2006**

7 September 2006

**Magistrate
JOHANNESBURG**

THE STATE v MAZIBUKO, THEMBA

REVIEW JUDGMENT

MOSHIDI, J:

[1] This matter was placed before me on automatic review.

[2] Mr Themba Mazibuko (the accused) was charged with the offence of theft out of a motor vehicle in the Orlando District Court. It was alleged that the offence was committed near Diepkloof on 30 May 2006. The accused pleaded guilty to the charge and was duly convicted as charged. The sentence imposed was a fine of R1 500,00 (One Thousand Five Hundred Rand) or 60 (sixty) days' imprisonment, as well as a further 6 (six) months' imprisonment which was wholly suspended for 5 (five) years on condition that

the accused was not convicted of theft or attempted theft committed during the period of suspension.

[3] The accused pleaded guilty and in mitigation of sentence apologised for his conduct and revealed that he was tempted by the devil to steal the radio from the complainant's motor vehicle which radio was never recovered. The accused also offered to pay a fine. Both the conviction and the sentence imposed, in my view, were in accordance with justice and ought to be confirmed. However, this would not put the matter to rest. Pursuant to the imposition of the sentence, and as at the time the trial magistrate referred this matter for review, the accused had not paid the fine in order to stay out of prison. When the trial magistrate received the J4 (the Review Case Covering Sheet) for signature, he noticed that some unidentified administrative clerk had incorrectly deleted the applicable portions thereof and retained the portion which indicated that the accused was released, which was factually incorrect. The accused was still in custody. The trial magistrate asked this Court, on review, to remedy the patent administrative error. The J4 should properly indicate that the fine was in fact not paid.

[4] If this matter was not ordinarily subject to automatic review, and the request to correct the administrative error was the only concern, I would have declined such request from the trial magistrate. Indeed, requests such as in the present matter can conveniently be corrected administratively by simply completing a fresh J4 and deleting the correct inapplicable portions thereof in

order to reflect the true and factual position – see in this regard **S v Mans en ‘n Ander** 1990 (1) SASV 75 (T), at page 79 where the following was said:

“Bowendien meen ek dat dit ongewens is – en moontlik selfs oordadig – om die tydwende weg van hersiening te volg om ‘n eenvoudige en voor-die-handliggende klerklike onagsaamheid te kan regstel.”

I have discussed, with Adv J R Davidowitz of the Director of Public Prosecutions, this matter and several other similar matters emanating from the magistrate’s court. He was readily in full agreement with the above approach. The magistrates should in future make more use of this approach in similar cases. I may add that Mr Davidowitz was also in agreement that the conviction and sentence were otherwise in order.

[5] In the result, I make the following order:

1. The conviction and sentence imposed are hereby confirmed;
2. The J4 is hereby amended by deleting the words “**Accused released**” and retaining only the words “**Fine not paid**”.

D S S MOSHIDI
JUDGE OF THE HIGH COURT

I agree:

M W MSIMEKI
ACTING JUDGE OF THE HIGH COURT