

NOT REPORTABLE

IN THE HIGH COURT OF SOUTH AFRICA

(TRANSCAAL PROVINCIAL DIVISION)

Date: 11 June 2007

High Court Ref No.: 491

Magistrate's Serial No.: 28/07

Case No.: M772/06

MAGISTRATE

NSIKAZI (held at MATSULU)

THE STATE V ELVIS FRANS PHIRI

REVIEW JUDGMENT

SOUTHWOOD J

On 22 February 2007 the accused was found guilty of possession of stolen property in the Kabokweni magistrates' court after pleading guilty to the charge of housebreaking with intent to steal and theft. On the same day the accused was sentenced to three years imprisonment.

In his answer to the review judge's request for reasons for conviction and sentence and his query regarding the procedure adopted, the presiding magistrate stated that instead of finding the accused guilty he should have entered a plea of not guilty in terms of section 113 of Act 51 of 1977 ('the Act').

The Director of Public Prosecutions agrees that the presiding magistrate erred as the

questioning did not establish all the requirements for a competent verdict. The Director of Public Prosecutions suggests that the conviction and sentence be set aside and the matter remitted to the court *a quo* to act in terms of section 113(1) of the Act.

The Director of Public Prosecutions accepted that the presiding magistrate did inform the accused of the competent verdict but this does not appear from the record. When the matter proceeds the presiding magistrate must ensure that the accused is properly informed of competent verdicts. These include receiving stolen property and convictions under sections 36 and 37 of the General Law Amendment, 62 of 1955.

The following order is made:

- I The conviction and sentence are set aside;
- II The matter is referred back to the court *a quo* to act in terms of section 113(1) of Act 51 of 1977 in the light of this judgment.

B.R. SOUTHWOOD
JUDGE OF THE HIGH COURT

I agree

J.R. MURPHY
JUDGE OF THE HIGH COURT