

A795/2012

IN NORTH GAUTENG HIGH COURT, PRETORIA

(REPUBLIC OF SOUTH AFRICA)

8  
DATE: 5 November 2012

5/11/2012 Retoriz

HIGH COURT REF NO: 1000  
CASE NO: H40/2012  
MAGISTRATE'S SERIAL NO: H40/2012

IN THE MATTER BETWEEN:

THE STATE

VERSUS

DENNIS MATHEBULA

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REVIEW JUDGMENT

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[1] This matter was placed before the court as a special review in terms of section 304(4) of Act 51 of 1977.

[2] The accused appeared in the Regional Court, Pretoria on a count of housebreaking with intent to steal and theft on 18 September 2012.

[3] At the start of the proceedings the magistrate enquired whether the accused understood the interpreter. The accused indicated that his home language is Shangaan, but that he understands the Sotho of the interpreter. Mr Sibiya, his legal representative confirmed that he was fluent in Sotho. The trial commenced. Mr Monyane, the court interpreter, indicated that he was not fluent in Shangaan.

[4] Whilst the accused was giving evidence Mr Sibiya for the accused indicated that:

*"We placed it on record that the accused understand partly there and there and he can follow to some extent in Sepedi not that he fully understands Sepedi Your Worship."*

[5] The magistrate found:

*"Because at this stage it would appear to the court that there are so many misunderstandings by the accused in respect of the evidence that was*

*presented yesterday that he could be prejudice if the court finds that he is lying now or pretending not to have understood."*

[6] In **S v Manzini 2007(2) SACR 107 WLD** at p 109 the Court held:

*"The role of an interpreter is a vital and crucial element of a fair trial."*

and

*"It is therefore very crucial that the interpreter not only understands the language, but also be so conversant with the language of the witness that he is able to convey to the court, and for the record, the meaning and the context as if they were conveyed by the witness."*

[7] It is clear that to ensure a fair trial in terms of s 35(3) of the Constitution that that the interpreter and the accused have to fully understand one another and that the interpreter must be conversant with the accused's language.

[8] A further aspect the court has to take into consideration is that it appears from the record, that the accused and his legal representative had a breakdown in communication. This resulted in the accused not giving Mr Sibiya proper instructions. The fact that the accused did not understand the interpreter or his legal representative is material. The rights of the accused were impacted on in terms of s 35(3)(k) of the Constitution, which provides:

*"Every accused person has a right to a fair trial, which includes the right-*

*(k) to be tried in a language that the accused person understands or, if that is not practicable , to have the proceedings interpreted in that language"*

[9] I agree with the Deputy Director of Public Prosecutions that the proceedings should be set aside, as the accused will be severely prejudiced if the matter is finalized without the accused being able to understand all the proceedings.

[10] It is left to the State to decide whether to prosecute the accused *de novo* before another magistrate.

[11] It is ordered:

**The proceedings in the Regional Court, Pretoria are set aside.**

  
C PRETORIUS

**JUDGE OF THE HIGH COURT**

**I AGREE:**

  
R G TOLMAY

**JUDGE OF THE HIGH COURT**