

A389/14

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	DATE DELIVERED: 29/5/2014

Case Number: Review 280/14

3/6/2014

THE STATE

v

GIDEON ZOBO MATHIBA

REVIEW JUDGMENT

BAM J

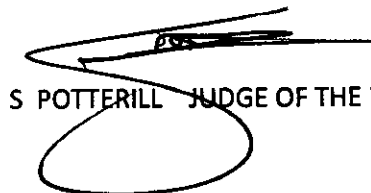
1. On 6 March 2014 the accused was convicted in the Magistrate's Court, Hammanskraal, district Wonderboom, on a charge of theft, and sentenced to 3 years imprisonment which was conditionally suspended for 5 years. One of the conditions was that the accused had to compensate the plaintiff in the amount of R20 000.
2. The matter was sent on review and received by the Registrar on 28 March 2014. Prinsloo J, who dealt with the review, directed an enquiry to the magistrate and enquired whether theft was in fact proved. The magistrate duly responded and conceded that theft was indeed not proved. The matter was then forwarded to the Director of Public Prosecutions, ("DPP"), for comment. The representatives of the DPP, Advocates Mahomed and Van Jaarsveld, are in agreement that theft had not been proved. It was however suggested by the two advocates that the matter should be remitted to the magistrate with a direction that a plea of not guilty in terms of section 113 of the Criminal Procedure Act should be entered.
3. From the record of the proceedings it appeared that the accused was not represented. The accused pleaded guilty to the charge of theft. A statement in terms of the provisions of section 122(2) of the Criminal Procedure Act ("CPA"), which statement was apparently prepared and drafted by a lawyer of Legal Aid on request by the public prosecutor, was then read out by the interpreter. Although the magistrate enquired from the accused whether he had made the statement, which the accused confirmed, and whether he understood the contents, which he did not confirm before the statement was read out, this procedure is not recommended. It would be advisable that the magistrate should, from the bench, after having recorded the plea of guilty, proceed to question the accused in terms of the provisions of section 112(1)(b) of the CPA.

4. However, from the statement it appears that the accused entered into an agreement with the complainant to sell him a stand. The complainant handed an amount of R20 000,00 to the accused but the accused was unable to comply and the accused agreed to return the money. The parties then agreed that the accused will repay the complainant monthly in the amount of R1000. The statement also included an admission by the accused that he knew that his actions were "*unlawful and not justifiable*".
5. Although the accused, upon being asked by the magistrate, confirmed the contents of the statement, I am in agreement with the Magistrate and the State Advocates that the statement lacks admission of all the elements of the crime of theft. I also agree with the State Advocates' contention that "*it appears that the matter resorts under the breach of a contractual obligation*".
6. It follows that the accused's conviction and sentence should be set aside. It is clear that the Magistrate should have entered a plea of not guilty in terms of the provisions of section 113 of the CPA. However, in view of the fact that since the accused's first appearance on 23 October 2013 the matter was remanded for a further 6 occasions before the trial commenced. In view of all the circumstances I therefore do not deem it in the interests of justice that the matter should be referred to the Magistrate to further attend to the matter.
7. Accordingly I make the following order:

The conviction and sentence are set aside.



A J BAM JUDGE OF THE HIGH COURT
28 May 2014



S POTTERILL JUDGE OF THE HIGH COURT