

A 579/14


IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT)

HIGH COURT REFERENCE NO: 171/14

MAGISTRATE'S SERIAL NO: 1/14

MAGISTRATE'S CASE NO: B242/11

8/8/2014

DELETE WHICHEVER IS NOT APPLICABLE	
(1)	REPORTABLE: YES / NO .
(2)	OF INTEREST TO OTHER JUDGES: YES / NO .
(3)	REVISED.
2014-08-06	
DATE	SIGNATURE

JUDGE'S CHAMBERS
HIGH COURT
GAUTENG DIVISION
PRIVATE BAG 442
PRETORIA
0001

MAGISTRATES COURT: MIDDELBURG
PRIVATE BAG X 1804
MIDDELBURG
1050

In the matter between:

THE STATE

and

VICTOR MASOMBUKA and EPHRIAM MALEBE

CORAM: HUGHES J *et* MOLEFE J

SPECIAL REVIEW JUDGEMENT

HUGHES J

1. This is a special review brought in terms of section 22 of the Superior Courts Act 10 of 2013 ("the Act").
2. This case was in the process of being dealt with in the Belfast Regional Court. During the proceedings the accused that had been refused bail initially brought a second bail application on the basis that new evidence had come to light. This bail application was conducted before the District Court, Magistrate Mr D Green and as he Magistrate he was gravely ill and hospitalised the application was heard before Relief Magistrate, Mr P Sibuyi.
3. Mr Sibuyi states that the new evidence that was adduced came from the Investigating Officer. This was in the form of an affidavit that stated accused 1

was terminally ill and as a result of his illness the correctional facility the accused was incarcerated in could not cater for his medical needs. With this information on hand the Investigating Officer and the Prosecutor did not oppose the accused being released on bail. The Relief District Magistrate granted bail on 24 May 2013.

4. The entry made on 24 May 2013 is set out below;

"On; 24/05/13

PO; P Sibuyi

PP; S Manzini

Int; S Tshabalala

Def; Ms Motshabi

Mechanical recording;

Court to State: Miss your case.

State: Yes.

Court: Did you discuss it, how much can they afford?

Def: Yes, R3000 for both. Family will pay.

Court: for both of them?

Def: Yes.

Court: Bail fixed at R3000 for each. Case postponed till 06/06/2013 in the Regional Court.

Written on minutes:

PP does not object to bail.

Bail fixed at R3000.00 for each. Both in custody.

Matter already in the R/C roll for 06/06/2013.

P. SIBUYI 24/5/13"

5. The record of the proceedings also has two entries of importance being that of 6 June 2013 and 10 June 2013, which I set out below:

"ON; 6/6/13

APPEARANCES AS BEFORE

Mr Malepe informs the court acc 1 got bial in the district court and is now in hospital. Court raises concern of how it happened that a bail application was brought in that court when matter is in this court. W/A issued. Court refuses to hold warrant over and gives instructions to prosecutor for I/O to use discretion in executing the warrant.

Remanded 15/8/13 for further evidence. Acc 2 in custody, no bail. Bail of acc 1 prov cancelled and forfeited, final cancel and forf 20/06/13. Witness Corneila dy Toit warned 08:30. W/A for witness Vusi Maseko issued.

Mr Botha 6/6/13

Postea: acc 2 in fact also on bail according to attorney. "

and

"On; 10/6/13

PO; J COMBRINCK

PP; M MDHLULI

INTER; S TSHABALALA

Acc 1 before court on his own initiative. He is obviously limping (court saw him limping on arrival). Mr Makobe requests that he be allowed to sit and indicates that his client is in discomfort and was treated at the Belfast Provincial Hospital on 6/6/13, whilst being wheelchair bound. The prosecutor after perusal of the relevant records, does not dispute this fact.

In terms of section 67(2) Act 51/77 the bail of the accused (no 1) is reinstated. It would appear as if the bail application was heard in the district court in terms of section 50(b)(c) of act 51/77.

Remanded 15/8/13, Belfast, further trial, bail of acc 1 is extended and he is warned for 08:30 and to remain in attendance.

J COMBRINCK

R/C MAGISTRATE

10/6/13"

6. These special review proceedings have been initiated by Regional Court Magistrate M. F. T. Botha, of Belfast. The Magistrate Botha seeks this special review in terms of S22 (1) (c) of the Act.

7. Section 22(1)(c) states;

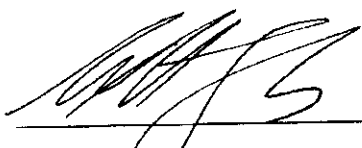
"22 Grounds for review of proceedings of Magistrates' Court.

(1) The grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are-

- (a) absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; and..."

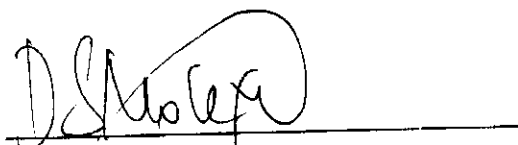
8. This process of review in terms of S22 (1) is subject to and must be read with Rule 53 of the Uniform Rules of Court. Thus the procedure that must be followed is embedded within Rule 53.
9. The procedure that must be followed is by way of motion court proceedings. A notice of motion must be delivered to the presiding officer and to all affected parties, that is, the Prosecution, Investigating Officer and the accused in this instant.
10. The strange phenomena in this case is that the presiding Magistrate, gives no notification to the affected parties, that being the accused, the prosecution and the investigating officer. This is evident from the record of some sort before me.
11. Rule 53 makes provision for not only notification by way of notice of motion to all affected parties and the presiding officer, but also calls upon those affected to:
 - 11.1 show cause why the lower court's decision or proceedings should not be reviewed, corrected or set aside; and
 - 11.2 despatch, within 15 days after receipt of the notice of motion, to the Registrar of the High Court, the record of such proceedings sought to be corrected or set aside, with such reasons as he/she is by law required or want to give, and to notify the applicant that he has done so.

12. Yet another disturbing feature of this review is that the applicant, Magistrate Botha, was not the presiding officer who was involved in the proceedings when the alleged gross irregularity was committed. The presiding officer was in fact the District Magistrate, M. P. Sibuyi. Ironically, Sibuyi as an affected party was not afforded the opportunity, as was the accused, the prosecutor and the investigating officer to respond in terms of Rule 53
13. Besides the procedural aspect that has not been adhered to there is also the issue of whether a gross irregularity has in fact occurred. From the record and the notes made above, I am of the view that there is no evidence to indicate that a gross irregularity occurred. The record I have been provided with is not conclusive and there is no confirmation on record from the prosecutor or the investigating officer that in fact there was no affidavit filed with the District Magistrate setting out the new evidence as alleged by Magistrate Botha. In the absence of the above it is yet a further indicator that there is no reason to conclude that a gross irregularity occurred.
14. In light of the above it appears to me that the matter has been erroneously submitted on review.



W. Hughes Judge of the High Court

I concur and it is so ordered:

A handwritten signature in black ink, appearing to read 'D. Molefe', is written over a horizontal line.

D. Molefe Judge of the High Court

IN THE ORDINARY COURSE OF EVENTS