



IN THE NORTH WEST HIGH COURT, MAFIKENG

CA 31/10

In the matter between:

KEABETSWE PIET MOOKETSI

Appellant

and

THE STATE

Respondent

CRIMINAL APPEAL

HENDRICKS J; KGOELE J

DATE OF HEARING : 22 FEBRUARY 2013

DATE OF JUDGMENT : 01 MARCH 2013

COUNSEL FOR THE APPELLANT : MR NKOSI

COUNSEL FOR THE RESPONDENT : ADV RASAKANYA

JUDGMENT

HENDRICKS J

[A] Introduction:-

[1] This matter came before us on appeal with the leave of the court ***a quo*** (Regional Court, Taung) against the conviction and sentence. The matter was finalized on 18 November 2004. On 31 May 2010 leave was granted to this Court against conviction and sentence.

[2] It is apparent from the judgment in the application for leave to appeal in the court ***a quo*** that the presiding Magistrate states that it will be difficult to reconstruct the record. This is however not stated under oath. Neither was there any evidence placed before us in the form of affidavits indicating that it is impossible to reconstruct the record of proceedings on the best secondary evidence available. It cannot follow automatically on the say-so of the presiding Magistrate.

See:- **S v Joubert** 1991 (1) SA 119 (A).

[3] It is therefore necessary to order the reconstruction on the best secondary evidence available, if it is indeed available.

[B] Order:-

[4] Consequently, the following order is made:-

[i] The matter is remitted to the clerk of the Regional Court, Taung for reconstruction of the record on the best secondary evidence available.

- [ii] The notes, if any, of the presiding officer must be obtained in an attempt to reconstruct the record.
- [iii] The assistance of the interpreter, stenographer as well as the legal representative who represented the Appellant during the trial in the Regional Court must be illicit.
- [iv] Any notes of any court official that can be of assistance must be obtained.
- [v] Affidavits must be obtained from an official who can say that the record has been mislaid; or cannot be reconstructed.
- [vi] The reconstructed record must be submitted to the Appellant and his legal representative to obtain from them their consent that the record has been correctly reconstructed.
- [vii] The Appellant must make an affidavit as to the correctness or otherwise of the reconstructed record.

R D HENDRICKS
JUDGE OF THE HIGH COURT

I agree.

A M KGOELE
JUDGE OF THE HIGH COURT

ATTORNEYS FOR THE APPELLANT:- MR NKOSI