



OFFICE OF THE CHIEF JUSTICE  
REPUBLIC OF SOUTH AFRICA

**IN THE HIGH COURT OF SOUTH AFRICA  
NORTH WEST HIGH COURT, MAHIKENG**

**HIGH COURT REF: 03/2017**

**In the matter between:-**

**STEPHEN RUPIYA**

**VS**

**THE STATE**

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**REVIEW JUDGMENT**

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**KGOELE J.**

[1] The matter came before me on review. The accused was charged with contravention of section 117 (1) of Act 111 of 1998 (**Escaping from lawful custody**) and in count 2, Assault with intent to do grievous bodily harm. He

pleaded guilty to both charges and he was convicted by the Presiding Officer solely on his plea of guilty.

[2] A query was sent to the Presiding Officer wherein I raised some concerns regarding the manner in which the Presiding Officer conducted the section 112 (1) (b) of the Criminal Procedure Act 51 of 1977 (**CPA**). The said query was couched as follows :

*“1. The duties of judicial officer in terms of Section 112(1)(b) of Act 51 of 1977 are two-fold:-*

- (a) To question the accused with reference to the alleged facts of the case in order to ascertain whether he admits the allegations of the charge; and*
- (b) To satisfy himself that the accused “is guilty of the offence to which he has pleaded guilty”.*

**See: Heugh; Dingle; Mlindeshweni; Mtyatela 1988 (1) SACR 83 (E)**

**S v Gwenya 1995 (2) SACR 522 (E)**

*1.1 Is the line of questioning adopted by the Presiding Officer sufficient enough to elicit information on which the Presiding Officer can form a basis and be satisfied that the accused is guilty of the offence to which he has pleaded?*

*1.2 In particular, the presiding officer is requested to indicate which portion(s) of the inquiry in terms of Section 112(1)(b) which the Court held reveals that:-*

- (a) The accused was in lawful custody when he allegedly escaped;*
- (b) The accused understood and appreciated what constitute lawful arrest;*
- (c) The accused unequivocally admitted that he has the intention to cause the complainant in the second Count grievous bodily harm.*

[3] The response from the Presiding Officer was received by the Registrar of this Court on the 27<sup>th</sup> of November 2017 and was couched as follows:-

- “(a) Accused was in custody as he escaped from the passage that forms part of the holding cell that led to the courtroom.*
- (b) Accused appreciated that he was in lawful custody as he told the court the nature of the offence of which he was incarcerated at the time of the escape.*
- (c) The Presiding Officer believes the accused unequivocally admitted that he had the intent to cause the complainant in the second count grievous bodily harm by pouring a substance with a burning sensation into his eyes to immobilize him to facilitate the escape.”*

[4] During the Section 112 (1) (b) enquiring the following transpired:-

*“Is it correct that on the 6<sup>th</sup> of October 2017 you were detained at Zeerust Court holding cells?”*

*ACCUSED: Yes.*

*COURT: Please speak up.*

*ACCUSED: Yes sir.*

*COURT: I see. Were you in lawful custody? Were you in custody, had you been held in the cells?*

*ACCUSED: Ja I was inside the cells.*

*COURT: Was your detention lawful?*

*ACCUESED: Yes*

COURT: *I see. Did you escape from lawful custody?*

ACCUSED: *No I escaped from the passage here.*

COURT: *Adjacent to the cells?*

ACCUSED: *Sorry?*

COURT: *The said passage is next to the holding cells.*

ACCUSED: *Exactly*

COURT: *During your escape was anything damaged?*

ACCUSED: *No.*

COURT: *Was anybody hurt to facilitate your escape?*

ACCUSED: *No.*

COURT: *Speak up please?*

ACCUSED: *You said that anybody was?*

COURT: *Injured in order to make it possible for you to escape.*

ACCUSED: *No.*

COURT: *Is it unlawful for one to escape from the lawful custody? Did you act unlawful by escaping from lawful custody?*

ACCUSED: *No*

COURT: *You acted within the law by escaping from lawful custody.*

ACCUSED: *No it is not unlawful.*

COURT: *It is not lawful.*

ACCUSED: *Yes.*

COURT: *Did you have the right to escape?*

ACCUSED: *No*

## J U D G M E N T

*On count 1 the court is satisfied that the accused is GUILTY as he has pleaded.*

COURT: *On the said date and time and place you met one Knox Mahotwe.*

ACCUSED: *Sorry?*

COURT: *On the said date did you meet the complainant on count 2, the one where it is alleged that you poured an unknown subject unto his eyes.*

ACCUSED: *Yes.*

COURT: *Did you in fact pour a substance that caused a burning sensation to his eyes?*

ACCUSED: *Ja I pour him Aromat. I pour him Aromat.*

COURT: *It was Aromat.*

ACCUSED: *Yes.*

COURT: *I see. Did you know or intend to cause him injuries by pouring such Aromat onto his eyes?*

ACCUSED: *No it was not intent, but the situation that I saw my wife when she was here, she had a stroke so that thing made me mad. It was not my intention to do that.*

COURT: *Did you act unlawfully by pouring this Aromat unto his eyes? Was it within the law, in order for one to pour another with such a substance unto his eyes?*

ACCUSED: *No it is not unlawful.*

COURT: *It is not?*

ACCUSED: *It is not unlawful, I was not supposed to do that, it is not lawful.*

COURT: *You are not supposed to do that.*

ACCUSED: *Ja.*

COURT: *Did you know that by pouring this Aromat onto his eyes it could injure him by causing sensation unto his eyes?*

ACCUSED: *That is right.*

COURT: *You knew that.*

ACCUSED: *Yes.*

COURT: *Did he give you the right or cause to pour such substance unto his eyes?*

[5] It is trite law from the provisions of Section 112 (1) (b) that the inquiry to be held by Presiding Officers remains a factual one. It has also been generally accepted that the best way of establishing these facts is to allow the accused to explain fully and in his own words what transpired during the commission of the offence.

[6] As far as the first count of escaping from lawful custody is concerned, it is quite clear that:-

- the Presiding Officer's questions consist of merely repeating, in a form of leading questions, allegations contained in the charge-sheet;
- The accused is a lay person. He was not legally represented and the Presiding Officer used too much of a legal jargon to such an extent that there is a strong likelihood that the accused might not have understood the nature and import of the words "**was your detention lawful**" and "did you escape from **lawful custody**".

[7] The concern raised above is demonstrated by the following answers from the accused;

COURT: *Was your detention lawful?*

ACCUSED: *Yes*

COURT: *I see, did you escape from lawful custody?*

ACCUSED: *No, I escaped from the passage here.”*

[8] In the case of **S v Moseamedi [1999] JOL 5049 (T)** the following was held:-

“On review, accused who had been convicted of escaping from lawful custody had pleaded guilty and in response to questioning in terms of Criminal Procedure Act 51 of 1977, Section 112 had replied that he had escaped from lawful custody. Held, magistrate had not ascertained that accused had been in lawful custody, therefore accused could not be said to have admitted all elements of the offence”. **[quote from Mini Summary]**

[9] As far as the charge of assault common is concerned, in addition to the problem of using legal jargon in this count as well, the Presiding Officer did ask the accused a question that could have revealed whether the accused intended to cause grievous bodily harm to the complainant. The problem is that the accused answered this question by saying “**No**”. The Presiding Officer thereafter asked the accused if he knew that by pouring a person with Aromat onto his eyes could injure that person by causing sensation in his eyes, which question the accused answered in the affirmative. With due respect to the Presiding Officer, the accused with this latter answer did not reveal that he intended causing the complainant grievous bodily harm. The Presiding Officer just simply assumed that this is the case on behalf of the accused. This is also depicted by the answer to my query which is couched as follows:-

*“The Presiding Officer believes the accused unequivocally admitted that he had the intention to cause the complainant grievous bodily harm by pouring a substance with a burning sensation into his eyes to immobilize him to facilitate the escape” [My Emphasis added]*

[10] Firstly, the Presiding Officer is not entitled to impose his own understanding, interpretation and belief on the answers given by the accused, especially when dealing with words that deal with the conclusions of the law. Secondly, contrary to what the Presiding Officer says in his reply to my query, this is clearly not an unequivocal admission by the accused that he intended to **“cause the complainant grievous bodily harm”**

[11] The questions asked by the Presiding Officer in both counts creates a serious doubt as to whether the answers given were sufficient enough to enable the Presiding Officer to form an informed opinion that the accused correctly admitted to all the allegations in both charges/counts, and further, that he is guilty of the two counts he pleaded guilty to. The questioning in my view thus fell short of the standard required in the application of section 112 (1) (b) of the CPA. I therefore come to the conclusion that the Presiding Officer has failed to apply the section properly to enable this Court to confirm the conviction of the accused.

[12] Consequently the following Order is made:

12.1 The conviction and sentence of the accused in both charges/counts are hereby set aside.



12.2. The matter is referred back to the Magistrate Court, Zeerust to start *de novo* before a Presiding Officer different from the one that presided in this matter, Magistrate Maseng.

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**A.M. KGOELE**  
**JUDGE OF THE HIGH COURT**

I agree

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**N. GUTTA**  
**JUDGE OF THE HIGH COURT**

**DATED: 15 DECEMBER 2017**