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IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST PROVINCIAL DIVISION, MAHIKENG

High Court Ref No: HC16/2025

Magistrate Serial No: A425/2024

Magistrate's Case No: A425/2024

Reportable: YES/**NO**

Circulate to Judges: YES/**NO**

Circulate to Magistrates: **YES**/NO

Circulate to Regional Magistrates: YES/**NO**

In the matter between:

THE STATE

And

BATHANDA MRABULE

ACCUSED

DATE RECEIVED: 28 MARCH 2025

DATE HANDED DOWN: 10 APRIL 2025

CORAM: REDDY J & MASIKE AJ

ORDER

- (i) The proceedings in the matter between the State and Bathanda Mrambule (the accused), in the Magistrate's Court for the District of Rustenburg Held at Tlhabane before Acting Magistrate JR Wallis under case number A425/2024 are set aside.
- (ii) The fine imposed by the court, if paid, is to be refunded to the accused forthwith.
- (iii) The matter is referred to the office of the National Prosecuting Authority, North West Province to decide whether to commence proceedings against the accused *de novo* before any presiding officer other than Acting Magistrate JR Wallis.

REVIEW JUDGMENT

MASIKE AJ

INTRODUCTION

- [1] This matter serves before this Court as a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 (the CPA) at the behest of Magistrate Mr. TT Gongxeka (Magistrate Gongxeka).
- [2] Magistrate Gongxeka contends that the proceedings before Acting Magistrate Wallis fall to be set aside primarily on two scores. First, whether the charge that

the accused had pleaded to complied with section 84 of the CPA and second, Acting Magistrate Wallis failed to apply the provisions of s112(1)(b) of the CPA correctly.

FACTUAL MATRIX

[3] On 29 September 2024, the accused was arrested on allegation of “drunken driving”. He was issued with a notice in terms of s72 of the CPA. This required of the accused to appear before the at Magistrate Tlhabane on 21 November 2024. On the latter date, the accused rights as embodied in s 35(3)(f) of the Constitution were explained. He elected to proceed without any legal representation. On 24 January 2025, the accused reaffirmed his decision not to secure legal representation but proceed by way of him conducting his own case.

[4] Relevant to Magistrate’s Gongxeka first concern is the substance of, the charge that was put to the accused. To this end, the record reads:

“PROSECUTOR: Sir the charge against you is one of driving under the influence of liquor or drugs. In that the accused is guilty of the offence of contravening the provisions of Section 65(1)(a) and (b) read with Section 1, 65(3), 65(4), 65(8), 65(9), 69(1) [indistinct 10;07] 89 of the National Road Traffic Act 93 of 1996 that is driving under the influence of liquor or drugs. In that upon or about 28 September 2024, at All Freedom Park Road the public road in the District of Rustenburg accused did wrongfully drive a motor vehicle to whit Toyota Corolla with registration number K[...] whilst he was under the influence of intoxicating liquor or a drug leaving a narcotic effect.”

[5] The accused indicated he understood the charge and pleaded guilty to same.

[6] Section 65(1) of the National Road Traffic Act 93 of 1996 (the NRTA) reads as follows:

“65. Driving while under the influence of intoxicating liquor or drug having narcotic effect, or with excessive amount of alcohol in blood or breath

(1) No person shall on a public road—

(a) drive a vehicle; or

(b) occupy the driver’s seat of a motor vehicle the engine of which is running,

while under the influence of intoxicating liquor or a drug having a narcotic effect.”

[7] Magistrate Gongxeka has raised the concern that the prosecutor, when putting the charge to the accused, referred to both subsections of section 65(1) of the NRTA. When in fact he should have only put the charge as read in terms of the provisions of section 65(1)(a) and (b) of the NRTA. The contention of Magistrate Gongxeka is that the charge was not put with sufficient particularity. This may have resulted in ambiguity to the unrepresented accused as the accused should not have been left in doubt as to which charge the State proffered against him. **The charge as was put to the accused referred to the accused of having driven a vehicle whilst under the influence of liquor or a drug having a narcotic effect as well as occupying the driver’s seat of a motor vehicle, the engine of which was running while under the influence of intoxicating liquor or a drug having a narcotic effect.**

[8] The record dispels this concern. Whilst the various sections of the annexure to the charge may have been read, the prosecutor read the specificity that the accused was to plead to “ **In that upon or about 28 September 2024, at All Freedom Park Road the public road in the District of Rustenburg accused did wrongfully drive a motor vehicle to whit Toyota Corolla with registration number K[...] whilst he was under the influence of intoxicating liquor or a drug leaving a narcotic effect**” (my emphasis)

- [9] What stands out, is that there can be no confusion as to the charge that the accused was expected to plead to. This then need not detain this, Court. The same holds true for other procedural deficiencies that may find application as raised by Magistrate Gongxeka.
- [10] The second concern Magistrate Gongexa has raised relates to the questioning of the accused by Acting Magistrate Wallis in terms of section 112(1)(b) of the CPA.
- [11] To this end, record in respect of the application of section 112(1)(b) of the CPA by Acting Magistrate Wallis provides:

"COURT: Sir considering that you have pleaded guilty to the charge the court will question you in terms of Section 112(1)(b) of the Criminal Procedure Act to determine the following whether you admit all the elements of this offence, whether you admit to the allegations contained in the charge sheet. Whether you pleaded guilty out of your own volition, whether or not you want to tender a defence against this charge and whether any defence is indeed available to you. If after questioning and if the court is satisfied that you are so guilty of the offence as charged you may be convicted without a need for the state to adduce any further evidence in this matter. If the court is not so, so satisfied that you are guilty the court must enter a plea of not guilty and the matter will proceed against you in its normal course. Do you understand this explanation?

ACCUSED: I understand Your Worship.

COURT: Sir your plea are you pleading guilty out of your own volition and freely?

ACCUSED: Freely and voluntarily Your Worship.

COURT: Does anyone influence to plead guilty?

ACCUSED: No.

COURT: Now please explain then to the court in your own words as to what happened and giving rise to the fact that you are now pleading guilty today?

ACCUSED: I admit that it was September month. Then it was a, a Saturday that day. I was from, we were driving from the stadium and then we were watching a soccer whereby Chiefs was playing Pirates. Then on my way home I [indistinct 10:12] entered a certain place to buy Savanna and then as I was heading home I

met with the police and then I was then apprehended and then from there I was taken to the police station. From there to the hospital for the blood to be withdrawn. Then from there they took us back to Tlhabane and then we were incarcerated.

COURT: Now Sir you indicated that you brought Savanna's on your way home. Did you actually drink this Savanna `a?

ACCUSED: Yes, I did drink it and then I did not finish it and then at the time when I was stopped it was almost a quarter inside the bottle.

COURT: It was only, it was only one bottle?

ACCUSED: I did drink only that bottle Your Worship.

COURT: And where were you at the stage when you were drinking this bottle, where, where did the drinking take place was this in the vehicle or where was it?

ACCUSED: In, inside the tavern I did drink and then I went with the bottle into the car. Then as I was driving but the bottle was just next to me and [indistinct 10:15] inside that bottle I was stopped.

COURT: So before you entered the car you already were drinking at the tavern and then you took [intervene].

ACCUSED: Yes. Yes, I was drinking that Savanna and then since I was hungry I just said okay let me just stop and then go into the car with this Savanna so that I can at least [indistinct 10:15].

COURT: Now Sir did you know that the Savanna would have an impact on you if you driving a motor vehicle?

ACCUSED: Yes.

COURT: What do you. What do you know of that please explain to the court?

ACCUSED: It is not right to drive under the influence of liquor because you might [indistinct 10:16] mistakes of maybe [indistinct 10:16] against the other car or person.

COURT: What vehicle were you driving at this stage?

ACCUSED: Corolla K[...].

COURT: Where were you driving from Sir you say it was from the stadium on your way home?

ACCUSED: Yes, I was from FNB Stadium driving home.

COURT: Do you know whether or not it is right or wrong to drive whilst you have consumed a beverage such as the one that you consumed?

ACCUSED: Yes.

COURT: And despite the fact that you know this you still proceeded to drink and drove regardless?

ACCUSED: Yes, Your Worship I did drive even I knew but the thing which encouraged me to drive is because I could see that I am, I am near my place. So from where I was driving from it was not a distance [indistinct 10:18].

COURT: How far was it?

ACCUSED: [Indistinct 10:18] on the other street so I would drive up to where there is a turn. And then when I take that turn I would get into the other street which is my street.

COURT: Do you accept that what you did was wrong Sir?

ACCUSED: [Indistinct 10:19]

COURT: Does the state accept the plea?

PROSECUTOR: That is so Your Worship."

ANALYSIS

[12] The application of section 112(1)(b) of the CPA is dispositive of this review. Section 112(1)(b) of the CPA reads:

"(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea-

(b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, or if requested thereto by the prosecutor, question the accused with reference to the alleged facts of the case in order to ascertain whether he or she admits the

allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.”

- [13] In *S v Nyanga* 2004 (1) SACR 198 (C) at para 7 Moosa J said the following in respect of section 112(1)(b) of the CPA:

“Section 112(1)(b) questioning has a twofold purpose; firstly, to establish the factual basis for the plea of guilty and, secondly, to establish the legal basis for such plea. In the first place of the enquiry, the admissions made may not be added to by any other means such as a process of inferential reasoning...The second phase of the enquiry amounts essentially to a conclusion of law based on admissions. From the admissions the court must conclude whether the legal requirements for the commission of the offence has been met. They are the questions of unlawfulness, actus reus and mens rea. These are conclusions of law. If the court is satisfied that the admissions adequately cover all these elements of the offence, the court is entitled to convict the accused on the charge to which he pleaded guilty”.

- [14] Section 112(1)(b) of the CPA obliges a presiding officer to question the accused with reference to the alleged facts of the case to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty. If satisfied that the accused is guilty of the offence which the accused person pleaded guilty to, convict the accused person on his or her guilty plea of the offence and impose any competent sentence.

- [15] Acting Magistrate Wallis in his reply to the query by Magistrate Gongxeka on the issue of questioning in terms of section 112(1)(b) replied as follows:

“...having perused the contents of the transcribed records as quoted by yourself, it does not so appear that the accused admitted an impairment on his driving capability even in the circumstances where he consumed

Savanna, which was the critical factor in establishing liability for the offence he stood accused of. The questioning on this aspect should have been dealt with more clearly and sufficiently.” (my emphasis)

[16] Whilst the accused may have admitted (i) that the intake of Savanna would have an impact on him driving a motor vehicle, (ii) that it is not right to drive under the influence of liquor because you might make mistakes of maybe against the other car or person, and, (ii) that it was not wrong to drive whilst you have consumed a beverage such as the one that he had. This did not constitute an unequivocal admission by the accused that his ability to drive his motor vehicle was impaired by the intake of alcohol. This speaks to an essential element of the charge. The elements of driving under the influence, are that the accused: (i) drove; (ii) a vehicle; (iii) on a public road (iv); while under the influence of alcohol or drugs; and (v) *mens rea*. (See: *S v Engelbrecht* 2001 (2) SACR 38 at 46i-j).

[17] The accused was to have admitted that the skill and judgment normally required of a driver in the manipulation of a vehicle were diminished or impaired because of the consumption of intoxicating liquor for a proper application of section 112(1)(b) of the CPA. The driving skill rests on physical abilities such as muscular control which can be impaired by alcohol by diminishing driving skills whilst judgment, rests on mental faculties. (See: *Michael v S* (A111/2024) [2024] ZAWCHC 134 (6 August 2024).

[18] In *R v Magula* 1939 EDL 207 it was held that:

“A man will for the present purposes be under the influence of liquor if, by reason of the drink he has consumed, his muscular control has been impaired, and this notwithstanding that his mental activities are in order and alert or even intensified by the exhilaration resulting from drink. For if his muscular action is impaired, powers of manipulating a motor car are then it is a reasonable inference that his diminished.”

[19] In *S v Binta* 1993 (2) SACR 553 (C) 558, it was held that should the driver's muscle control and power of judgment be affected, then he is “**under the influence**”. Pertinently in *S v Lombard*, 1967 (4) SA 538 (A) 549 the court distinguished instances where a driver consumed alcohol and whose faculties are impaired,

“the impairment of his skill and judgment is such that he will not be able to do what is required of him as a driver as efficiently as if he were sober. It seems to be quite clear from *R v Spicer* that even a slight degree of impairment or diminution of faculties due to the consumption of liquor will suffice for a conviction under the relative legislation” See also *Michael v S* (A111/2024) [2024] ZAWCHC 134 (6 August 2024) at a para 13-15)

[20] For the reasons set out above, the proceedings were not in accordance with justice, and as such the conviction and sentence must be set aside.

[21] Finally, the accused was sentenced to a fine of R 3000-00 or 90 days imprisonment of which R 1500-00 or 45 days is suspended for a period of 3 years on condition the accused is not convicted of contravening Section 65(1) read with Section 65(1), 65(3), 65(4), 65(8), 65(9), 69(1), 73 and 89 of the NRTA, which contravention occurs during the period of suspension. The fine imposed was deferred and the accused was to pay the R1500-00 on or before 18 February 2025.

[22] In the event that the accused has paid the fine, the fine is to be refunded to the accused forthwith.

ORDER:

[23] Resultantly, the following order is made: -

- (i) The proceedings in the matter between the State and Bathanda Mrambule (the accused), in the Magistrate’s Court for the District of Rustenburg Held

at Tlhabane before Acting Magistrate JR Wallis under case number A425/2024 are set aside;

- (ii) The fine imposed by the court, if paid, is to be refunded to the accused forthwith;
- (iii) The matter is referred back to the office of the National Prosecuting Authority to decide whether to commence proceedings against the accused *de novo* before any presiding officer other than Acting Magistrate JR Wallis.

T MASIKE
ACTING JUDGE OF THE HIGH COURT SOUTH AFRICA,
NORTH WEST DIVISION, MAHIKENG

I agree

A REDDY
JUDGE OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION MAHIKENG