

IN THE HIGH COURT OF LESOTHO

In the matter between

LIMPHO MOKOTJO

1ST APPLICANT

AKHENTE PONOANE

2ST APPLICANT

RETHABILE LESOLE

3RD APPLICANT

Vs

DIRECTOR OF PUBLIC PROSECUTIONS

1ST RESPONDENT

THE LEARNED MAGISTRATE

(HIS WORSHIP MR. HLABANYANE

2ND RESPONDENT

Review case No. 20/2013

CR. NO.576/2010

Review Order No. 1/2014

In the district of Maseru

Order on Review

Delivered by the Honourable Mr. Justice E.F.M. Makara

On the 27 January, 2014

[1] This case came before me on review sought for by the 1st Applicant. The intervention asked for has its genesis in the proceedings which were conducted before the Magistrate Court for the district of Maseru. The grounds advanced for the review are in a nutshell that the Trial Magistrate committed procedural irregularities and that as a result thereof justice was undermined. It should be recorded here that the applicant was represented at the trial.

[2] It has in the review application been changed that the Magistrate had committed procedural irregularities in that;

- In recording the proceedings the learned Magistrate had assumed the role of an interpreter and yet he is not, a sworn interpreter in that whilst the case was being conducted in Sesotho he had recorded the deliberations in the English language and, therefore, rendering the accuracy and the authenticity of the record doubtful;
- Not bothered to establish if the Judge's Rules had been followed by the police at the time of his arrest together with his co-accused;
- Charged without having the 1st Applicant secured a directive from the DPP and yet he is a Public Servant;
- Failed to properly record the evidence;
- Failed to order a separation of trials and yet the 3rd accused had pleaded guilty to the ownership and possession of the dagga and;
- Erred in convicting him despite **the absence of evidence in support of the charge.**

[3] The charges preferred against the accused including the Applicant reads:

1. That the said accused are charged with C/S 43 (2) (b) of Drugs of Abuse Act of 2008 – read with subsection (3). In that upon or about the 27th March 2010 and at or near Semphuroaneng Nazareth in Maseru district, the said accused did each, both or all of them wrongfully and unlawfully acquire or have in their possession a prohibited drug knowing that such drug is not to be used in Lesotho or elsewhere. To Wit: Two (2) bags of dagga.
2. That the said accused are charged with C/S 10 (2) of Road Traffic Act No.8 of 1981. In that upon or about the 27th March, 2010 and at or near Semphuroaneng, Nazareth in Maseru district, the said accused did each, both or all of them wrongfully, unlawfully and intentionally drive a motor vehicle bearing false registration number plates. To Wit: a White Golf car registration No CRD 676 FS.

[4] All the accused pleaded innocence to the charges.

[5] At the conclusion of the trial, the Applicant who was charged as A2 and the 3rd Accused (A3) were held guilty of Count 1 while A1 was found guilty of both counts.

[6] The Court determines *ex-facie* the record of the proceedings and the grounds advanced for the review would be more appropriate for an appeal in that they also address the merits of the case.

[7] It is, consequently, directed that the applicant should file an appeal and subsequently have it set down for hearing soonest. In the meanwhile, the *status quo* should remain in place.

**E.F.M. MAKARA
JUDGE**

For Applicant : Adv. M.A. Molise
For Crown : Law Office

Copy: The Director of Public Prosecutions
The Chief Magistrates
The Magistrate – Maseru
All Magistrates
All Public Prosecutors
The Director of Prisons
O/C Police –Maseru