

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG

PETITION NO: 41/1099/17

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| (1) | <u>REPORTABLE: YES / NO</u> |
| (2) | <u>OF INTEREST TO OTHER JUDGES:</u> <u>YES/NO</u> |
| (3) | <u>REVISED.</u> |
| | |
| DATE | |
| SIGNATURE | |

In the matter between:

GUMBO AFTERMATH MDUDUZI

And

THE STATE

MABESELE J and KARAM AJ

JUDGMENT

MABESELE, J:

[1] The accused, a Zimbabwean national, pleaded guilty in the Johannesburg magistrate's court to three counts of fraud. He was subsequently convicted and sentenced to a period of five (5) years' imprisonment on all counts, taken together, in terms of Section 276(1)(i). He was declared not unfit to possess a firearm in terms of section 103(1) of the Act¹

[2] Aggrieved by the decision of the magistrate, refusing him leave to appeal his sentence the accused approached this court by way of petition, for leave to appeal.

[3] Having perused the record of the proceedings we are of the view that the accused was not placed in a position to clearly understand the charges preferred against him so that he was able to properly exercise his right with regard to a plea. It is also clear from the record that the accused was not made aware that he is expected to plead to each charge and not all charges at the same time. What transpired at the trial is the following:

[4] First, the record of the proceedings shows that the prosecutor informed the court that the services of the interpreter were not necessary whereas there was no indication from the accused or his legal representative that the accused was able to follow the proceedings in English. The magistrate did not enquire from the accused whether he was able to follow the proceedings in English.

[5] Second, the prosecutor did not put all the charges to the accused for him to plead. After the prosecutor had put the first charge to the accused and before the

¹ 60 of 2000

accused answered, the prosecutor intervened and informed the court that he and the legal representative of the accused had agreed that it was not necessary for the two remaining charges to be put to the accused because his legal representative had already explained them to him. After the legal representative of the accused had confirmed to the magistrate that he explained the charges to the accused, the magistrate asked the accused whether he understood all three charges. After the accused had confirmed to the magistrate that he understood the charges the magistrate asked the accused to plead to all the charges² and the accused pleaded guilty to all the charges. Thereafter the statement of the accused which was prepared in terms of section 112(2) of the Criminal Procedure Act³ was read into the record of the proceedings in respect of all the three counts.

[6] Section 35(3) of the Constitution⁴ provides that every accused person has a right to a fair trial, which includes the right-

- to be informed of the charge with sufficient detail to answer it⁵
- to be tried in a language that the accused person understands or, if that is not practicable, to have the proceedings interpreted in that language.

[7] The proceedings were conducted in English and not interpreted to the accused, a Zimbabwean national. No effort was made to enquire from the accused whether he understood English. The accused was asked to plead to all the charges at the same time. Other charges were not put formally to the accused by the prosecutor.

² The accused was asked to plead to all the charges at the same time

³ Act, 1996

⁴ Act, 1996

⁵ Section 105 of Act, (51 of 1977) provides that the charge shall be put to the accused by the prosecutor before the trial of the accused is commenced and the accused shall be required by the court to plead thereto

For these reasons we are of the view that leave to appeal against convictions be granted, in the interests of justice. It follows that leave to appeal against sentence should also be granted.

[8] In the result, the following order is made:

Leave to appeal against convictions and sentence is granted.

**M. M MABESELE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**

I agree

**W.A. KARAM
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG**