

IN THE SUPREME COURT OF SOUTH AFRICA

(APPELLATE DIVISION)

In the matter between :

THE STATE ..... Appellant

and

DONALD JAMES WOODS ..... Respondent

Coram: Jansen, Trollip, Muller, Diemont et  
Joubert JJA.

Heard: 18 November 1977.

Delivered: 25 November 1977.

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J U D G M E N T.

JANSEN JA :-

Pursuant to a subpoena under sec. 83 (1) of  
Act 56 of 1955 (as amended) the respondent, an editor of  
a newspaper / ...

a newspaper, appeared before a magistrate at B Court, East London, for examination by the public prosecutor. He submitted to being sworn, but when asked to disclose the identity of a witness to an alleged offence, he refused to do so, claiming "just excuse" for such refusal. The magistrate came to the conclusion that the circumstances advanced by the respondent did not in law constitute a just excuse and accordingly sentenced the respondent to 6 months imprisonment in terms of section 212 (1) of the Act.

On appeal to the Eastern Cape Division counsel for the respondent inter alia challenged the validity of the proceedings before the magistrate. The contention was that as the magistrate who presided at the examination and sentenced the respondent was not the magistrate who had caused the subpoena to be issued, the proceedings were null and void. The court (KANNEMEYER and STEWART JJ) held this to be so

and / ...

and ordered that "the ruling by the magistrate that there was no just excuse justifying the appellant's refusal to disclose the identity of his informant and the sentence imposed as a result of such refusal" be set aside.

By leave of the Court a quo the State now appeals against this order, on the following ground :-

"The Court erred in law to hold that section 83 (1) of Act 56 of 1955 requires that the examination must be held by the magistrate who issued the subpoena."

There can be little doubt that according to its plain, ordinary, grammatical meaning sec. 83 (1) of Act 56 of 1955 (as amended) envisages that when a magistrate requires the attendance of a person in terms of the section, the person should appear before him, i.e. not before another magistrate. The

section / ...

section reads :-

"83 (1). A magistrate may, at any time upon the request of the public prosecutor, require the attendance before him for examination by the public prosecutor of any person who is likely to give material evidence as to any alleged offence, whether or not it be known or suspected who the person is by whom the offence has been committed."

The plain, ordinary, grammatical meaning is particularly conspicuous when the wording of the section is contrasted with the wording of its predecessor, sec. 96 (1) of Act 31 of 1917, and of its successor, sec. 205 (1) of Act 51 of 1977 :-

"96 (1). Every magistrate may, at any time upon the request of the local public prosecutor, require the attendance of any person who is likely to give material

evidence / ...

evidence as to any supposed offence, although it is not known or suspected who is the person by whom the offence has been committed.

205 (1). A magistrate may, upon the request of a public prosecutor, require the attendance before him or any other magistrate, for examination by the public prosecutor, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed."

The apparently deliberate insertion of the words "before him" in 1955 and of the words "or any other magistrate" in 1977, is completely consistent with the reading of sec. 83 (1) adopted above.

Before us the State advanced in the main

~~three contentions against that meaning.~~ First,

that the word "magistrate" is used in sec. 83 (1)

in an abstract sense, designating the office of

magistrate / ...

magistrate and that, consequently, the words "before him" refer to any magistrate appointed as such for the district in terms of sec. 9 (1) of Act 32 of 1944. Second, that as Act 56 of 1955 was a consolidating statute, it did not intend to alter the existing law under sec. 96 (1) of Act 31 of 1917, which did not require the examination to be held before the same magistrate (R. v. Heard, 1937 CPD 401, at 405 and 409). Third, that once a person is before a magistrate he is subject to the provisions of sec. 212 (1) of the Act and it is irrelevant how he came to be there.

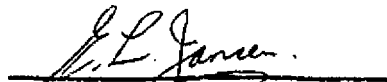
Broadly similar contentions were advanced in the Court a quo and they were dismissed by the court for, in my view, sufficient and convincing reasons (in a judgment as yet only reported in summary form: 1977 (2) SA 219). As to the first and second contention, it will suffice now to say that the first does violence to the plain meaning of section 83 (1),

and/ ...

and the second does not give due weight to the apparently deliberate insertion in section 83 (1) of the words "before him". The third contention, it is true, is supported by the judgment in State v. Poggrund (1961 (3) SA 868 (T), 870 H). I am, however, in full agreement with the Court a quo that the following aspect was not then considered. Sec. 212 (1) applies to a person required to give evidence "in any criminal proceedings". An examination under sec. 83 (1) is not such a proceeding. It is only by virtue of a deeming provision in sec. 83 (2) that certain other sections of Act 56 of 1955 (including sec. 212 (1) ) are applied to such an examination: "The provisions of sections .... 212 .. ... shall apply in respect of an examination under this section as if it were criminal proceedings and the magistrate a court ..... " Once it is established that an examination was not authorized by sec. 83 (1), e.g. it having being conducted before

a magistrate other than the magistrate who had issued the subpoena, it follows that sec. 212 cannot be invoked. The Court a quo was fully justified in rejecting any recourse by the State in this regard to the provisions of sec. 212.

The order of the Court a quo is upheld and the appeal is dismissed with costs.

  
E.L. JANSEN,  
JUDGE OF APPEAL.

TROLLIP, JA.)  
MULLER, JA.)      Concur.  
DIEMONT, JA.)  
JOUBERT, JA.)



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RECORD  
18-11-1977

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In the matter between:

THE STATE

Appellant

and

DONALD JAMES WOODS

Respondent

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RESPONDENT'S HEADS OF ARGUMENT

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TO: THE REGISTRAR  
APPEAL COURT  
BLOEMFONTEIN

AND  
TO: THE ATTORNEY-GENERAL  
GRAHAMSTOWN

Heads of Argument filed by: THE BAX PARTNERSHIP  
Attorneys for Respondent  
Trust Bank Centre  
North Street  
EAST LONDON

ISRAEL & SACKSTEIN  
Attorneys for Respondent  
E P Buildings  
Maitland Street  
BLOEMFONTEIN

Respondent's Counsel : MR H.W.LEVY, S.C.

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THE STATE vs. D.J. WOODS

RESPONDENT'S HEADS OF ARGUMENT

Respondent asks that the Appeal be dismissed with costs, for the following reasons:-

1. On 19th December 1975, the Respondent was brought before a Magistrate, the purported intention being that he should be examined in terms of Section 83 of Act 56 of 1955.
2. (a) The first document (page 1 of the Record) is incorrectly described as a "Charge Sheet" and contains incorrect descriptions of what transpired on 19th December 1975 and of the Respondent. It refers to the "Examination" as a "Trial" and describes the Respondent as an "Accused".  
(See also p. 6).
- (b) (The Magistrate in his "Reasons" describes the Respondent as "The Accused").  
(P. 30, 1. 8).