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Posted to the web on: 25 September 2007
 Judge frees man failed by legal aid
 Ernest Mabuza

Legal Affairs Correspondent



THE Legal Aid Board came under fire in a Supreme Court of Appeal judgment for not discharging its duties in the case of a man whose appeal process began in 2003.

The man was arraigned in the Venda High Court on a charge of rape, alternatively unlawful sexual intercourse with a girl under the age of 16 .

He pleaded and the prosecutor accepted the plea of guilty to the alternative charge.

The court then convicted and sentenced him to 15 years' imprisonment in December 2002 even though the Sexual Offences Act prescribed a six-year maximum sentence for the offence.

When the appeal court heard the matter on September 11, it set aside the high court's sentence and imposed a sentence of three years' imprisonment.

As the man had been in prison for five years already, it also ordered that he be released from prison immediately.

“The delays in prosecuting the appeal were mainly caused by the attorneys appointed by the Legal Aid Board for him, as he could not afford legal representatives of his choice. He was granted leave on 5 December 2002 and the first step towards the prosecution of the appeal was taken in January 2003,” appeal court Judge Christopher Jafta said.

His attorney instructed an advocate to prepare a notice of appeal. Nothing happened afterwards until May 2004 when the advocate returned the brief without the notice because he had a dispute about fees with the board.

The attorney then briefed another advocate in July 2004, who failed to produce heads of argument for a period of a year.

The advocate's explanation for the failure was that he was unable to carry out instructions due to other work-related commitments.

Jafta said that by providing legal representation in matters such as these, the Legal Aid Board was discharging one of the most important constitutional obligations imposed on the state by the constitution, the right to a fair trial. “This obligation is necessitated by the fact that the majority of people in this country are — as the law reports inform us — poor, and they cannot afford to pay for legal representation.

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“Poor service by lawyers appointed by the board, which leads to infringement of accused persons’ rights, does not constitute a proper discharge of that obligation,” Jafta said.

The judge said the delays had resulted in the appellant serving an unjustifiably excessive time in prison.

“In view of the fact that none of these delays were attributed to the appellant and that the state did not oppose the application, we granted condonation asked for.”

Jafta said the high court seemed to have been under the impression that there were facts before it that established that the appellant was guilty of rape, and it sentenced him accordingly.

He said the court impermissibly relied on the summary of substantial facts for its findings.

“The summary does not constitute evidence nor admitted facts,” the judge said.

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