

Can an alcohol test be taken after two hours?

In the case of *Betrum Ernest Van der Bank v State* (2021) ZAWCHC 262, the High Court, held that the “blood specimen must be taken anytime within two hours; after the alleged contravention.”

On 4 May 2019 at 01h15, Mr Betrum Ernest van der Bank was apprehended by the traffic police. The evidence at the Magistrate Court by the traffic officer was that Mr van der Bank stopped his vehicle without being signalled.

In addition to the above, the traffic officer testified that he arrested Mr van der Bank at 01h30. He took Mr van der Bank for a breathalyzer test, but it was unsuccessful. He then decided to take him to a hospital for blood tests.

A doctor only drew blood at 03h29. There was no record of what happened between 01h15 and 01h30.

Mr van der Bank applied for his discharge in terms of Section 174 of the Criminal Procedure Act 51 of 1977. His grounds for such an application were that the two-hour period lapsed as per Section 65 of the National Road Traffic Act and only started running at the time of the commission.

The Magistrate refused the application.

The Magistrate found him guilty and held that the two-hour period as per Section 65(2)(a) and Section 65(3) started once a person had been arrested and not once a person had started driving the car.

Mr van der Bank appealed and contended that the two-hour period commences immediately once the engine stops running.

The State argued that the two-hour period commences from the time of the arrest.

The High Court held that “the two hours should be calculated from the time the driver ceases to drive or when the engine stops running to when the medical practitioner inserts a needle and draws blood.”

The appeal was upheld, and the decision of the Magistrate Court was set aside.

Clients are advised to consume alcohol responsibly and to, as far as possible, arrange a designated driver who should not be consuming alcohol. Should you ever find yourself in a situation as in the above matter, it is advised to immediately contact your attorney for advice.

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