

SOUTH AFRICA / JUDGMENT

Nelson v Potgieter and Others

(2504/2020)

[2023] ZAECKMKHC 81 (8 August 2023)

[2023] ZAECKMKHC 81

COURT

Eastern Cape High Court, Makhanda

BEFORE

JGA Laing, GNZ Mjali

CASE / FILE NUMBER

2504/2020

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FLYNOTES:

CRIMINAL – Legal representation – Choice of representative – Expressed a preference for services of Mr Bence but did not oppose continuing with Mr Greeff – Right to choose a legal practitioner is not an absolute right – Did not contend Mr Greeff's expertise was inadequate or that his involvement resulted in infringement of applicant's right to a fair trial – Inadequacy of explanation, weak prospects of success and prejudice caused to respondents outweigh condoning unreasonable delay – Application dismissed – Superior Courts Act 10 of 2013, s 22(1).

IN

THE HIGH COURT OF SOUTH AFRICA
(EASTERN
CAPE DIVISION, MAKHANDA)
CASE NO. 2504/2020

In

the matter between: LIAAN
NELSON
Applicant
and
JOHAN
POTGIETER
First respondent
THE
DIRECTOR OF PUBLIC PROSECUTIONS,
EASTERN
CAPE
Second respondent
TIM
VAN
STADEN
Third respondent

JUDGMENT

LAING J

- [1] This is an application for the review and setting aside of the trial proceedings that took place during the period of 14 March until 16 August 2013 in the Port Elizabeth Regional Court. The applicant also seeks condonation for the late institution of the present application proceedings.

APPLICANT'S CASE

- [2] The applicant, together with the third respondent, had been charged with murder and other offences. He had been represented by a Mr Greeff initially, who had been appointed by the Legal Aid Board. The

applicant had informed Mr Greeff, prior to the commencement of trial on 14 March 2013, that he wished to terminate his mandate and to instruct a Mr Bence, who was an attorney in private practice. Consequently, Mr Greeff conveyed this to the magistrate, who has been cited in this application as the first respondent. The applicant personally confirmed that this was his wish.

- [3] The first respondent, however, refused to postpone the trial to give effect to the applicant's wish. The applicant alleges that the first respondent compelled him to continue with Mr Greeff. The first

respondent interrupted the applicant constantly and allegedly refused to listen to his explanation for why he wanted Mr Bence to represent him. It is the applicant's contention that he was placed under extreme pressure by the first respondent to proceed. He attaches an extract from the transcription of the record to demonstrate this, asserting that he was denied his constitutional right to a fair trial, which included the right to be represented by a legal practitioner of his own choice.

[4] Ultimately, the first respondent convicted the applicant on 17 July 2013 on the charge of murder and sentenced him, on 16 August 2013, to life imprisonment. A period of five years' imprisonment was

imposed for the remaining charges, to run concurrently. The applicant's subsequent application for leave to appeal was unsuccessful. His petition to the High Court was dismissed on 8 August 2014.

[5] The applicant avers that he was unhappy, for many years, about the way the proceedings had been conducted. He says, moreover, that he was unaware that he could do anything about it. It is his assertion

that he has only recently been able to raise the funds for an attorney to investigate the matter further, which has led to the

present application.

RESPONDENTS' CASE

[6] The first respondent has indicated that he intends to abide the decision of the court. He has, nonetheless, filed an answering affidavit to place the relevant facts before the court to assist in the adjudication of the matter. He notes that the matter had been on the trial roll since 5 September 2011, originally with Mr Bence as the applicant's attorney. The Legal Aid Board appointed Mr Greeff on 24 April 2012. The latter continued as the applicant's attorney until the commencement of trial on 14 March 2013. At no stage did the applicant ever express dissatisfaction with Mr Greeff's appointment.

[7] After the applicant's conviction but prior to sentencing proceedings, Mr Greeff requested leave to withdraw because he was exiting the legal profession. Mr Bence replaced him on 16 August 2013 and addressed the first respondent on 25 September 2013 in relation to sentence, which was handed down on the same date. At no stage,

avers the first respondent, did Mr Bence ever raise the issue of an unfair trial or the denial of the applicant's right to be represented by a legal practitioner of his own choice, whether during the sentencing proceedings, application for leave to appeal, or as part of the applicant's petition.

[8] The first respondent admits that he refused to postpone the trial. He denies, however, that he forced the applicant to continue with Mr Greeff or interrupted him or refused to listen to him or placed him under extreme pressure. The extract from the transcription of the record speaks for itself. He refused the postponement by reason of the circumstances at the time, including the long delay before commencing trial, the congested court roll, and the fact that the defence was ready to proceed.

- [9] The second respondent also filed an answering affidavit. As a point in limine, the second respondent contends that the applicant has failed to make out a case for condonation of his late filing of the present application. The applicant has failed to explain the delay from the date upon which he was convicted and sentenced until the date of these proceedings, instituted on 18 November 2020. He has failed to explain why Mr Bence never raised the alleged infringement

of the applicant's rights during the application for leave to appeal or as part of the petition. He has failed to explain what steps were taken to raise the necessary funds.

- [10] Importantly, asserts the second respondent, the applicant has also failed to explain how he was prejudiced by the alleged violation of his rights. He has never stated that Mr Greeff conducted the trial unprofessionally. He has, moreover, not dealt with the potential prejudice to the second respondent if the trial is ordered to commence afresh, some 13 years after the offences were committed.
- [11] The second respondent, in relation to the merits, argues that the extract from the transcription of the record does not support the applicant's contentions.

ISSUES

TO BE DECIDED

- [12] At the outset, it is necessary to consider the second respondent's point in limine. This pertains, primarily, to whether condonation for the late filing of the application ought to be granted.
- [13] If there is no basis to the above, then the court will be required to consider the merits of the matter. This will entail a determination of whether the first respondent denied the applicant his right to be represented by a legal practitioner of his own choice, and whether this, in turn, infringed his constitutional right to a fair trial.

LEGAL FRAMEWORK

- [14] The point in limine concerns the late filing of a review application within the context of criminal proceedings in the Magistrates' Court. It will be helpful to consider the applicable principles before discussing their relevance in the present matter.

Review of decision

- [15] As a starting point, the decision that forms the subject of this application is one taken by the first respondent in his capacity as a judicial officer in the performance of his judicial functions. This does not amount to administrative action. The procedures and remedies available under the Promotion of Administrative Justice Act 3 of 2000 (PAJA) are unavailable.
- [1]

[16] Instead, the application seems to fall within the ambit of section 22(1) of the Superior Courts Act 10 of 2013, which provides as follows:

‘(1) The grounds upon which the proceedings of any Magistrates’ Court may be brought under review before a court of a Division are–

- (a) ...
- (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; and
- (d) ...’

[17] There has been some debate about the extent to which section 173 of the Constitution enhances or extends the review powers of the High Court.[2] For immediate purposes, the court is satisfied that either or both grounds stipulated in terms of section 22(1)(b) and (c), above, inform the present application.

[18] Regarding the meaning of ‘gross irregularity’, counsel for the first and second respondents referred to *Magistrate Pangarker v Botha*,[3] where Mhlantla JA expressed approval for the definition given by Van Loggerenberg:

‘an irregular act or omission by the presiding judicial officer... in respect of the proceedings of so gross a nature that it was calculated to prejudice the aggrieved litigant, on proof of which the court would set aside such proceedings unless it was satisfied that the litigant had in fact not suffered any prejudice.’[4]

[19] The above meaning will be considered further in due course. At this stage, however, it is necessary to restate the principles applicable to the delay in the launching of the present application.

Delay in institution of review proceedings

[20] It is trite that an applicant who fails to challenge without delay the decision or proceedings of the Magistrates’ Court or a tribunal or board or official performing judicial, quasi-judicial, or administrative functions, may well be barred from doing so.[5] *Hoexter and Penfold* explain that there are two main reasons that underpin the so-called ‘delay rule’: to curb potential

prejudice that may arise from the delay; and to promote the value of finality and certainty in relation to public decision-making.[6]

[21] The Supreme Court of Appeal dealt with a review application that fell under the common law, not PAJA, in *Associated Institutions Pension Fund v Van Zyl*,[7] where Brand JA held as follows:

‘...Since PAJA only came into operation on 30 November 2000 the limitation of 180 days in s 7(1) does not apply to these proceedings. The validity of the defence of unreasonable delay must therefore be considered with reference to common-law principles. It is a longstanding rule that courts have the power, as part of their inherent jurisdiction to regulate their own proceedings, to refuse a review application if the aggrieved party had been guilty of unreasonable delay in initiating the proceedings. The effect is that, in a sense, delay would “validate” the invalid administrative action... The *raison d’être* of the rule is said to be twofold. First, the failure to bring a review within a reasonable time may cause prejudice to the respondent. Secondly, there is a public interest element in the finality of administrative decisions and the exercise of administrative functions...

...The scope and content of the rule has been the subject of investigation in two decisions of this Court. They are the *Wolgroei* case[8] and *Setsoke v Busidi* (Edms) Bpk v Voorsitter, *Nasionale Vervoerkommissie, en ‘n Ander* 1986 (2) SA 57 (A). As appears from these two cases and the numerous decisions in which they have been followed, application of the rule requires consideration of two questions:

- (a) Was there an unreasonable delay?
- (b) If so, should the delay in all the circumstances be condoned?

(See *Wolgroei* at 39C-D.)

...The reasonableness or unreasonableness of a delay is entirely dependent on the facts and circumstances of any particular case... The investigation into the reasonableness of the delay has nothing to do with the Court’s discretion. It is an investigation into the facts of the matter in order to determine whether, in all the circumstances of that case, the delay was reasonable. Though this question does imply a value judgment it is not to be equated with the judicial discretion involved in the next question, if it arises, namely, whether a delay which has been found to be unreasonable, should be condoned...’[9]

[22] The dual enquiry, described above, has become an established practice for matters of this nature.[10] As to what is reasonable entails a factual enquiry upon which a value judgment is made considering all the relevant circumstances,

including any explanation given for the delay.[11] The court exercises a judicial discretion in deciding whether an unreasonable delay should be condoned. In doing so, the court must consider the relevant circumstances, including any explanation, but also the two reasons for the ‘delay rule’ that were mentioned earlier, viz. the prejudice caused to the other party, and the public interest in achieving finality and certainty regarding the making of administrative decisions and the performance of administrative functions.[12]

[23] The above principles must be applied to the matter at hand, as set out in the paragraphs that follow.

DISCUSSION

[24] The discussion follows the dual enquiry described earlier and is demarcated accordingly.

Whether there was an unreasonable delay

[25] It is not in dispute that the incident that gave rise to the present application occurred on 14 March 2013. This was the date upon which the first respondent refused to postpone the matter, despite the applicant's having expressed his wish to instruct Mr Bence. The application was issued on 18 November 2020, more than seven-and-a-half years later. The only explanation given by the applicant is that he had been unaware that he was able to do anything about his situation and had only recently been able to raise the necessary funds to instruct an attorney to advise him.

[26] The explanation given is sparse, to say the least. The applicant does not say whether he and Mr Greeff discussed the incident of 14 March 2013, either immediately afterwards or during the trial itself, prior to the applicant's conviction and Mr Greeff's withdrawal on 17 July 2013. He also fails to indicate whether he and Mr Bence discussed the incident after the latter accepted the instruction and appeared for the applicant from 16 August 2013 until sentence was handed down on 25 September 2013. The incident seems never to have been considered, whether during the trial, sentencing proceedings, the application for leave to appeal, or as part of the petition, which was dismissed on 8 August 2014. It appears only to have emerged as an issue and received attention after the applicant instructed his present attorney, Mr Daubermann. The applicant does not say exactly when this occurred.

[27] Regarding the availability of funds, the applicant does not explain his financial position at all. He does not say that he had entirely lacked funds or that he had been unable to obtain adequate assistance from family or friends or acquaintances or elsewhere. The court is completely in the dark about the impact that his financial position had on his circumstances and precisely what happened between the date upon which the applicant's petition was dismissed and the date upon which the present application was launched.

[28] Quite simply, the applicant has failed to offer any compelling explanation for the delay of seven-and-a-half years. It is difficult for the court not to find that the delay was unreasonable.

Whether the unreasonable delay should be condoned

[29] Turning to the remainder of the enquiry, the court must exercise a judicial discretion in relation to the possible granting of condonation. It must consider all the relevant circumstances, which will inevitably entail some investigation into the applicant's prospects of success.

Prospects of success

[30] The investigation begins with the incident itself. The extract from the transcription of the record reveals that, at the commencement of proceedings on 14 March 2013, Mr Greeff informed the first respondent that the applicant wished to terminate his mandate. He added that the applicant was 'ongelukkig' (unhappy) but was unable to

give a precise reason to Mr Greeff for why this was so. Mr Greeff confirmed that the applicant had never had any problem with him since he first appeared for the applicant on 24 April 2012.

[31] The first respondent then addressed the applicant in person, asking him to clarify his position. The applicant said that he was 'ontevrede' (dissatisfied) about one or two things. Upon the first respondent's further enquiry, the applicant stated that he was not actually dissatisfied with Mr Greeff and that he had no problem with the latter's conducting the matter on his behalf. He went on to state as follows:

'Maar ek wil vir mnr Bence in die saak in betrokke, want hy was voorheen, toe het ons ge-"consult according" die saak, verstaan meneer? Dit is die eintlike rede.'[13]

[32] On the face of it, the applicant wanted to involve Mr Bence in the matter because he had originally represented him. That was the 'eintlike rede' (actual reason). The applicant confirmed, after additional queries from the first respondent, that he had no problem with Mr Greeff. The following exchange subsequently took place:

'Ja, goed, ek het niks gehoor wat vir my daarop dui dat ek hierdie saak moet uitstel nie. Die saak sal voortgaan. Meneer, ek probeer nie snaaks wees nie, verstaan my mooi. --- Ek verstaan meneer.

Die saak kom al 'n hele ruk. Die meneer is gereed. Jy het nie met hom 'n problem nie. Ons sal moet aangaan met die saak.

--- (Geen antwoord hoorbaar.)

Jy is tevrede daarmee. --- Is in die haak, Edelagbare.'

[33] To paraphrase, the first respondent stated that he had heard nothing to indicate that he should postpone the case. It had to go ahead. He pointed out that the case had already been underway for some time. Mr Greeff was ready to proceed, and the applicant had no problem with him. The first respondent asserted that the applicant was satisfied with this, to which the latter responded that it was 'in die haak' (in order).

[34] At the hearing of the present matter, the applicant's attorney argued that the first respondent had not carried out a proper enquiry into what the applicant had wanted. He had not explained that he could have applied for a postponement. He had, from a position of authority, pressurized the applicant to continue with Mr Greeff.

[35] Reference was made to the decision in *S v Moodie*,^[14] where the erstwhile Appellate Division had dealt with a case where the deputy-sheriff had been present while a jury had been engaged in deliberations. The applicable legislative provision at the time had made it clear that a jury should have been in a private place, by themselves, to enjoy the fullest freedom of discussion. The presence of the deputy-sheriff undermined the right of privacy. It was an irregularity of such a nature as to amount, per se, to a failure of justice.

[36] The decision does not, however, appear to take the applicant's case much further. It would be an exaggeration to contend that the incident on 14 March 2013 gave rise to an irregularity that resulted in the failure of justice. Whereas the applicant expressed a preference for the services of Mr Bence, he was not opposed to continuing with Mr Greeff. The record is clear in that regard. The register and tone of the first respondent, moreover, could well be described as assertive but it can hardly be said that this was inappropriate or that the first respondent pressurized the applicant into proceeding against his wishes. He afforded the applicant a proper opportunity to explain the situation and to clarify any reservations that he may have held about going ahead with the trial.

[37] The applicant's attorney also referred to *S v Ramabele and others*,^[15] within the wider context of the applicant's constitutional right to a fair trial, including the right to choose and to be

represented by a legal practitioner.^[16] The relevance of the decision to the present matter, however, is not entirely apparent. The Constitutional Court merely held as follows:

'...Generally, when legal assistance is appointed for the accused by the state, they ought to accept the legal representation. They do not necessarily have the right to select the legal representative appointed for them.

...Furthermore, there is also a duty placed upon judicial officers to afford the accused an opportunity to obtain legal representation, as well as a duty to inform the accused that, if their legal representative withdraws, they have a right to apply for a postponement to enable another legal representative to be appointed. This constitutional guarantee requires that an accused be given a fair and reasonable opportunity to obtain legal representation. In order to consider what constitutes a fair and reasonable opportunity, there are a myriad of factors to take into account. This should be considered on a case-by-case basis, and failure to do so in certain circumstances may very well result in irregularities. However, the right to be represented by a legal representative of the accused's own choice does not include a right to have an ongoing trial postponed for a lengthy period in order to allow an accused an opportunity to earn and save sufficient income to secure the services of a particular legal representative of their choice, since this may go beyond the bounds of reasonableness.'^[17]

[38] The above decision reiterates the principle that a court must allow an accused a proper opportunity to secure the services of a legal practitioner. If the practitioner subsequently withdraws, then the court must indicate to the accused that he or she can apply for a postponement to secure the services of another practitioner. Where the state provides a

practitioner, e.g. an attorney appointed by the Legal Aid Board, the accused should accept the services offered; he or she does not have an automatic right to a practitioner of his or her own choice in such circumstances.

[39] Counsel for the first and second respondents, in this regard, drew the court's attention to the decision in *S v Halgryn*,^[18] where Harms JA stated:

‘...Although the right to choose a legal representative is a fundamental right and one to be zealously protected by the courts, it is not an absolute right and is subject to reasonable limitations... It presupposes that the accused can make the necessary financial or other arrangements for engaging the services of the chosen lawyer and, furthermore, that the lawyer is readily available to perform the mandate, having due regard to the court's organization and the prompt despatch of the business of the court. An accused cannot, through the choice of any particular counsel, ignore all other considerations... and the convenience of counsel is not overriding...

...If a legal representative is assigned by the State, the accused has little choice. The accused cannot demand that the State assign to him counsel of his choice. That does not mean that he may object to a particular representative, but the grounds upon which it can take place are severely limited. Conflict of interest is one and incompetence may be one, but one has to act on the assumption that a duly admitted lawyer is competent. In this case the appellant did not object to the appointment of Mr H and it does not appear that he had any grounds for doing so; on the contrary, after conviction he even instructed Mr H to note an appeal on his behalf. It follows that the reliance on the right to a specific counsel is misplaced.’^[19]

[40] The Supreme Court of Appeal made it abundantly clear that the right to choose a legal practitioner is subject to reasonable limitations. It is not an absolute right. An accused does not enjoy a great deal of leeway where the state has provided a practitioner; the circumstances under which the accused can refuse such practitioner's services are very few. This approach was clearly endorsed by the Constitutional Court in *Ramabele*, to which the applicant's attorney referred.^[20]

[41] The court's attention was also drawn to *S v Shiburi*,^[21] where Makgoka AJA held that the principle regarding legal representation was context sensitive. In any given situation, the enquiry was always whether the accused's right to a fair trial had been infringed.^[22]

[42] In the present matter, the applicant was not unrepresented. The Legal Aid Board had appointed an attorney, Mr Greeff, who was present at the time of the incident in question. The applicant was, moreover, not dissatisfied with Mr Greeff and had no problem with his continued involvement for the purposes of trial. At no stage has the applicant ever contended that Mr Greeff's expertise was inadequate or that his involvement resulted in the infringement of the applicant's

right to a fair trial in any other manner.

[43] A distinction must be drawn between a right and a preference. The applicant had a right to choose and to be represented by a legal

practitioner. If the right is to be given real effect, then it should be understood as encompassing the services of a qualified

practitioner,[23] provided at a satisfactory level.[24] The applicant in the present matter may have had a greater liking for a particular practitioner but that did not give rise to a protectable right. A litigant will, given the chance, select a practitioner with superior expertise. But this is not always feasible. Just because a court refuses to postpone a long outstanding case to permit an accused the opportunity to secure the services of a practitioner for whom he has a preference does not necessarily translate to an unfair trial and the infringement of a constitutional right. Any determination in that regard remains context sensitive, as evident from Shiburi.

[44] Ultimately, there is nothing in the record to demonstrate that the incident gave rise to a gross irregularity, as defined in *Magistrate Pangarker*. There is also nothing to suggest any interest in the cause, bias, malice, or corruption, on the part of the first respondent.

Other circumstances

[45] To decide whether to grant condonation for the unreasonable delay in launching the present application, the court must also consider the two reasons for the 'delay rule' that were mentioned earlier, viz. the prejudice caused to the other party, and the public interest in achieving finality and certainty regarding the making of administrative decisions and the performance of administrative functions.

[46] The unreasonable delay in the present matter will undoubtedly have been accompanied by the dimming of witnesses' recollections of the events pertaining to the offences in question, which occurred on 3 April 2010, more than 13 years ago. The availability of such witnesses or the deponents to affidavits, as well as the availability of documents and other evidence, will almost certainly have become compromised, too, over such a lengthy period.[25] The prejudice caused is obvious. Whereas the applicant's constitutional right to a fair trial is of fundamental importance,

the public interest is not served by reviewing and setting aside the proceedings of the Magistrates' Court, finalised more than seven-and-a-half years ago, unless there are good grounds for disturbing the finality and certainty thereof. The applicant has simply failed to deal with these aspects.

RELIEF AND ORDER

[47] The court has already found that there was an unreasonable delay in the institution of these review proceedings. By reason of the inadequacy of the explanation given by the applicant, the weak prospects of success in relation to the merits, the prejudice caused to the first and second respondents by the delay, and the public interest in achieving finality and certainty, the court is not persuaded that the delay ought to be condoned.

[48] The respondents' point in limine is successful. There is no need to investigate the merits in any further detail and there is no reason why the costs should not follow the result.

[49] In the circumstances, the following order is made:

- (a) the application is dismissed; and
- (b) the applicant is directed to pay the second respondent's costs.

JGA LAING

JUDGE OF THE HIGH COURT

I agree.

GNZ MJALI

APPEARANCE

For the applicant: Mr

Daubermann, instructed by Peter Daubermann Attorneys, Gqeberha.

For the 1st and 2nd respondents: Adv Schoeman SC, instructed by the Office of the State Attorney, Gqeberha.

Date of hearing:

11 May 2023.

Date of delivery of judgment: 08 August 2023.

[1] The definition of 'administrative action' in terms of section 1 of PAJA expressly excludes the judicial functions of a judicial officer of a court.

[2] The provisions of section 173 indicate that the High Court has inherent power to protect and regulate its own process, and to

develop the common law, taking into account the interests of justice. The court in *S v Taylor* 2006

(1) SACR 51 held that the provisions in question extended the court's review powers whereas the court in *S v Khumalo* 2009 (1) SACR 503 (T) held that the provisions did not permit a court to assume inherent jurisdiction to act contrary to an express legislative provision. See, too, the discussion in Etienne du Toit (et al), *Du Toit: Commentary on the Criminal Procedure Act* (Jutastat e-publications, RS 61, 2018) at ch30-p3.

[3] 2015 (1) SA 503.

- [4] At paragraph [21]. See, too, DE van Loggerenberg, Erasmus: Superior Court Practice (Jutastat e-publications, OS, 2023) at D-236.
- [5] In *Lion Match Co Ltd v Paper Printing Wood & Allied Workers Union* 2001 (4) SA 149 (SCA), Farlam JA confirmed, at paragraph [25], that an applicant for review who fails to bring the application within a reasonable time may (unless the delay can be condoned) lose the right to complain of the irregularity in regard to which the review is brought. See, too, *Wolgroeiërs Afslaers (Edms) Bpk v Munisipaliteit van Kaapstad* 1978 (1) SA 13 (A) and *Mamabolo v Rustenburg Regional Local Council* 2001 (1) SA 135 (SCA).
- [6] Cora Hoexter and Glenn Penfold, *Administrative Law in South Africa* (Juta, 3ed, reprinted 2022) at 720.
- [7] 2005
- (2) SA 302.
- [8] See n 5 above.
- [9] At paragraphs [46] to [48].
- [10] See the discussion in Van Loggerenberg, n 4 above (RS 21, 2023) at D1-702.
- [11] Hoexter and Penfold, n 6 above, at 721. See, too, *Setsokosane Busdiens (Edms) Bpk v Voorsitter, Nasionale Vervoerkommissie, en 'n Ander* 1986 (2) SA 57 (A) at 75C-E; and, more recently, *Madikizela-Mandela v Executors, Estate Late Mandela and others* 2018 (4) SA 86 (SCA), at paragraph [10].
- [12] *Wolgroeiërs*, at 41; *Associated Institutions Pension Fund*, op cit, n 7 above; *Gqwetha v Transkei Development Corporation Ltd* 2006 (2) SA 603 (SCA), at 612E-613A; and *Madikizela-Mandela*, op cit, n 11 above.
- [13] The extract has been attached as annexure 'LN 1' to the applicant's founding affidavit. The portion in question appears at p 7, lines 7-10 thereof.
- [14] 1961
- (4) SA 752 (A).
- [15] 2020
- (2) SACR 604 (CC).
- [16] Section 35(3)(f) of the Constitution of the Republic of South Africa, 1996.
- [17] At paragraphs [47] and [48].
- [18] 2002

(2) SACR 211 (SCA).

[19] At paragraphs [11] and [12].

[20] See, too, an earlier decision of the High Court in *S v Swanepoel and others* 2000 (1) SACR 384 (O).

[21] 2018

(2) SACR 485 (SCA).

[22] At paragraph [13].

[23] See, in this regard, *S v Sibeko and others* 2017 (2) SACR 457 (FB), where Hefer AJ held that an accused's right to a fair trial was infringed where he was represented by a person without the necessary qualifications to practise as a legal practitioner.

[24] In *Halgryn* (n 18 above), Harms JA observed, at paragraph [14], that '[t]he constitutional right to counsel must be real and not illusory and an accused has, in principle, the right to a proper, effective or competent defence.'

[25] See, in this regard, *Mandela v Executors, Estate Late Nelson Rolihlahla Mandela and others*, n 11 above, at paragraph [16].

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