

SOUTH AFRICA / JUDGMENT

S v Bokaba (A869.2015) [2015] ZAGPPHC 892 (26 November 2015) [2015] ZAGPPHC 892

COURT

North Gauteng High Court, Pretoria

BEFORE

D S Molefe, R G Tolmay

CASE / FILE NUMBER

A869.2015

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REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: A869.2015

DATE: 26 NOVEMBER 2015

In the matter between:

THE STATE

And

MOSES RAMOEFELA BOKABA

High Court Reference No: 495/2015

Review Case No: PR 28/2015

Magistrate's Case No: 14/1199/2012

REVIEW JUDGMENT

MOLEFE J

- [1] This is a special review which came before the Honourable Judge Khumalo in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977 ("The Act"). The accused appeared before the regional court, Pretoria and is charged with rape and assault with intent to do grievous bodily harm. When the trial commenced in 2013 the accused was represented by Mr Lekota who held himself out as a duly admitted attorney.

[2] After the matter was postponed for further evidence, Mr Lekota disappeared and did not return to court. Subsequent to Mr Lekota's disappearance the accused had on several occasions been coming to court without legal representation until in 2015 when Mr Manaswe received instructions from the accused to represent him and informed the magistrate that Mr Lekota was never admitted as an attorney.

[3] The magistrate stopped the proceedings and sent the matter on special review in a letter dated 28 August 2015 which reads as follows:

"The accused appeared in court charged with rape and assault with intent to do grievous bodily harm. From the outset the accused was legally represented by Mr Lekota, an attorney who is well known in our court and who has been practising for a long time."

Proceedings in this matter commenced in

2013. In 2015, Mr Manaswe took over instructions from the accused. The accused had on several occasions been coming to court alone without his attorney, Mr Lekota. Mr Manaswe informed the court that the name of Mr Lekota was not appearing on the list of attorneys practising in the North Gauteng Regional Division, (copy of the letter from the Law Society is attached).

In view of the above situation, a request is being made to have the proceedings set aside".

[4] Madam Justice Khumalo directed a letter to the Director of Public Prosecution dated 20 October 2015 for their comments on the magistrate enquiry.

[5] The Director of Public Prosecutions responded in a letter dated 27 October 2015 which inter alia reads as follows:

"In numerous cases, it was held that "legal representation" by a "practitioner" who does not have a right of appearance is a fundamental and fatal irregularity and will automatically result in the proceedings being set aside

- vide *S v Khan* 1993 (2) SACR 118 (N); *S v La Kay* 1998 (1) SACR 91 (K); *S v Gwantshu and Another* 1995 (2) SACR 384 (E) and *S v Nkosi and Others* 2000 (1) SACR 592 (T).

In the aforementioned circumstances it is submitted that the proceedings be set aside and that the prosecution be entitled to proceed with a prosecution de novo".

[6] It is trite that in principle, a fatal irregularity takes place where an accused is represented by someone who has no right of appearance. A person who represents the accused must have the necessary legal qualifications as required by law.

[7] In my view, the request of the Regional magistrate that the proceedings be set aside by this court and for the trial to start de novo is well-founded.

The order I propose to make will further enable the accused to obtain proper legal representation.

- [8] I agree with the suggestion by the Deputy Director of Public Prosecution that the Senior magistrate, Pretoria should investigate all the criminal / civil matters in which Mr Lekota appeared and to consider appropriate criminal charges to be instituted against him.
- [9] In the result, the following order is made:
- 1) The proceedings in the magistrate's court for the regional court, Pretoria, Case no 14/1199/2012 are set aside and the matter is remitted to the Regional Court for hearing de novo.
 - 2) The Senior magistrate, Pretoria is requested to investigate all the criminal / civil matters in which Mr Lekota appeared and to consider criminal charges to be instituted against him.

D S MOLEFE

JUDGE OF THE HIGH COURT

I agree.

R G TOLMAY

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Prepared on 10 October 2026 · Esheria