

SOUTH AFRICA / JUDGMENT

# S v Henry (Review) (39/2025)

## [2025] ZAWCHC 89 (6 March 2025)

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## COURT

Western Cape High Court, Cape Town

## BEFORE

LG Nuku, N E Ralarala

## CASE / FILE NUMBER

39/2025

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IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

Case No: 39/2025

Specialised Commercial Crime Court, Bellville Case No: SH7/25/23

In the matter between:

THE STATE

and

NIZAAM HENRY

Accused

REVIEW JUDGMENT

NUKU, J

- [1] The accused, Ms Nizaam Henry, is facing one count of corruption and one count of money laundering at the Specialised Criminal Crime Court, Bellville and had been represented by Mr P Scott (Mr Scott) until 4 November 2024 when the matter was postponed, after hearing argument, for judgment on 11 December 2024.
- [2] Mr Scott did not attend court on 11 December 2024. Instead, the state prosecutor advised the court that it had come to his attention that Mr Scott had been struck off the roll of advocates as far back as October 2021 and that in his view Mr Scott was not authorised to represent the accused in the proceedings. The state prosecutor expressed the view that the proceedings should be sent to the High Court for special review and sought guidance from the presiding officer. The state prosecutor further advised that he had received communication from Mr

Scott during the course of that morning wherein the latter advised that he would no longer be representing the accused because of the judgment against him that was delivered in October 2021.

- [3] The presiding officer expressed concern that the accused had been represented by a person who had no authority to do so and advised the accused that the matter would be referred to this court on special review. He postponed the matter to 24 April 2025 for the decision of this court regarding the further conduct of the matter.
- [4] This court's power to intervene in uncompleted criminal proceedings in the lower courts was stated by Ogilvie Thompson JA in Wahlhaus[1] as follows:

'It is true that, by virtue of its inherent power to restrain illegalities in inferior courts, the Supreme Court may, in a proper case, grant relief – by way of review, interdict, or mandamus – against the decision of a magistrate's court given before conviction... This, however, is a power which is to be sparingly exercised. It is impracticable to attempt any precise definition of the ambit of this power; for each case must depend on its own circumstances. The learned authors of Gardiner and Lansdown (6th ed, vol 1, p 750 state:

*"While a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon untruncated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained ..."*

In my judgment, that statement correctly reflects the position in relation to unconcluded criminal proceedings in the magistrates' courts. I would merely add two observations. The first is that, while the attitude of the Attorney-General is obviously a material element, his consent does not relieve the Superior Court from the necessity of deciding whether or not a particular case is an appropriate one for intervention. Secondly, the prejudice, inherent in an accused's being obliged to proceed to trial, and possible conviction, in a magistrate's court...'

- [5] The approach of the High Courts, in completed criminal proceedings, when dealing with reviews based on the fact that the person who represented an accused person was not an authorised legal practitioner has been uniform. In this regard Olivier J stated the

following in *S v Van Eeden*[2] that "There is a long line of cases in which it was held that lack of authorisation to appear on behalf of accused persons in criminal

proceedings constitutes a fatal irregularity, regardless of the fact that the representatives concerned had the required academic

qualifications, and that such an irregularity necessitated the rescission of those proceedings, without regard to the merits."

- [6] On the authority of *S v Van Eeden* and the cases referred to therein the proceedings against the accused are destined to be rescinded, without reference to the merits, on the basis that Mr Scott who represented the accused lacked authorisation to do so. The implications of this

court not intervening at this stage, when it has the power to do so, is that the accused would be forced to participate in meaningless proceedings that will invariably be reviewed and set aside. The prejudice inherent therein is self-evident. To allow the proceedings against the accused to continue until finalisation would serve no purpose. In my view, this is one of those matters where the intervention of this court is warranted despite the fact that the proceedings have not been concluded. The result is that the criminal proceedings against the accused should be set aside and start from the beginning.

[7] In the result I make the following order:

7.1 The criminal proceedings against the accused in the Regional Division of the Western Cape held at the Specialised Commercial Crime Court, Bellville under case number SH7/25/23 are hereby reviewed, set aside and are to start from the beginning.

LG NUKU

JUDGE OF THE HIGH COURT

I agree

N E RALARALA

[1] Wahlhaus And Others v Additional Magistrate, Johannesburg And Another 1959

(3) SA 113 (A) at 119H-120

[2] S v Van Eeden 2018 (2) 218 (NCK) at para [27] (footnotes omitted)

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