

SOUTH AFRICA / JUDGMENT

S v Nkosi (Special Review) (CA&R182/2024) [2024] ZAECMKHC 115; 2025 (1) SACR 558 (ECMk) (22 October 2024)

[2024] ZAECMKHC 115

COURT

Eastern Cape High Court, Makhanda

BEFORE

N G Beshe, A S Zono

CASE / FILE NUMBER

CA&R182/2024

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IN THE HIGH COURT OF SOUTH AFRICA

(EASTERN CAPE DIVISION, MAKHANDA)

Case Number: CA&R182/2024

Case Number 27/518/24

In the matter between:

THE STATE

and

KHANYISO NKOSI

Case Number: 27/835/24

MAWETHU SAJINI

JUDGMENT – SPECIAL REVIEW

Beshe J

- [1] The two matters mentioned above have been placed before me in terms of Section 304 of the Criminal Procedure Act[1] for special reviewal. In both cases, the accused persons who had been out on bail, failed to appear in court after a postponement. This resulted in warrants of arrest being authorised against them. When the accused in the two matters appeared before court, the Magistrate purportedly dealt with their non-attendance in terms of Section 67A of the Act. This she did by summarily enquiring why the accused in each matter failed to appear in court on a previous date when their respective matters were on the roll, whilst on bail. She then found in both cases that the explanation given by each of the accused was not

reasonable. She ordered the accused in each matter to pay a fine of R100.00. The Magistrate states that the proceedings were in terms of Section 67A. The fact that she imposed a fine in each of the matters is indicative of the fact that she was purporting to act in terms of Section 67A of the Act.

[2] Section 67A creates an offence by providing that:

‘67A Criminal liability of a person who is on bail on the ground of failure to appear or to comply with a condition of bail

Any person who has been released on bail and who fails without good cause to appear on the date and at the place determined for his or her appearance, or to remain in attendance until the proceedings in which he or she must appear have been disposed of, or who fails without good cause to comply with a condition of bail imposed by the court in terms of section 60 or 62, including an amendment or supplementation thereof in terms of section 63, shall be guilty of an offence and shall on conviction be liable to a fine or to imprisonment not exceeding one year.’

It is clear therefore that the normal rules and standard of proof in criminal cases apply in proceedings held in terms of Section 67A. Section 67A does not empower the court to enquire in a summary manner whether there has been a contravention of the section.

[3] Section 67 which also deals with accused who whilst out on bail fail to appear in court, provides thus:

‘67 Failure of accused on bail to appear

(1) If an accused who is released on bail-

(a) fails to appear at the place and on the date and at the time-

(i) appointed for his trial; or

(ii) to which the proceedings relating to the offence in respect of which the accused is released on bail are adjourned; or

(b) fails to remain in attendance at such trial or at such proceedings, the court before which the matter is pending shall declare the bail provisionally cancelled and the bail money provisionally forfeited to the State, and issue a warrant for the arrest of the accused.

(2) (a) If the accused appears before court within fourteen days of the issue under subsection (1) of the warrant of arrest, the court shall confirm the provisional cancellation of the bail and the provisional forfeiture of the bail money, unless the accused satisfies the court that his failure under subsection (1) to appear or to remain in attendance was not due to fault on his part.

(b) If the accused satisfies the court that his failure was not due to fault on his part, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall lapse.

(c) If the accused does not appear before court within fourteen days of the issue under subsection (1) of the warrant of arrest or within such extended period as the court may on good cause determine, the provisional cancellation of the bail and the provisional forfeiture of the bail money shall become final.’

[4] It is clear that the procedure adopted by the Magistrate is not envisaged by any of these provisions, be it Section 67A or Section 67. The proceedings in both matters were therefore not in accordance with justice and fall to be set aside.

[5] Accordingly, the proceedings in S v Khanyiso Nkosi under Case Number 27/518/24 and S v Mawethu Sajini under Case Number 27/835/24 in which the Magistrate purported to act in terms of Section 67A of the Criminal Procedure Act are reviewed and set aside.

N G BESHE

JUDGE OF THE HIGH COURT

ZONO AJ

I agree.

A S ZONO

ACTING JUDGE OF THE HIGH COURT

Delivered: 22 October 2024

[1] 51 of 1977.

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