

SOUTH AFRICA / JUDGMENT

S v Zilo (Review) (CA&R91/2025)

[2025] ZAECMKHC 56 (22 July 2025)

[2025] ZAECMKHC 56**COURT**

Eastern Cape High Court, Makhanda

BEFORE

Gqamana, V Noncembu

CASE / FILE NUMBER

CA&R91/2025

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Source record**IN****THE HIGH COURT OF SOUTH AFRICA****(EASTERN CAPE****DIVISION, MAKHANDA)****NOT REPORTABLE****CASE NO.: CA & R****NO. 91/2025****DATE DELIVERED: 22****JULY 2025**

In the matter between:

THE STATE

and

THANDENKOSI DLAMINI

ZILO

REVIEW

JUDGMENT**GQAMANA J**

- [1] This Matter was initially sent to this court on or about 3 June 2024 on automatic review by the Magistrate, East London. On 4 June 2024, my colleague, Bands J considered it and issued a certificate that the proceedings were in accordance with justice.

- [2] Almost a year thereafter, it was again sent to us on special review by the Regional Magistrate, East London. On the referral letter on special review, the Magistrate held the view that there was a gross irregularity in the trial proceedings because the accused was represented by an attorney, Mr Somtsewu who had no right of appearance.
- [3] Briefly the facts are as follows: the accused was charged and convicted of rape and kidnapping. He was sentenced to 12 years' imprisonment for rape and 3 years' imprisonment for kidnapping. He was also declared unfit to possess a firearm in terms of section 103(1) of Act 60 of 2000.
- [4] The issue at hand is whether the trial proceedings were irregular due to the fact that the accused was represented by a person who had no right of appearance.
- [5] It is evident from the information at our disposal that Mr Somtsewu was admitted as an attorney on 14 February 2017, and was registered as a Professional Assistant with Hlutwa Attorneys. However, the said firm of attorneys was closed since 13 July 2021.[1]
- [6] At the time of the commencement of the trial herein on 2 March 2023, he had no right of appearance.
- [7] I must add further that from the opinion received from Ms Turner, Deputy Director of Public Prosecutions, Makhanda, Mr Somtsewu has no right of appearance. Further and more disturbing is the apparent prevalence of this practice. According to the report of Ms Turner, criminal proceedings which are otherwise in accordance with justice are too often reviewed and set aside because of "legal representatives" who appear in court despite them not having the right of appearance. It is the responsibility of the court to put an end to such conduct before it spreads like wild fires.
- [8] The legal position is clear that only persons who have been admitted and enrolled to practice as legal practitioners who have a right of appearance in court.[2]
- [9] Furthermore, in terms of section 33(1) (a) of the Legal Practice Act, 28 of 2014:
- "No person other than a practising legal practitioner who has been admitted and enrolled as such in terms of this Act may, in expectation of any fee, commission, gain or reward-
- (a) appear in any court of law,, or similar institution in which only legal practitioners are entitled to appear."
- [10] As indicated above Mr Somtsewu is a non-practising attorney and as such he had no right of appearance when he represented the accused during trial proceedings under review. Accordingly, his representation of the accused was a gross irregularity which renders the trial proceedings a nullity.[3]
- [11] In the circumstances, the following order is issued:

1. The criminal proceedings against the accused in the Regional Court, sitting in East London, under case no: RC 2/42/22 are reviewed and set aside.
2. The matter is remitted for trial de novo before a different magistrate.
3. The Registrar must forward a copy of this judgment to the Legal Practice Council at the Eastern Cape office for investigation against Mr Somtsewu for his conduct.

N GQAMANA

JUDGE OF THE HIGH COURT

I agree

V NONCEMBU

JUDGE OF THE HIGH COURT

- [1] See letter from the Legal Practice Council, Eastern Cape Provincial Office dated 12 May 2025.
- [2] Section 25 (1) and (2) of the Legal Practise Act, 28 of 2014.
- [3] See S v Leon King, unreported judgment of Roberson AJ, Case No: CA&R 54/2025 dated 15 April 2025 at para 18 and the cases cited therein.

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Prepared on 9 October 2026 · Esheria