

SOUTH AFRICA / JUDGMENT

S v Ndlovu (A801/2016) [2016] ZAGPPHC 1004 (24 November 2016) [2016] ZAGPPHC 1004

COURT

North Gauteng High Court, Pretoria

BEFORE

S. A. M. Baqwa, V. V. Tlhapi

CASE / FILE NUMBER

A801/2016

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IN

THE HIGH COURT OF SOUTH AFRICA

(GAUTENG

DIVISION, PRETORIA)

A801/2016

24/11/2016

High

Court reference number: 330/16

Case

number: SH77/16

Not

Reportable

Not

of interest to other judges

Revised

In

the matter between:

THE
STATE
versus
KHATAZILE
NDLOVU
REVIEW

JUDGMENT

Baqwa J

- [1] This is not a review in terms of Section 302 or 304 of the Criminal Procedure Act 51 of 1977 on the merits of the case.
- [2] The accused is charged with rape in the Magistrate's Court in which the alleged intercourse took place in a dark home, the only light being from a street light through the curtains.
- [3] The accused was represented by a Legal Aid attorney who put the question of identity in issue.
- [4] When the prosecution endeavoured to hand in the DNA report the attorney asked for the analyst to be called for purposes of cross-examination. At that stage a disagreement arose between the attorney and his client (the accused) regarding what his version under oath would be. The attorney summarily withdrew indicating that the client would not get another Legal Aid attorney.
- [5] Section 22 (1), (2) and (3) of the Legal Aid Act 39 of 2014 (the Act) deals with cases in which Legal Aid refuses to appoint an attorney to assist an accused and in that case a lower court may subject to certain prescripts order that Legal Aid appoint an attorney to assist an accused.
- [6] Section 22 (4) of the Act permits a Legal Aid client to approach a High Court to review the decision of the Legal Aid Board to assign a particular practitioner to his case. By implication only a High Court may order that another practitioner be appointed if the client is not satisfied with a particular attorney.
- [7] In casu, the charge which the accused faces is a serious one and even though he has been afforded legal representation before I am of the view that he ought not to forfeit that right purely on the basis of a disagreement with his previous representative.
- [8] In the result and in the interests of justice I propose that the following order be made:

ORDER

In terms of Section 22

- (4) of the Legal Aid Act 39 of 2014 the Legal Aid Board is ordered to provide legal representation to Khatazile Ndlovu in case number SH77/16 subject to the usual conditions.

S. A. M. BAQWA

JUDGE OF THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

I agree and it is so ordered.

V. V. TLHAPI

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