REPUBLIC OF SOUTH AFRICA

SOUTH GAUTENG HIGH COURT, JOHANNESBURG

High Court Ref No: 234/09
Magistrate's Serial No: 03/2009
Review Case No: A388/2009

and

High Court Ref No: 235/09
Magistrate's Serial No: 04/2009
Review Case No: A421/2009

25 May 2010

REPORTABLE

Magistrate
RANDFONTEIN

THE STATE v ISAAC LUNGILE VENDA MOLAWA and
BONGANI WISEMAN MPENGESI

REVIEW JUDGMENT

MOSHIDI, J:

INTRODUCTION

[1] The two matters discussed in this judgment were placed before me on automatic review in terms of sec 302(1) of the Criminal Procedure Act 51 of 1977.

[2] In both matters, adjudicated on by the same magistrate, Mr C L Mqalo (the trial magistrate) in the Randfontein Magistrate's Court, no reasons at all were furnished for the convictions and sentences at the end of the respective trials. The reviews therefore concern the failure of the trial magistrate to furnish reasons for judgment as described above.

[3] It is, for practical reasons, convenient to deal with both cases simultaneously. I also set out the facts of each case separately.

THE FACTS IN THE CASE OF THE STATE v L V MOLAWA, CASE NO A388/2009 (THE *MOLAWA* MATTER)

[4] The accused was charged with robbery, read with the provisions of sections 51(2), 52(2), 52A and 52B of the Criminal Law Amendment Act 105 of 1997. The State alleged that on 20 June 2008, at Mathanzima Street, Mohlakeng in the district of Randfontein, the accused robbed Boitumelo Morane (the complainant) of a Nokia cellphone valued at R800,00. The accused, who elected to conduct his own defence, pleaded not guilty. The complainant testified and was cross-examined by the accused. At the end of the State's case the accused testified in his own defence and also called as a witness, his mother. However, she could not advance the version of the accused in any way. Thereafter both the prosecutor and the accused

addressed the court on the merits of the case. The trial magistrate, thereafter quite uncharacteristically, simply pronounced as follows: "*Found guilty as charged*". No reasons whatsoever were given for the basis of the verdict. The matter was postponed for defence witnesses in mitigation of sentence. On the next court appearance, the accused called two witnesses. However, both these witnesses virtually had nothing to say. In fact, it is not entirely clear what transpired since the record is critically shorthanded. Suffice to say that both witnesses could not advance the accused's case. Little wonder that there was no cross-examination of these witnesses. Thereafter, and once more, strangely, the record reflects as follows:

> "*Appeal and Review right explained. Accused understood. See J 15 for sentence.*"

Indeed, the J15 records:

> "*To undergo twelve (12) months imprisonment. Section 103 of Act 60 of 2000 – unfit to possess firearm.*"

Once more, no reasons at all were furnished for the sentence imposed.

THE FACTS IN THE CASE OF BONGANI W MPENGESI, CASE NO A421/2009 (THE *MPENGESI* MATTER)

[5] The trial magistrate virtually followed the same pattern as in the previous case. The accused was charged with assault with intent to do grievous bodily harm. The State alleged that on 25 July 2009, at Mohlakeng,

Randfontein, the accused assaulted Berman Dibetso by stabbing him with a knife/panga/bush knife. As in the previous matter, the accused elected to conduct his own defence. He pleaded not guilty and tendered a statement in terms of sec 115(1) of the Criminal Procedure Act 51 of 1977. The complainant testified and was cross-examined by the accused. Two other witnesses also gave evidence for the prosecution. They were also cross-examined by the accused. Thereafter the accused testified as the only witness for the defence. The accused was cross-examined. Both the public prosecutor and the accused addressed the court. Thereafter, as in the previous matter, the trial magistrate summarily pronounced: "*Found guilty as charged*". No reasons were given at all. The accused testified in mitigation of sentence, whereafter both the accused and the public prosecutor addressed the court on sentence. Thereafter the record reflects the following:

> "*BY COURT:*
>
> *Appeal and Review right explained and understood. See J 15 for sentence.*"

The J15 reflects the sentence imposed as follows:

> "*To undergo six (6) months imprisonment. Section 103 Act 6 of 2000 – Unfit to possess firearm.*"

Once more, no reasons were furnished for the sentence imposed.

[6] On perusal of the record of the proceedings, I naturally requested the trial magistrate to supply the reasons for judgment on conviction and sentence

in both matters. In due course, and in respect of the *Molawa* matter, the trial magistrate furnished the following reasons:

> "*AD CONVICTION*
>
> *Both complainant and accused are known to each other. They stay in the same street. They school together. The complainant only identified accused as he is well known to her. The other person got away. Accused hit the complainant on her mouth with a bottle and took the cell phone. The cell phone was in her pocket. The accused version was rejected by court as false. He denied robbing complainant but failed to tell the police about the alleged robbery by his friend. This was an after thought by accused. Was it a coincident that his version is not far from that of the complainant? The court thus did not believe his story and convicted him as charged.*
>
> *AD SENTENCE*
>
> *This is robbery. A serious offence. A bottle was used to hit a woman on her mouth. She was injured. She was pick pocketed, her cell phone. This aggravated the whole thing. The sentence passed by the court was fair, just and appropriate. It fitted the offence the accused charged with. It is not shocking.*"

[7] In respect of the *Mpengesi* matter, the trial magistrate furnished the following reasons:

> "*AD CONVICTION*
>
> *Accused had just quarrelled and assaulted his girlfriend, who is the daughter to the complainant. Accused had a child with the girlfriend. The accused went to the complainant's house. The complainant was seated peacefully with his family watching television. Accused came in and took his child at night by force. Complainant reprimanded him. Accused left with the child by force. Complainant followed accused with the intent to take the child from him. Accused then assaulted the complainant, an old man with a panga. He assaulted him several times. He was injured. He did so even when Seun tried to intervene. This show accused intended to injure the complainant. Accused stopped assaulting only when Seun dispossessed him of the panga. Accused version that he was attacked by the complainant was rejected*

by court as false. Court believed complainant's version which is supported by two other witnesses as per evidence before court. He showed no respect for the complainant and in fact he undermined the complainant. The court thus convicted him.

AD SENTENCE

The sentence passed by the court was just, fair and appropriate. It fitted the offence accused was charged for. It was not shocking."

[8] There was surprisingly no explanation tendered for the absence or omission of the reasons for judgment in the first place. The handwritten notes of the trial magistrate, which accompanied the original charge sheet and the proceedings, similarly contain no judgment or reasons for the convictions and sentences imposed. It is therefore not unreasonable to infer that the reasons for judgment supplied later were complied subsequent to the request of this Court. Hence the wording: "*It is not shocking*", at the end of the paras dealing with the reasons for sentence in each case.

[9] The trial in the *Molawa* matter commenced on 28 August 2009, and was completed on 21 September 2009 after a single postponement in between. On the other hand, the trial in the *Mpengesi* matter commenced on 18 September 2009. On the latter date, the matter became part-heard and postponed to 30 September 2009 for the continuation of the State's case. The trial was finalised on 30 September 2009.

[10] Prior to finalising this matter, and as it is customary in this Division, I solicited the comment of the Director of Public Prosecutions, Johannesburg.

The comment, which arrived timeously, is extremely helpful, for which I am grateful. It is part of the recommendation of the Director of Public Prosecutions that the convictions and sentences be confirmed. I respectfully agree with this recommendation. The reasons subsequently furnished by the trial magistrate, although brief, especially in regard to the judgment on sentence, nevertheless enable this Court to confirm the convictions and sentences. The proceedings before the trial court, save for the initial neglect to furnish reasons for judgments, which I deal with hereunder, appear otherwise to have been in accordance with justice.

[11] I deal with the issue of the failure of the trial magistrate to furnish reasons at the time of the respective judgments. The Director of Public Prosecutions agrees that the failure of the trial magistrate to supply full reasons at the time of the judgment, is unacceptable practice. To this end, the second recommendation of the Director of Public Prosecutions is that the matters be referred back to the trial magistrate for him to furnish comprehensive judgments and full reasons for the convictions and sentences. After careful consideration of the matter, however, I have decided against this recommendation for several practical reasons, one of which is the likelihood of further systemic delays in finalising matters of this nature. I prefer rather to deal with what seems to be a growing practice of trial magistrates in criminal matters not to furnish reasons for judgment, for whatever reason. This practice frequently occurs in reviews, appeals, and even petitions which come before this High Court.

[12] With regard to high courts, sec 146 of the Criminal Procedure Act 51 of 1977 provides:

> "*A judge presiding at a criminal trial in a superior court shall –*
>
> (a) *where he decides any question of law, including any question under paragraph (c) of the proviso to section 145(4) whether any matter constitutes a question of law or a question of fact, give reasons for his decision;*
>
> (b) *whether he sits with or without assessors, give the reasons for the decision or finding of the court upon any question of fact;*
>
> (c) *where he sits with assessors, give the reasons for the decision or finding of the court upon the question referred in paragraph (b) of the proviso to section 145(4);*
>
> (d) *where he sits with assessors and there is a difference of opinion upon any question of fact or upon the question referred to in paragraph (b) of the proviso to section 145(4), give the reasons for the decision or finding of the member of the court who is in the minority or, where the presiding judge sits with only one assessor of such assessor.*"

It is the view of the Director of Public Prosecutions, with which I respectfully agree, that in spite of its reference to superior courts, the principle contained in the above quoted sec, should apply equally to the magistrates' courts. This, on the basis of the provisions of sec 93 *ter* (3) of the Magistrates' Courts Act 32 of 1944. Sec 93 *ter* of the latter Act provides for the assistance of magistrates by assessors, while sec 93 *ter* (3)(d) provides that:

> "*Upon all matters of fact the decision or finding of the majority of the members of the court shall be the decision or finding of the court, except when only one assessor sits with the presiding judicial officer in which case the decision or finding of such judicial officer shall be the decision or finding of the court if there is a difference of opinion.*"

The relevant sec is sec 93 *ter* (3)(e) of the Magistrates' Courts Act, which provides:

> "*It shall be incumbent on the court to give reasons for its decision or finding on any matter made under paragraph (d).*"

The word "*incumbent*" in the above sec suggests that it is indeed the duty or responsibility of the magistrate to give the reasons. It is interesting that under sec 1 of the Magistrates' Courts Act 32 of 1944, it is said:

> "'*Judgment'. When used in its general sense, the word comprises both the reasons for judgment and the judgment or order; when used in its technical sense, it is the equivalent of an order.*"

See Administrator, Cape and Another v Ntshwaquela and Others 1990 (1) SA 705 (A) 714I-715F.

[12] The authors Du Toit *et al* in *Commentary on the Criminal Procedure Act* – Service 41, [2008], p 21-10A, support the view that all the important findings of fact should be contained in the judgment given at the conclusion of the trial, and that the same should apply in the magistrates' courts in terms of sec 93 *ter* (3)(e) of the Magistrates' Courts Act 32 of 1944, quoted above. It is therefore not a question of the magistrate furnishing reasons in a criminal trial when requested to do so by the reviewing Judge, but at the conclusion of the trial. Review proceedings certainly play an essential part in the criminal justice system. The reviewing court in adjudicating whether the proceedings in the lower court were in accordance with justice, is not confined to the four corners of the record, as in the case of appeals, but also to issues not appearing on the record. The neglect by trial magistrates to furnish reasons

for judgment at the conclusion of a trial will effectively frustrate this important judicial function. In *Rex v Van der Walt* 1952 (4) SA 382 (A), the appellant was tried by a Judge and assessors on a charge of murder. The appellant was convicted and sentenced. The trial Judge gave no judgment beyond an announcement that the Court found the accused guilty as charged. In allowing the appeal, the Appeal Court at p 38C-D said:

> "*It is not open to question that these important findings ought to have appeared in a judgment of the whole Court given at the time when the appellant was convicted, and not for the first time in a judgment of the trial Judge alone, given nearly a month after the conviction, on an application for leave to appeal.*" (my underlining)

The failure to give judgment at the conclusion of the trial was found not to be in accordance with what was laid down by the then appellate division in *Rex v Majerero and Others* 1948 (3) SA 1032 (A), as being "*the invariable practice and clearly in the interests of justice*".

[13] More recently, in *S v Calitz en 'n Ander* 2003 (1) SACR 116 (SCA), the appellants pleaded guilty in the magistrate's court. The magistrate imposed sentence but his reasons for sentence did not appear from the record. In response to the notice of appeal, the magistrate requested that his '*ex tempore judgment'* be regarded as reasons for the purposes of appeal. It was held, *inter alia*, "*that it had to be emphasised that the proper protection, on the one hand, of the appellant's constitutional right to an appeal and, on the other hand, the community's interests that offenders be properly punished, required of a judicial officer that thorough attention be paid to the formulation and furnishing of reasons for sentence. Without it sound criminal justice was*

hampered." In the context of the present matter, the failure of the trial magistrate to furnish reasons for both the convictions and sentences, falls squarely within this admonition.

[14] There is indeed a further compelling reason why reasons for judgment ought to be furnished. The right to appeal or review is entrenched constitutionally to every accused person. In this regard sec 35(3)(o) of the Constitution of the Republic of South Africa Act 108 of 1996 provides as follows:

> "*(3) Every accused person has a right to a fair trial, which includes the right –*
>
> *(o) of appeal to, or review by, a high court.*"

These are certainly important rights that should not be overlooked. Similarly, and as stated earlier, the institution of review proceedings, particularly automatic reviews, plays an important function in view of the many unrepresented accused persons who appear in the lower courts. The accused persons in the present matters had no legal representation. They faced serious charges.

[15] The origin and purpose of the provisions of sec 302(3)(a) of the Criminal Procedure Act 51 of 1977 (a sentence which is imposed in respect of an accused who was not assisted by a legal adviser) were succinctly set out by Msimang J, (as he then was), in *S v Zwane* 2004 (2) SACR 291 (N) at 294c-g, as follows:

> "*In the ensuing legislation the sentiment expressed in the said passage was enacted into law in the form of the provisions of s 302(3)(a) of the Criminal Procedure Act, thus removing the system of automatic review from the benefit of the State and making it available solely for the benefit of the convicted person who had been unrepresented during his trial. It must accordingly follow that where, in terms of the provisions of s 304(1) of the Criminal Procedure Act, it must appear to a reviewing Judge 'that the proceedings are in accordance with justice', what is meant is that those proceedings must be in accordance with real and substantial justice insofar as the interests of that convicted person are concerned. In my view, therefore, the system must always be utilised in favour of those interests. In S v Madonda 1979 (3) SA 795 (Tk) the automatic review in the ordinary course was being sought in the proceedings in which the accused had been wrongly acquitted. In declining to exercise such jurisdiction the Court made the following remarks: 'The purpose of review in the ordinary course is to afford a safeguard against unjust convictions or sentences. It serves to protect accused persons from injustice due to errors or irregularities which may occur in the trial of the more serious cases heard by the lower courts. It was not intended that this court should on review correct mistakes which may occur in the lower courts but which do not result in the conviction or sentence of the accused, nor is this court disposed to embark upon such a task which is not authorised by the Act.'*"

[16] From the above, it follows logically that if a trial court does not furnish reasons for its findings, in the form of a reasoned judgment, the reviewing Judge would be disadvantaged in applying the test as to whether the proceedings were in accordance with justice. The reviewing Judge would be compelled to call for such reasons, as I was indeed constrained to do in the present matters. In addition, in discharging its function on review judiciously, the reviewing Judge must have regard to the factual and credibility findings made by the trial court with all the advantages it had during a trial. In this regard, it is trite law that an appellate court will not readily interfere with such findings. See *S v Robinson and Others* 1968 (1) SA 666 (A), and *S v Bailey* 2007 (2) SACR 1 (C). The failure by the trial court to make such findings and

to furnish reasons for its judgment, will, once more, hamper the reviewing Judge in adjudicating properly in review proceedings. See *S v Franzenburg and Others* 2004 (1) SACR 182 (E). Indeed, in *S v Van der Berg and Another* 2009 (1) SACR 661 at 665h-j, the court said:

> "*The failure of the magistrate to give any reasons for his decision in the trial-within-a-trial, or to make any findings relating to the credibility of the witnesses, places this appeal court at a distinct disadvantage. The magistrate had the opportunity of observing all the witnesses and their demeanour when giving evidence. Demeanour is an important factor in weighing up the credibility of a witness. In the present case we do not know which witnesses the magistrate accepted as truthful, or why he did so. We also do not know on what facts he based his decision in the trial-within-a-trial*."

[17] Indeed the words of Corbett CJ (as he then was) published in the SALJ, Vol 115, (1998) p 117, remain apposite and instructive:

> "*As a general rule, a court which delivers a final judgment is obliged to give reasons for its decision. This applies to both civil and criminal cases. In civil matters this is not a statutory rule but one of practice. In Botes and Another v Nedbank Ltd the Appellate Division held that where a matter is opposed and the issues have been argued, litigants are entitled to be informed of the reasons for the judge's decision. The court pointed out that a reasoned judgment may well discourage an appeal by the loser; and the failure to state reasons may have the opposite effect, that is, encourage an ill-founded appeal. In addition, should the matter be taken on appeal, the court of appeal has a similar interest in knowing why the judge who heard the matter made the order which he did. But there are broader considerations as well. In my view, it is in the interests of open and proper administration of justice that the courts state publicly the reasons for their decisions. Whether or not members of the general public are interested in a particular case – and quite often they are – a statement of reasons gives some assurance that the court gave due consideration to the matter and did not act arbitrarily. This is important in the maintenance of public confidence in the administration of justice. The same general rule of practice applied in criminal matters, both in regard to verdict and in regard to sentence. In regard to the former Davis AJA stated:*

> *'We are aware that there is no provision in the Criminal Procedure Code for the delivery of a judgment when a judge sits alone or with assessors; but in practice such a judgment is invariably given and we wish now to say that it is clearly in the interest of justice that it should be given.'*

After pointing to the absence of reasons in the case before the court, Davis AJA continued:

> *'… we feel that it is unfortunate that the court should have been left, as it has been, to a considerable extent in the same position as if a verdict of guilty had been returned by a jury.'"*

The complete citation of *Botes and Another v Nedbank Ltd* is 1983 (3) SA 27 (A). See also *RAF v Maruga* [2003] 2 All SA 148 (SCA), and *S v Immelman* 1978 (3) SA 726 (A). Subsequent to *S v Calitz en 'n Ander* (*supra*), the Supreme Court of Appeal, in at least one other judgment, emphasised the need for trial Courts to furnish reasons for judgment. In *Mocke v The State* [2008] 4 All SA 330 (SCA), the appellant stood trial on a murder charge in the magistrate's court. Without providing any reasons, the magistrate rejected the appellant's version and accepted the evidence of the state witnesses. The evidence of the State was based on that of a single witness who was also implicated by the appellant in the murder. The appellant was convicted and sentenced to 7 years' imprisonment. The appellant appealed against the conviction and sentence. In criticising the magistrate's failure to furnish reasons for judgment, the Appeal Court, quoted with approval the *dictum* by De Villiers, JP, in *Schoonwinkel v Swart's Trustee* 1911 (TPD) 397 at 401:

> "*This Court, as a court of appeal, expects the court below not only to give its findings on the facts, but also its reasons for those findings. It is not sufficient for a magistrate to say, "I believe this witness, and I did not believe that witness". The court of appeal expects the magistrate, when he finds that he cannot believe a witness, to state his reasons why he does not believe him. If the reasons are, because of inherent improbabilities, or because of contradictions in the evidence of the*

> *witness, or because of his being contradicted by more trustworthy witnesses, the court expects the magistrate to say so. If the reason is the demeanour of the witness, the court expects the magistrate to say that; and particularly in the latter case the court will not lightly upset the magistrate's finding on such a point.*"

The Appeal Court was of the view that although the *dictum* was intended for a civil case, it is equally applicable to a criminal case. Indeed, the Constitutional Court in *Strategic Liquor Services v Mvumbi NO* 2010 (2) SA 92 (CC), had the occasion to deal with a labour matter in which the Labour Court, despite repeated requests, failed to furnish reasons for its decision. At paras [15] to [17], of the judgment, the Constitutional Court states:

> "*[15] It is elementary that litigants are ordinarily entitled to reasons for a judicial decision following upon a hearing, and, when a judgment is appealed, written reasons are indispensable. Failure to supply them will usually be a grave lapse of duty, a breach of litigants' rights, and an impediment to the appeal process. In Botes and Another v Nedbank Ltd, Corbett JA pointed out that 'a reasoned judgment may well discourage an appeal by the loser': 'The failure to state reasons may have the opposite effect. In addition, should the matter be taken on appeal, as happened in this case, the Court of Appeal has a similar interest in knowing why the Judge who heard the matter made the order which he did.'*
>
> *[16] That the Labour Appeal Court considered the employer's application for leave to appeal without requiring Nel AJ to supply reasons, and without in their absence furnishing its own, is most regrettable. The application before that court gave to it the opportunity that Nel AJ let slip through his fingers, namely to give the employer reasons for its failed attempt to review the CCMA outcome.*
>
> *[17] In Mphahlele this court noted that there is no express constitutional provision requiring judges to furnish reasons for their decisions (and on this basis upheld the long-standing practice of the Supreme Court of Appeal not to furnish reasons when determining applications for leave to appeal). We add that there is likewise no express statutory provision requiring judges who have given judgment ex tempore to furnish written reasons when later required. Nonetheless, as this court pointed out in Mphahlele, a reasoned judgment is indispensable to the appeal process. Judges ordinarily*

> *account for their decision by giving reasons – and the rule of law requires that they should not act arbitrarily and that they be accountable. Furnishing reasons –*
>
> *'explains to the parties, and to the public at large which has an interest in courts being open and transparent, why a case is decided as it is. It is a discipline which curbs arbitrary judicial decisions. Then, too, it is essential for the appeal process, enabling the losing party to take an informed decision as to whether or not to appeal or, where necessary, seek leave to appeal. It assists the appeal Court to decide whether or not the order of the lower court is correct. And finally, it provides guidance to the public in respect of similar matters.'"*

It is further noteworthy that the Constitutional Court went on to express rather strong words against the failure of courts to furnish reasons for judgment. It mentions that in *Mphahlele v First National Bank of South Africa Ltd* 1999 (2) SA 667 (CC), the court "*added that it may well be that where a decision is subject to appeal it would ordinarily be a violation of the constitutional right of access to courts, if reasons were to be withheld by a judicial officer*". With reference to sec 34 of the Constitution, the Court is of the view that the failure of the judicial officer concerned to furnish his reasons, when requested for the appeal process, cuts right across the employer's right of access to courts.

[18] All of the above, undoubtedly highlight the critical importance of the reasons for judgment and credibility findings of a trial court. These play a critical role in the adjudication of appeals and reviews.

THE PROMOTION OF ADMINISTRATIVE JUSTICE ACT 3 OF 2000

[19] It is rather interesting that, although courts, and judicial officers on the one hand, and their functions and decisions, on the other hand, are neither

"*organs of state*", nor "*administrative action*", respectively, under the Promotion of Administrative Justice Act 3 of 2000, (PAJA), the meritorious *rationale* for the furnishing of reasons for administrative action by organs of state, seems highly attractive. In terms of sec 1 of PAJA:

> "*Administrative action*", "*means any decision taken, or any failure to take a decision, by –*
>
> *(a) an organ of state, when –*
>
> *(i) exercising a power in terms of the Constitution or a provincial constitution; or*
>
> *(ii) exercising a public power or performing a public function in terms of any legislation; or*
>
> (b) *a natural or juristic person, other than an organ of state, when exercising a public power or performing a public function in terms of an empowering provision, which adversely affects the rights of any person and which has a direct, external legal effect, but does not include –*
>
> *(aa)* [not applicable]
>
> *(bb)* [not applicable]
>
> *(cc)* [not applicable]
>
> *(dd)* [not applicable]
>
> *(ee) the judicial functions of a judicial officer of a court referred to in section 166 of the Constitution or of a Special Tribunal established under section 2 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No 74 of 1996), and the judicial functions of a traditional leader under customary law or any other law.*"

PAJA further defines "*organ of state*" as "*bears the meaning assigned to it in section 239 of the Constitution*". In turn, the latter sec defines an "*organ of state*" as:

"*(a) any department of state or administration in the national, provincial or local sphere of government; or*

(b) any other functionary or institution –

(i) *exercising a power or performing a function in terms of the Constitution or a provincial constitution; or*

(ii) exercising a public power or performing a public function in terms of any legislation, but does not include a court or a judicial officer."

The learned author, J R de Ville, in "*Judicial Review of Administrative Action in South Africa*", [2003], in Chapter 6, states:

> "*Firstly, giving reasons is one of the fundamentals of good administration. It encourages rational and structured decision-making and minimises arbitrariness and bias. A decision-maker who knows that she has to defend or justify his/her decision with reasons is in other words less likely to act arbitrarily or mechanically. It compels him/ her to properly consider the relevant statutory provisions, the grounds for taking the decision, the purpose thereof, all relevant evidence and circumstances including the specific circumstances of the matter at hand, and the policy to be implemented. Secondly, it encourages open administration. Such openness is conducive to public confidence in the administrative decision-making process. Thirdly, it satisfies the desire on the part of an individual to know why a decision was reached and contributes towards a sense of fairness – a person adversely affected by a decision knows that his/her case has at least been considered by the administration. Fourthly, if a person is furnished with reasons, it makes it easier for that person to appeal against the decision (if provided for in the statute concerned) or to make an application for review as s/he knows what the basis for the decision was. It also assists a court in reviewing administrative action. Lastly, the furnishing of reasons serves an educational purpose. If an adverse decision was taken in, for example, an obligation for a licence, the person concerned may in future instances be able to improve the quality of the application.*"

Indeed, the entire conspectus of the *rationale* to furnish reasons in the above quotation, accords with what Corbett CJ, (as he then was), said *supra*. In the context of the present matter, it makes perfect sense to adopt unreservedly,

the *rationale* for furnishing reasons as prescribed for administrative action by state organs under PAJA. The criminal justice system, in particular, the review process, can only benefit therefrom, and achieve the ideals of a fair trial as envisaged in sec 35(3) of the Constitution.

FOREIGN JURISDICTION

[20] Dealing with statutory bodies and administrative action, I need to refer briefly to *R v Civil Service Appeal Board, Ex Parte Cunningham* [1991] 4 All ER 310. The appellant, a prison officer, was dismissed from the prison service after he allegedly assaulted a prisoner. He appealed against his dismissal to the Civil Service Appeal Board, which held that his dismissal was unfair and recommended that he be reinstated. The Home Office, as it was entitled to do, refused to reinstate him and the board then assessed the compensation for unfair dismissal. The board refused to give reasons for its award on the ground that it employed simple and informal procedures and that to ensure a non-legalistic approach to the merits of each individual case it had adopted a policy of not giving reasons for any award. The applicant applied for judicial review of the board's decision on the grounds that the award was *prima facie* irrational and the board's refusal to give reasons was a breach of natural justice. The Judge granted the application because of the board's failure to give reasons. The board appealed. The applicant cross-appealed from the Judge's finding that the award was not *prima facie* irrational. In dismissing the appeal, the Court held, *inter alia*, that:

> "*There are three possible reasons for holding that the board should have given reasons for their award. The first is that there is a general*

> *rule of the common law or, if that be different, a principle of natural justice that a public law authority should always or even usually give reasons for its decisions … The second is that a tribunal exercising a jurisdiction which mirrors that of the industrial tribunals which are required to give reasons and further or alternatively a tribunal which is exercising a judicial function from which there is no appeal should give sufficient reasons to enable a party to know why he has failed to secure any or, as the case may be, all of the relief which he sought and above all to be satisfied that the decision was lawful. … The third is that Mr Cunningham and others who resort to the board have a legitimate expectation that it will give reasons. This, as I have shown, the Judge accepted.*"

In *Halsbury's Laws*, 4th ed (2001) Re-Issue, Vol 1(1), 2001, para 112, under the heading "*The Duty to give Reasons*", it is said:

> "*A duty to give reasons can arise under statute or under European Union Law. Such a duty can be either express or implied. … The statement of reasons for the decision must be taken to form part of the decision and to be incorporated into the record. The reasons given in pursuance of any such obligation must be full and sufficient, intelligible, and must deal with the substantial points which are at issue. Parties to the proceedings and the courts should be able to see what matters have been taken into consideration and what view has been formed by the tribunal or minister on the points of fact and law which arise.*"

Indeed, the relevance of the above informative authorities to the matter under discussion, cannot be overemphasised.

CONCLUSION

[21] To sum up. From all the above, the trial magistrate ought to have given fully reasoned judgments in both the cases at the time of the conclusion of the respective trials. He had a duty to do so. He should not have waited to do so until asked by the reviewing Judge. I have scrutinised both the typed record of the proceedings as well as the trial magistrate's handwritten notes taken

contemporaneously. There is no judgment or reasons except as indicated above. It is indeed bothersome that the *Molawa* matter was completed on 21 September 2009, while the *Mpengesi* matter was finalised on 30 September 2009. This suggests to me that the trial magistrate was in the habit of passing judgments without furnishing reasons therefor. This kind of pattern must be investigated urgently by the Chief Magistrate of the area concerned, alternatively, by the Magistrates' Commission. As stated earlier, the convictions and sentences were in accordance with justice and call to be confirmed. It will not be in the interest of justice to remit the matters to the trial magistrate for him to expand on his judgments.

ORDER

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

(1) The conviction and sentence in the matter of *S v I L V Molawa* (Case No A388) are hereby confirmed.

(2) The conviction and sentence in the matter of *S v B W Mpengesi* (Case No A421/2009) are hereby confirmed.

(3) The Registrar of this Court is ordered to forward a copy of this judgment to the Chief Magistrate, Randfontein, Private Bag X13, Randfontein, 1760, for attention.

D S S MOSHIDI
JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG

I concur:

N PANDYA
ACTING JUDGE OF THE SOUTH GAUTENG
HIGH COURT, JOHANNESBURG