

**IN THE SOUTH GAUTENG HIGH COURT  
JOHANNESBURG**



**REVIEW CASE: HIGH COURT REF NO: 57/11  
MAGISTRATE'S SERIAL NO. 07/2011  
JOHANNESBURG CASE NO: 41/2712/2009**

In the matter between:

**THE STATE**

and

**NEVILLE RAJA**

**ACCUSED No.1**

and

**MOKHINA MOTAUNG**

**ACCUSED No.2**

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**JUDGMENT: SPECIAL REVIEW**

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**WILLIS J:**

[1] This matter has been referred to me by way of special review in terms of section 304 of the Criminal Procedure Act, No. 51 of 1977, as amended.

[2] Both accused had been arraigned in the Johannesburg Regional Court on charge of Housebreaking. They were arrested on 26<sup>th</sup> December, 2009 and are currently in custody, Accused No.2 having had his bail revoked after conviction.

[3] It has come to light, after the conviction of the accused but before their sentencing that Mr Molwedi who represented them was a candidate attorney without having any right of appearance in court.

[3] The learned magistrate, Mr Petersen, has accordingly requested that the High Court set aside the convictions of the accused and direct that the trial proceed *de novo* before a different magistrate.

[4] Having regard to the record of the proceedings which the learned magistrate has helpfully reconstructed, I am satisfied that justice will be well served by making such an order, subject to a residual discretion in the hands of the Director, Public Prosecutions.

[5] Two further points need to be made. The first is that it is a most unsatisfactory state of affairs that so much inconvenience should be caused by a candidate attorney not knowing his correct status when it comes to representing accused persons. The learned magistrate should report the matter to the law society, not so much to punish the Mr Molwedi as to take steps to ensure that repetitions of this kind of incident are minimised.

[6] The second is that the magistrate who hears the matter *de novo* should be appraised of this judgment so that he or she may take special care to ensure that no injustice is done either in convicting or acquitting the accused. If the accused are indeed convicted, the time wasted through the necessity for reviewing the proceedings should be taken into account on sentence.

[7] Clearly this is case where the hearing *de novo* should be expedited.

[8] The Following is the order of the court:

1. The trial proceedings in this matter before the magistrate, Mr Petersen, are set aside;
2. The trial may commence *de novo* before another magistrate in the discretion of the Director, Public Prosecutions.

**DATED AT JOHANNESBURG THIS 13<sup>th</sup> DAY OF APRIL,  
2011.**

**N.P.WILLIS**

**JUDGE OF THE HIGH COURT**

I agree.

**F.H. D. VAN OOSTEN  
JUDGE OF THE HIGH COURT**