



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

A210/14

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ YES ☐ NO.

(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ YES ☐ NO.

(3) REVISED.

20/3/2014
DATE

A. G. G. M. J.
SIGNATURE

DATE: 27/3/2014

HIGH COURT REF. NO. : 240/2014
MAGISTRATE's SERIAL NO : 04/2013
CASE NUMBER : BRC 66/2012

IN THE MATTER BETWEEN:

THE STATE

AND

BUTI JOHANNES MALESA AND OTHERS

REVIEW JUDGMENT

TOLMAY, J:

- [1] The learned magistrate referred this matter by way of special review purportedly in terms of sec 304(3) of the Criminal Procedure Act 51 of 1977, (the "CPA").

- [2] The accused were charged with 35 different charges as set out in the charge sheet.
- [3] The facts that lead to the matter being sent for review were that the advocate, Mr Sentso who appeared for accused no 1, and apparently at some stage also for accused no 4, was not properly instructed by an attorney. This transpired during cross-examination of the state's first witness. The proceedings were stopped and the matter was sent on review to this Court. In his note to this Court the learned magistrate also reported that advocate Sentso was struck from the roll under case number 71717/2011 by the North Gauteng High Court. It is not clear when he was struck from the roll.
- [4] It is clear that an irregularity occurred in the proceedings as the accused was not properly represented.
- [5] Section 304(3) of the CPA, to which the learned magistrate referred does not find application as this section only applies after sentencing has occurred. Section 304 A also don't find application as there was not yet a conviction. This Court however has an inherent power of review which is augmented by sec 35(3) of the Constitution. See **S v Engelbrecht & Others 2005(2) SACR 383 C on 384 i-j.**
- [6] In this instance the accused were not properly represented, and it is appropriate for this Court to assume jurisdiction as the irregularity is of such a gross nature that the proceedings will eventually have to be set aside. The accused's right to

a fair trial was compromised by the fact that they were not properly represented and this constitutes a failure of justice. See **S v Dhlamini 2008 (2) SACR 202 (T)** at par (12) and (13).

[7] The following order is made:

7.1 The proceedings are set aside.

7.2 The matter is referred back to the Regional Court to start *de novo* before another magistrate.

I agree



R G TOLMAY
JUDGE OF THE HIGH COURT



E JORDAAN
JUDGE OF THE HIGH COURT