

IN THE HIGH COURT OF SOUTH AFRICA

A720/14

GAUTENG DIVISION, PRETORIA

High Court Ref No.: 647/14

Special Review No.: 11/2014

In the matter between:

THE STATE

versus

DEFENSE WHICH EVER IS NOT APPLICABLE	
(1) DEFENSE YES/NO.	YES/NO.
(2) OF INTEREST TO OTHER JUDGES: YES/NO.	YES/NO.
(3) RAISED:	YES/NO.
DATE 29/2/2014	SIGNATURE

9/10/2014

JABU MONOTSHI

Accused

REVIEW JUDGMENT

1. This matter was sent for a special review of the proceedings in the Magistrate's Court for the district of Hammanskraal by the Regional Court Gauteng. The accused was charged with housebreaking with the intent to steal and theft. According to the charge sheet he was arrested in April 2013.
2. He applied for bail before the magistrate, Ms S Rapulane, in that district court. During these proceedings he disclosed what was called a relevant previous conviction for a similar offence. Bail was denied on 10 May 2013.
3. When the accused appeared for trial in the same court on 24 June 2013, the prosecutor applied to have the trial referred to the Regional Court in the light of the accused's previous conviction. Such a request is apparently routinely

made in circumstances of this nature by the prosecution in accordance with a directive issued by the Director of Public Prosecutions.

4. Magistrate Rapulane acceded to the prosecutor's request. Clearly acting in accordance with section 115A of the Criminal Procedure Act 51 of 1977 (as amended) ("CPA"), the matter was transferred to the Regional Court.
5. Rather surprisingly, this decision by the Magistrate was countermanded by another district magistrate, Mr Noeth, on the 14th August 2013 and the trial was returned to the district court presided over by Ms Rapulane. It is unclear on what grounds Mr Noeth felt himself called upon to make this decision, nor is there any indication of the relevant authority or empowering statutory provision he relied upon to overrule a decision of a colleague of the same rank as his own.
6. The trial proceeded before Ms Rapulane and the accused was convicted. In the light of his record the matter was again transferred to the Regional Court, this time for sentencing. The proceedings were then interrupted by the decision to request this special review by a Judge of this court, as the Regional Magistrate was not convinced that the matter should have been dealt with by the district court once a decision had been made to transfer the trial to the Regional Court.
7. The accused has now filed an affidavit in which he requests that the proceedings be reviewed on three further grounds, namely that the trial magistrate ought not to have presided over his matter as she had dealt with the bail application and had therefore been appraised of his previous convictions; that she failed to assist him properly during the trial and that he did not have legal representation because he did not appreciate that he could

request the assistance of a lawyer after having first decided to defend himself. He was not informed of his right to change his mind in this respect at any later stage of the trial proceedings.

8. The trial magistrate has kindly furnished the reviewing Judge with her comments upon the accused's affidavit. She disputes the assertion that the accused was not properly assisted in conducting his defence, but does not deal with the implications of the fact that she did preside over the bail application and was aware of the accused's previous convictions prior to presiding over the trial itself.
9. It is correct that the CPA does not make provision for a trial that has been transferred to the Regional Court from the district court in terms of section 115A to be referred back to the district court. The reason that no such power has been given to either the district court or the Regional Court is clear: No case should be referred to the Regional Court from the district court unless the district magistrate is of the view that the seriousness of the charge, or the nature of the accused's criminal record, is such that a sentence might be appropriate that exceeds the district court's jurisdiction. Once that decision has been made, it would lead to untenable confusion and jurisdictional disputes if another court could set it aside other than on review to the High Court on appropriate grounds. Transferring matters back and forth between the Regional and district courts would cause huge delays, would redound to the accused's prejudice and would further overload a system that is already staggering under the existing challenges.
10. Ms Rapulane should have refused to attend to the trial and directed it back to the Regional Court clerk for as speedy a conclusion as possible.

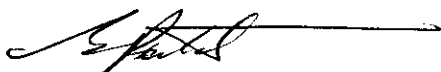
11. The reviewing Judge has still not been furnished with the record of the trial in the district court, in spite of a request to that effect. What was provided was a transcript of bail proceedings in a completely unrelated matter, for no apparent reason whatever. The Chief Magistrate of the district court is kindly requested to investigate and correct this administrative confusion.
12. Ordinarily, the reviewing Judge would have returned the file again with the urgent demand that the proper record should be provided. In the light of the conclusion reached in respect of other aspects, and in the interest of avoiding further delays, the matter will be dealt with here and now in respect of those issues the reviewing Judge can consider properly. In the absence of the trial record, however, no finding can be made on the trial magistrate's alleged failure to assist the accused to properly present his defence. It is also impossible to assess the effect that the absence of legal representation had on the fairness of the accused's trial.
13. Ms Rapulane was appraised of the accused's previous convictions during the bail proceedings. Her attention was not drawn to the decision in *S v Bruinders* 2012 (1) SACR 25 (WCC), which held that a magistrate should not preside over the trial of an accused whose bail application has served before the same court. *Silwana & Another v Magistrate, District of Piketberg & Another* 2003 (5) SA 597 (C) is to the same effect, relating to the position of a magistrate having issued a warrant for the accused's arrest.
14. These decisions are in point and I respectfully associate myself with the sentiments expressed therein.
15. This leads to the conclusion that the proceedings must be reviewed and set aside, both on the ground that the district court had no further jurisdiction to

try a matter it had referred to the Regional Court, and on the basis that the trial magistrate may reasonably have been seen to be biased. No order will issue relating to the accused's continued detention. He must be released and it is left to the prosecution to decide whether he should be charged again or not. Should the accused be prosecuted again, - obviously before another magistrate - a copy of this judgment and the record of the previous proceedings must be made available to the court trying the accused.

Order

- 1. The proceedings against the accused in the Hammanskraal district court are reviewed and set aside.**
- 2. The accused must be released from detention immediately.**

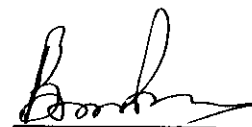
Signed at Pretoria on this 25th day of September 2014.



E BERELSMANN

Judge of the High Court

I agree

A handwritten signature in black ink, appearing to read 'TJ Raulinga', written over a horizontal line.

TJ RAULINGA
Judge of the High Court