

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

A33/2016
21/01/2016

REVIEW 633/15

In the matter of:

THE STATE

Vs

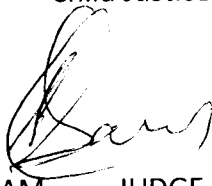
KHUTSO KOPANYE and Others
(Magistrate Pretoria Reference: Case 61/890/14 Atteridgeville)

REVIEW JUDGMENT

BAM J

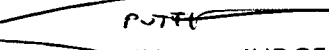
1. This matter was sent on special review by the Senior Magistrate, Tshwane Central, Atteridgeville. It concerns a trial where the accused were charged with contravention of the Animal Protection Act.
2. During the trial it transpired, before judgement, that the second accused, to whom I will refer as LM, was a minor. The other four accused were adults. The magistrate then separated LM's case from the others and removed it from the roll. The case against the other four proceeded. All the accused were legally represented.
3. The trial magistrate, Mrs E van Biljon, was clearly correct in arriving at the conclusion that the Child Justice Act, Act 75 of 2008, was applicable, and that the relevant provisions should have been complied with. It involves that LM's situation should have been investigated in terms of that act before he was charged with the other accused. That did not happen.
4. It appears that the senior prosecutor, at the time the five accused were charged, did not consider whether LM's situation had been dealt with in accordance with provisions of the Child Justice Act. This was unfortunate, and, to say he least, it clearly prejudiced LM, in view thereof that he may be charged again.

5. The trial magistrate's suggestion that the proceedings, as far as LM is concerned, should be declared null and void, is correct in law, and is supported by representatives of the Director of Public Prosecutions , Advocates Wilsenach and Erasmus.
6. Accordingly the following order is made:
 - (a) The proceedings in case number 61/890/14, Atteridgeville, concerning the erstwhile accused 2, referred to as LM, is reviewed and set aside.
 - (b) The matter of LM is remitted to the Senior Magistrate, Tshwane Central, Atteridgeville, to be dealt with in accordance with the applicable provisions of the Child Justice Act.



A J BAM JUDGE

I agree,



S POTTERILL JUDGE

19 January 2015