



**IN THE HIGH COURT OF SOUTH AFRICA  
(WESTERN CAPE, CAPE TOWN)**

**REVIEW CASE NO. A1200/2008  
MAGISTRATE'S SERIAL NO. SPECIAL  
REVIEW 31/2009  
HIGH COURT REF. NO. 1067**

In the matter between:

**THE STATE**

And

**KHAYELETHU GADU**

**ACCUSED**

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**REVIEW JUDGMENT DELIVERED ON 17 MARCH 2010**

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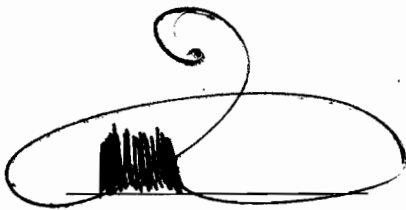
**DLODLO, J**

[1] This matter served before me by way of Special Review in terms of the provisions of the Criminal Procedure Act 51 of 1977 as amended (the Criminal Procedure Act). Upon conviction the accused was sentenced as follows:

*“A Fine of R3000 or 90 days Imprisonment suspended for 5 years – on condition that accused is not committed of Housebreaking and Theft or Theft..... during the period of suspension. Accused also declared unfit to possess firearm in terms of section 103 (CPA).”*

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- [2] It is needless to say that the sentence quoted above is incompetent. The accused was declared unfit to possess a firearm. Although, in my understanding, an accused is automatically declared to be unfit, the Court must hold an enquiry and enable the accused person to show (if he can) why he should not be so declared. This did not happen in this case. The matter is hereby reviewed and the sentence portion and the declaration are set aside. The matter is remitted to the trial Magistrate to sentence afresh and follow procedure regarding the declaration of a person to be unfit to possess a firearm in terms of Section 103 of Act 60 of 2000.

A stylized handwritten signature in black ink, featuring a large, sweeping loop that starts from the left, goes up and over, and then comes back down to the left, ending in a small flourish.

**DLODLO, J**

**I agree.**

A handwritten signature in black ink, consisting of a large, bold, stylized letter 'S' that loops around and ends with a horizontal line extending to the right.

**SAMELA, AJ**