



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

**REVIEW CASE NO. A3550/2010
Magistrate's Serial No. HERS 01/2011
HIGH COURT REF. NO. 11250**

In the matter between:

THE STATE

And

LAKHONA MOYAKHE


ACCUSED

REVIEW JUDGMENT DELIVERED ON TUESDAY, 26 APRIL 2011

DLODLO, J

- [1] This matter served before me by way of Special Review in terms of section 304 (4) of the Criminal Procedure Act 51 of 1977 as amended. I am requested by the Additional Magistrate Bellville that I must set aside proceedings in this matter. It would appear that it only emerged when the accused was about to be sentenced that he was a minor who was before the Magistrate without a guardian and/or parental assistance. The Magistrate also brought it to my attention that another consequence was that the accused person was thus never assessed in terms of the Children's Act 38 of 2005.
- [2] I agree with the Magistrate that it will be in the interest of justice that proceedings in this matter be set aside so that the legally permissible procedure shall be followed. The proceedings in this matter are hereby reviewed and are set aside. The matter may at the discretion of

the Director of Public Prosecutions be dealt with *de novo* before another Magistrate.


DLODLO, J

I agree.


FORTUIN, J