

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

CASE NUMBER:

A81/2011

5 **DATE:**

13 MAY 2011

In the matter between:

LWAZI NGOMANE

Appellant

and

10 **THE STATE**

Respondent

J U D G M E N T

15 **BINNS-WARD, J:**

In this matter it is conceded by the state that the appellant's trial was vitiated by fundamental irregularities going to the breach of his rights to a fair trial in terms of section 35 of the
20 Constitution and, as Mr Zeeman correctly conceded, the appropriate order in the circumstances would be to uphold the appeal and set aside the conviction and sentence.

It is important in matters of this nature, particularly for the
25 education of presiding officers in the lower courts, that full

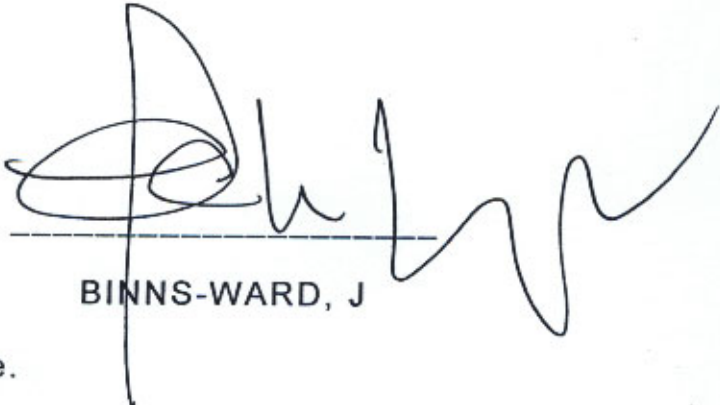
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reasons be given for our decision and for that reason, and because the matter was identified by us and dealt with in heads of argument only handed up at our request today, we are not in a position to give the reasoned judgment that is
5 called for at this stage.

Nevertheless, particularly in view of the unhappy history of this matter, today being nearly two years after the appellant was granted leave to appeal, the issue of the order cannot be
10 delayed. Accordingly, we shall make an order today and give reasons later. The order that my learned colleague and I agree should be issued today is that the appeal against conviction and sentence be upheld, that the conviction and sentence be set aside, and that an order^{be} issued today for the appellant's
15 release. Reasons for this decision will be given in writing later.

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BINNS-WARD, J

STEYN, J: I agree.

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STEYN, J

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