

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

CASE NUMBER:

A312/2015

5 DATE:

11 NOVEMBER 2016

In the matter between:

**M D MNAPU**

Appellant

and

**THE STATE**

Respondent

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**J U D G M E N T**

**BOQWANA, J:**

15 The appellant appeared the Bellville Regional Court on two counts of rape. He pleaded not guilty to the charges and was convicted on 24 May 2016. He was sentenced to 18 years imprisonment. Leave to appeal was granted by the magistrate.

20 It appears from the reasons the magistrate granting leave to appeal that she was not satisfied that the appellant received a fair trial. The appellant was represented by Ms Siyo for the duration of the trial.

25 It appears that questions were raised by the magistrate  
/RG /...

regarding Ms Siyo's right of appearance. According to the magistrate the Law Society informed her that Ms Siyo did not have right of appearance. On appeal the State appears to have conducted an investigation whereupon they were advised  
5 that Ms Siyo was admitted with fidelity fund certificate. These facts were not properly put before us.

Be that as it may, further concerns were raised by the Magistrate in her reasons granting leave to appeal that Ms  
10 Siyo materially failed to represent her client properly and adequately. She not only demonstrated ineptitudness but failed to take instructions from her client when her client wished to raise an issue with the Court. Her understanding of the law demonstrably led to the conclusion that there was a  
15 failure of justice leading the magistrate to conclude that:

"I am therefore of the opinion I cannot confidently say that the trial was fair and that the accused received adequate, I cannot say the accused received adequate  
20 legal advice etc."

Apart from the magistrate's own conclusion, the reading of the record manifestly shows that the magistrate interfered with the cross examination of witnesses unduly. While, this may have  
25 been because of the frustrations she had with the manner in

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which Ms Siyo handled the matter, it appears to me that interference was grossly irregular when viewed in totality. The record is replete with that and I need not repeat such interactions in this judgment.

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This Court took time to go through examples of interruptions and interferences by the magistrate during cross examination and from this exercise, it was evident that the magistrate not only intervened to assist an inexperienced counsel which in  
10 itself is allowed but went as far as offering conclusions, giving evidence and suggesting objections even before they were made by the prosecutor. This list of examples is not exhaustive.

15 Ms Ajam for the State was constrained to submit as an officer of this Court that from what appeared on the record, it was difficult not to conclude that cumulatively the interferences were material and left that for the court to decide. It appears from the record of the proceedings before the trial Court that  
20 during argument of the leave to appeal, the State conceded that the appellant was ill-advised and therefore was not properly represented.

There is a further issue of the application to lead further  
25 evidence that was brought with the application for leave to  
/RG /...

appeal which the magistrate did not deal with but stated that it would be dealt with by the High Court. I need not deal with this issue save to say that the magistrate erred in that regard as the law is clear in s 309(B)(5)(a) of the Criminal Procedure Act on how this issue should be dealt with. Nevertheless, in view of the findings on other aspects of the case, I need not deal with whether this application to lead further evidence properly before us.

I am of the view that this case is one which fits the category of irregularities that are so gross in nature as *per se* to vitiate the trial, warranting this Court's interference to set aside the conviction and sentence without reference to the merits.

Accordingly, the following order is made:

**1. THE CONVICTION AND SENTENCE IS SET ASIDE.**

**2. THE DIRECTOR OF PUBLIC PROSECUTIONS OR HIS  
OR HER DEPUTY MAY ELECT TO PROSECUTE THE  
APPELLANT DE NOVO BEFORE ANOTHER  
MAGISTRATE.**

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I agree.

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**BOQWANA, J**

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**MAGONA, AJ**

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