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IN THE HIGH COURT OF SOUTH AFRICA

NORTH WEST DIVISION, MAHIKENG

REVIEW NUMBER: HC 16/2023

REGIONAL MAGISTRATES'

CASE NUMBER: H169/2018

In the matter between:

THE STATE

versus

**REBABALETWE
ACCUSED**

MOTSEKO

CORAM: DJAJE AJP; PETERSEN ADJP

Summary: Special Review – section 22(1)(c) of the Superior Courts Act – impersonating a legal practitioner (attorney) – gross irregularity in proceedings – proceedings reviewed and set aside – referred to the Director of Public Prosecutions, North West Province to consider re-instatement of prosecution *de novo*.

ORDER

- (i) The proceedings are hereby reviewed and set aside.
- (ii) A copy of the judgment must be brought to the attention of the Director of Public Prosecutions, North West Province.
- (iii) The decision on re-instatement of prosecution *de novo* against the accused is left to the discretion of the Director of Public Prosecutions, North West.
- (iv) Should prosecution be re-instated, the trial must be conducted by a Regional Magistrate other than Regional Magistrate IDB Motswai.

REVIEW JUDGMENT

PETERSEN ADJP

- [1] This review application came before me on **14 November 2022** at the behest of Regional Magistrate K.A. Sephoti, Ga-Rankuwa North West Province. The matter is one of several matters where a Mr K. Kgatle gave out and pretended that he is a duly admitted legal practitioner (attorney) whereas in truth and in fact he had no title and right of appearance to appear in the matter.
- [2] This Court has handed down judgment under two case numbers, HC 05/2022 (25 November 2022) and HC 1/2023 (04 July 2023) in which the proceedings implicated under those case numbers were reviewed and set aside.
- [3] As in the previous matters the proceedings are not reviewable in terms of the relevant review provisions of the Criminal Procedure Act 51 of 1977 ('the Criminal Procedure Act') but in terms of section 22(1)(c) of the Superior Courts Act 10 of 2013 ('the Superior Courts Act') the proceedings of any Magistrates' Court may be brought under review before a court of a Division based on a gross irregularity in the proceedings.
- [4] In case number HC 05/2022, the following was said:

“[5] The right to legal representation of detained and accused persons is entrenched in sections 35(2)(b) and 35(3)(f) of the Constitution of the Republic of South Africa, 1996. Section 35(3)(f) in particular provides that an accused has a constitutional right to choose and be represented by a “*legal practitioner*”. The right to legal representation and the definition attributed to the phrase “*legal practitioner*” is dealt with in other law of general application, which includes the Criminal Procedure Act

and the Legal Practice Act 28 of 2014 ('the Legal Practice Act'). It is apposite to have regard to these pieces of legislation.

[6] Section 73 of the Criminal Procedure Act provides that:

“73. Accused entitled to assistance after arrest and at criminal proceedings

(1) An accused who is arrested, whether with or without warrant, shall, subject to any law relating to the management of prisons, be entitled to the assistance of his legal adviser as from the time of his arrest.

(1) **An accused shall be entitled to be represented by his legal adviser at criminal proceedings, if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.**

(my emphasis)

...

[10] Section 33(1) of the Legal Practice Act further provides that: “*subject to any other law, no person other than a practising legal practitioner may, in expectation of a fee, commission, gain or reward, appear in any court or before any board or tribunal in which only legal practitioners are entitled to appear.*”

[5] In a founding affidavit under case number 24494/2022 dated 25 April 2022, deposed to by Mr Karabo Kgatle, for his admission and enrolment as an advocate of the High Court of South Africa, in the Gauteng Division, Pretoria, he states as follows at paragraphs 5.1 and 6.1:

“5. **ADMISSION AS AN ATTORNEY**

5.1 *I have never been admitted as an attorney. **However, I was registered as a candidate attorney serving articles of clerkship in May 2016 under***

the supervision of Nyaziwe Joseph Mnguni...and completed same in November 2018...

(my emphasis)

6. ***FIT AND PROPER PERSON***

6.1 *I have never previously made application to be admitted or practiced as an attorney or advocate. I have accordingly never been struck off the roll of attorneys or advocates or suspended from practice in any court either in the Republic or elsewhere."*

[6] The articles of clerkship of Mr Kgatle ended in **November 2018**. He therefore had no title to appear in any court in the Republic of South Africa from **December 2018**. In the present matter Mr Kgatle appeared for the accused, who was charged with kidnapping (count 1) and contravening section 3 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007 (rape). On **13 June 2019**, "represented" by Mr Kgatle, the accused tendered a plea of guilty to the rape charge (count 2), with the kidnapping charge (count 1) having been withdrawn against the accused by the State. The accused was duly convicted and on **16 June 2019** sentenced to an unprecedented fine of R10 000 (TEN THOUSAND RAND) or eight (8) years imprisonment, for rape.

[7] Unsurprisingly the State noted an appeal against sentence, which was enrolled for hearing in this Court on **24 February 2023**. The appeal was removed from the roll, when it was brought to the attention of the Director of Public Prosecutions and counsel for the accused that Mr Kgatle had no title to defend the accused.

[8] In case number HC 05/2022, this Court said:

“[13] The probability is accordingly strengthened that Mr Kgatle misled his clients and the Magistrate/s seized with the implicated matters, that he was entitled to act as an attorney. The sentiments expressed at paragraph [46] of *S v Van Eeden*, *supra* in echoing *S v Mkhise*; *S v Mosia*; *S v Jones*; *S v Le Roux* 1988 (2) SA 868 (A) at 872G and 875C are equally applicable in the present matter:

“In my view this irregularity is “of so fundamental and serious a nature that the proper administration of justice and the dictates of public policy require it to be regarded as fatal to the proceedings in which it occurred” and “when considerations of public interest are paramount, hardship in a particular case, should it arise, is to be regretted but cannot be avoided.”

[9] The proceedings in this matter accordingly stand to be set aside.

[10] In the result it is ordered that:

- (i) The proceedings are hereby reviewed and set aside.
- (ii) A copy of the judgment must be brought to the attention of the Director of Public Prosecutions, North West Province.
- (iii) The decision on re-instatement of prosecution against the accused is left to the discretion of the Director of Public Prosecutions, North West.
- (iv) Should prosecution be re-instated, the trial must be conducted by a Regional Magistrate other than Regional Magistrate IDB Motswai.

**A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT
OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION**

I agree.

**J T DJAJE
ACTING JUDGE PRESIDENT
OF THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION**

**REVIEW RECEIVED ON 14 NOVEMBER 2023
JUDGMENT DELIVERED ON 16 NOVEMBER 2023**