



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

[Reportable]

(*Coram*: Henney J et Sher J)

High Court Ref No: 17531 & 17532

Case No: C90/17 and C83/17

Magistrate's Serial No: 14/17 and 13/17

In the matter between:

THE STATE

v

**ANDRIES FRANSMAN
NTSIKELELO KOWA**

REVIEW JUDGMENT: 22 JUNE 2018

HENNEY et SHER JJ:

Introduction

[1] This judgment deals with two separate matters that were submitted for automatic review by the magistrate of Clanwilliam, who presided over both. The issue for consideration is unique to these cases. In the first matter of *S v Andries Fransman* (the "Fransman case") the accused was charged with one count of

housebreaking with intent to steal and theft, which was allegedly committed on or about 22 –23 January 2017. After his arrest on 23 February 2017 the accused made several appearances in court and on 9 March 2017 his right to legal representation was explained by the magistrate and he elected to conduct his own defence and to enter a guilty plea.

[2] The magistrate then proceeded to question him in terms of the provisions of s 112(1)(b) of the Criminal Procedure Act¹ (“the Act”). Upon conclusion thereof the magistrate was satisfied that the accused had pleaded guilty to the lesser charge of theft and after the plea was accepted by the prosecutor the accused was convicted accordingly and thereafter sentenced to 24 months imprisonment in terms of the provisions of s 276 (1)(i) of the Act.

[3] In the second matter of *S v Ntsikelelo Kowa* (the “Kowa case”), the accused was charged with contravening ss 65(1)(a) and s 12 of the Road Traffic Act² (the “RTA”). It was alleged that on 15 November 2015 on the N7 National Road in the district of Clanwilliam he drove a motor vehicle whilst he was under the influence of intoxicating liquor, and without being in possession of a valid driver’s licence.

[4] After the accused was summonsed to appear before the magistrate, he elected to conduct his own defence and to plead guilty to both charges. The magistrate then similarly proceeded to question him in terms of the provisions of s 112(1)(b) of the Act and on conclusion thereof he was duly convicted as charged.

¹ Act 51 of 1977.

² Act 93 of 1996.

[5] In respect of the first count he was sentenced to a fine of R10 000 or 12 months imprisonment of which R8000 or 10 months imprisonment was suspended for a period of 5 years on condition that he was not again convicted of contravening the relevant provisions of the RTA during the period of suspension.

[6] In respect of the second count he was sentenced to a fine of R800 or 60 days imprisonment which was wholly suspended for a period of 5 years on similar conditions.

[7] When the review came before this court on 17 May 2017 it was returned to the magistrate with a query pertaining to the questioning of both accused in terms of the provisions of s 112(1)(b) of the Act. The magistrate was required to explain why such questioning had been so cryptic and whether it constituted a true and accurate representation of the proceedings in both matters, and why a complete record was not kept in light of the fact that the magistrate's court is a court of record, as much as the High Court is.

[8] The magistrate only formulated a response to this query a year later on 8 May 2018 before thereafter returning the case records to this Court.

The magistrate's response

[9] In her response the magistrate confirmed that all lower courts are courts of record and that ordinarily everything which is said during formal proceedings before such courts should form part of the record thereof. She said that although the record in both matters appeared incomplete and somewhat cryptic, the questioning of the accused had not been so. According to her, notwithstanding the abbreviated notation

thereof her questions were put in full sentences and in a form clear enough for the accused to understand and to answer properly.

[10] The magistrate said that it was unfortunate that she had noted the questions in an abbreviated manner. She was aware that this was not the correct procedure to follow and now that it had been brought to her attention she would make every effort to ensure that such an omission would not occur again. She said that she could understand the court's misgivings as to whether she had been satisfied that the accused in both matters properly pleaded guilty to all the elements of the charges, given her incomplete recordal of what transpired. However, she assured the court that she had been completely satisfied, in both matters, that each accused had pleaded fully to all the elements of the charges.

The record in s 112 (1)(b) and 112 (2) proceedings

[11] In *S v Baron*³ it was held that s 112(1)(b) proceedings are intended to protect especially an unrepresented or illiterate accused from the consequences of tendering an ill-considered plea of guilty.⁴ As such, the record of the questioning in terms of s 112(1)(b) as a whole (ie including the answers thereto) should form part of the record of the trial.

[12] Although the judgment in *Baron* was handed down in the pre-constitutional era, the sentiments expressed therein are of even greater application today especially if regard be had to the provisions of s 35 of the Constitution, which guarantee an accused's right to a fair trial. This includes the right to be treated fairly

³ 1978 (2) SA 510 NC.

⁴ *Id* at 512F-G; *S v Samuels* 2016 (2) SACR 298 (WCC) at para [21].

during plea proceedings in terms of the provisions of s 112(1)(b), when an accused has elected to waive his or her right to remain silent, and the fairness of such proceedings should consequently be safeguarded by the magistrate who presides over them.

[13] To this end the magistrate should take especial care to ensure that the questioning of the accused is carried out carefully and with scrupulous regard for the elements relevant to the charges at hand, and it should further appear from the contents of the record that such questioning took place in a clear manner and in terms which the accused understood. In addition, in the case of a written notation of the questioning the record ought, as far as possible, to be a reproduction of what actually transpired and should not simply be an *ex post facto* attempt at reconstructing what the magistrate believes to be the gist of what was said, for by doing so aspects of what was essentially evidentiary material before the court might, to use a colloquial phrase, thereby be lost in the subsequent ‘translation’.

[14] Rule 66 (1) of the Magistrate’s Court rules provides that “*the plea and explanation or statement, if any, of the accused, the evidence orally given, any exception or objection taken in the course of the proceedings, the rulings and judgment of the court and any other portion of criminal proceedings, may be noted in shorthand... either verbatim or in narrative form*” or may be recorded “*by mechanical means.*”

[15] In *S v Phundula*; *S v Mazibuko*; *S v Niewoudt*⁵ it was pointed out that it should always be the aim of the presiding officer when questioning an accused not only to

⁵ 1978(4) 855 TPD.

make sure that he/she actually committed the offences in question, but also to ensure that the record faithfully reflects the proceedings in which that was determined, even if the manual, narrative form is used instead of an audio recording.

[16] It should be remembered that ultimately the record of the proceedings in a criminal trial is not only there for the benefit of the magistrate, but for any other court which may have to consider it subsequently, and as such it should be an objective and accurate portrayal of what transpired during those proceedings.

The *Fransman* case

[17] During the s 112(1)(b) questioning in *Fransman*, the accused admitted that his plea of guilty was made freely and voluntary. He further admitted that the incident happened on the date, and at the place, alleged in the charge-sheet. When he was asked by the magistrate to recount what happened he said that whilst he was on his way to his mother's home he had passed by the complainant's house and had noticed that the front door was standing ajar. As he did not see anybody in the house he entered it and took a television set which he sold for R300. He was later arrested by a policeman after the buyer had informed him that the accused was the person who had sold the television set to him.

[18] In order for the magistrate to cover the elements of housebreaking, intent and unlawfulness, she proceeded to ask the following questions:

"V: *Deur?*"

A: *Wawyd oop. Nie verder oopgemaak . Kon net ingestap het.*

V: *Eienaar permanent onteien?*

A: *Ja*

V *Hoekom?*

A: Geld nodig gehad

V: Weet verkeerd en strafbaar?

A: Ja"

[19] Although this form of cryptic notation of the questioning in terms of s 112(1)(b) is not to be encouraged as it might not always result in a true and accurate reflection of the actual proceedings, from our assessment of the record the admissions which were made in the answers given by the accused properly established his guilt on the lesser charge of theft on which he was convicted. We are therefore of the view that despite its shortcomings the proceedings in respect of the conviction were in accordance with justice in terms of the provisions of s 302 of the Act, and in our view the sentence which was imposed was also an appropriate one.

The Kowa case

[20] In *Kowa* the situation is somewhat different. On questioning by the magistrate in respect of count 1 the accused said that he pleaded guilty freely and voluntarily and he admitted that the incident took place on the N7 highway, a public road within the area of jurisdiction of the court, while he was driving in the direction of Vredendal. This part of the questioning by the magistrate, even though it was in a similar cryptic form, resulted in the accused providing answers which were uncontroversial. However, the following further questions which were put with a view to ascertaining whether the accused's driving skills were impaired, and the manner in which these questions were framed, raise some difficulties:

"V: Wat gebeur?

A: Stokvel gehad. Einde van die jaar. Geld uitdeel. Ek het gedrink. Nie besef so dronk. Bier en brandewyn gedrink. Weet nie hoeveel nie. Eienaar van motorvoertuig baie dronk. Besluit

ek moet bestuur want nie so dronk. Op N7 polisie ons gestop en ek is gearresteer vir dronk bestuur. My hospitaal toe geneem en bloed getrek. Nie padblokkade. Polisie my net gestop.

V: Bestuursvermoë aangetas?

A: Kan nie onthou hoe my bestuursvermoë was. Was motor voertuig agter my.

V: Mense gekla heen en weer oor pad?

A: Kan nie stry want was aand en ek het gedrink.”

Then in a follow-up question he was asked:

“V: Indien nugter sou beter bestuur of nie bestuur?

A: Stem saam.”

[21] From the manner in which this questioning proceeded it is not apparent that the admissions which the accused made on this aspect were clear and unequivocal. As is apparent, he said he was not ‘so drunk’ (sic) and could not remember whether his driving skills or abilities were impaired at the time. Although he made reference to a motor vehicle which was behind him it is not clear whether this was at a time when he was driving or when his vehicle was stationary, and the relevance of this vehicle in relation to the offence in question was never made clear. In this regard it is not apparent from the questioning whether the occupants of the vehicle observed that he was driving his vehicle inappropriately or back and forth across the road or whether someone else saw this, or even whether this in fact happened at all. It was merely suggested to the accused by the magistrate that ‘persons’ had complained that he was driving back and forth across the road. In the absence of such an allegation in the charge-sheet it is not apparent where this averment came from. It was not in direct answer to any preceding question which was posed by the magistrate and it was simply put in the form of a statement to the accused, and his answer acceding to such a possibility hardly constituted an admission that his driving abilities were impaired. In the circumstances it is a cause for concern that the magistrate even put

such a statement to the accused. Either she was indulging in conjecture or she was privy to information which was not included in the charge-sheet, but which may have been obtained elsewhere.

[22] If this is the record of the proceedings in respect of which the magistrate says that she was satisfied that the accused admitted all the material allegations in the charge-sheet and upon which she based her conviction she surely could not have arrived at such a conclusion. We are not satisfied from the record we have before us that the accused properly made the necessary admissions which were required in order for the magistrate to be satisfied, beyond a reasonable doubt, that the accused's driving abilities were impaired so as to conclude that he was guilty of driving under the influence of intoxicating liquor in contravention of s 65 of the RTA.

[23] As a court of review we are required in terms of s 302 of the Act to make a determination as to whether the proceedings before the magistrate were in accordance with justice. Given the deficiencies in the record which we have highlighted, we find ourselves unable to make such a finding. In the circumstances the conviction on this charge cannot stand and must be set aside.

Inordinate Delay

[24] This is unfortunately once again one of those many instances where a matter which is subject to automatic review has been delayed inordinately. It was remitted back to the magistrate on 22 May 2017 with a query and a directive that the magistrate should reply thereto on or before 15 June 2017. From the official court date stamps it seems that the query was received by the magistrate on 29 May 2017

but her response thereto was only finalised on 8 May 2018, almost a year later, and the matter was only returned to the registrar's office on 25 May 2018.

[25] In trying to explain the delay the magistrate says that she requested the clerk who dealt with the reviews to furnish her with the original files relating to the two matters; that the clerk initially forgot about her instructions and then upon her reminding him, took some weeks to trace the files. The magistrate further states that when she eventually received the files she was simply swamped with work, having taken over as head of office and having to mentor a colleague who had replaced her in the criminal courts. She said that it was only 'now' (presumably this meant in May 2018) that she had been able to catch up on the backlog of matters she had to deal with. She said that she was aware that queries in review matters were urgent and that the responsibility to attend to them rested squarely on her shoulders.

[26] Regrettably, the explanation which was given by the magistrate is not acceptable. She failed firstly, to comply with the directive that the review query should be answered on or before 15 June 2017. One would have expected that in the event that it was not possible for her to do so as a result of factors beyond her control, she would as a matter of common courtesy and with a view to discharging her duty to report back to this court, have timeously informed the Registrar accordingly. But that aside, we are unable to accept that her workload was of such a nature that she did not have any opportunity or time within a period of 12 months, to answer the review query. Even on her own sparse explanation it is very apparent that she did not give the matter the attention it should have enjoyed.

[27] As the magistrate correctly stated, matters sent to the High Court on automatic review are inherently urgent, and the Act prescribes a specific procedure

that has to be followed to expedite them. We therefore find it astonishing that the magistrate regarded her other duties such as the training of a colleague as more pressing and urgent. The urgency in review matters lies in the fact that any delay might adversely affect an accused's constitutional rights, which not only include the right to a fair trial, but a host of other rights, such as the right to dignity, freedom and access to court, as well as the right to a speedy trial and the right to appeal or review.

[28] In our view, the responsibilities which the magistrate had to attend to could not be treated as being more urgent or pressing, because her primary function was to administer justice in terms of the Constitution and this duty required her to attend to any outstanding queries in review matters as expeditiously as possible.

[29] But in this regard it was not only the magistrate who was remiss in discharging her duty towards this Court and it seems to us that the administrative component including the Clerk of the Court, and the Office and Court Managers were also at fault.

[30] Undue delays in automatic review matters have become a regular occurrence in this division, so much so that this Court recently expressed its displeasure about this unacceptable state of affairs in the reported matters of *S v Jacobs*; *S v Swart*; *S v Damon*; *S v Jas*; *S v Klaasen*; *S v Swanepoel*; *S v Xhantibe*⁶ in which we dealt with a number of late reviews from various magistrates' courts⁷ in the Western Cape, which in our view were symptomatic of a widespread and endemic problem. With a view to eradicating this unacceptable state of affairs we made a number of

⁶ 2017 (2) SACR 546 (WCC) (16 August 2017)

⁷ Including Caledon, Montagu, Vredendal and Ceres.

recommendations for consideration by the relevant stakeholders, including the Director-General of the Department of Justice, the Regional Heads of the Department of Justice and the Office of the Chief Justice for the Western Cape, the Director of Public Prosecutions for the Western Cape, the Magistrates' Commission, the Regional Court President (Western Cape) and the Chief Magistrates and judicial administrative/'cluster' heads for the various courts referred to as well as the Head of Court of each of the magistrates' courts concerned, and the Judge-President.

[31] Amongst the remedial measures we offered for consideration was the introduction of an 'outstanding automatic reviews' list (modelled along the lines of the reserved judgment list which this Court and certain of the other divisions of the High Court keep), in which the particulars of all outstanding reviews (with reference to each magistrates' court, and the case numbers and names of the parties and the presiding officers concerned) would be kept, and updated on a weekly/bi-monthly or monthly basis. We pointed out that the Heads of the Magistrates' Courts within this division, including the Regional Court President and the heads of the administrative regions were required to account to the Judge-President for the management of their courts⁸ and the Judge-President was responsible⁹ (subject to the over-arching authority and control of the Chief Justice as Head of the Judiciary) for the co-ordination of the judicial functions of all such courts. Those functions included the management of procedures to be followed in respect of case-flow management¹⁰ and the finalisation of any matter before a judicial officer including any outstanding

⁸ In terms of cl 4 of the Norms and Standards for the Performance of Judicial Functions (the "*Norms and Standards*"), issued by the Chief Justice by way of GN 147 on 28 February 2014.

⁹ In terms of S 8(4)(c) of the Superior Courts Act 10 of 2013 and cl 4 of the Norms and Standards.

¹⁰ Cl 4 (v)(a) of the Norms and Standards.

judgment, decision or order.¹¹ Case-flow management in turn is directed at enhancing service delivery and access to justice through the speedy finalization of matters, and is co-ordinated via the Provincial Efficiency Enhancement Committee (the 'PEEC') under the control and supervision of the Judge-President.¹²

[32] In light of the particular problems which were being experienced at certain of the magistrates' courts we have referred to¹³ we directed that the heads of those courts should account to us (and the responsible Chief Magistrates and administrative/cluster heads as well as the Regional Head of the Department of Justice and the Magistrates' Commission), retrospectively in respect of all matters involving reviewable sentences which were imposed by their courts within a period of 3 years. The idea of making such an order was for us to determine whether there were other accused who were awaiting but unable to exercise their constitutional rights of review, as well as whether there were accused whose rights of review had been rendered nugatory because of undue delay, and we were of the view that it would also reveal the extent of any administrative, systemic problem at these courts.

[33] Finally, given the widespread delays experienced at all the magistrates' courts from whom we had matters before us, we directed that the Regional Head of the Department of Justice (with the assistance of the relevant administrative/cluster heads and Chief Magistrates) should conduct an audit in respect of administrative deficiencies and lack of resources at all of such courts, and should report back to us in 3 months in respect of the outcome of such audits and any remedial and

¹¹ CI 4 (v)(b).

¹² CI 5.2.4 (ii).

¹³ Notably the Caledon and Montagu courts.

disciplinary measures which had been instituted pursuant thereto, in order to address these deficiencies and lack of resources.

[34] Pursuant to these directives and recommendations the Regional Head appointed a task team comprising of the Director of Legal Administration and Court Operation and the Area Court Managers of the Bellville and the Wynberg clusters, to conduct an operational audit of each of the magistrates' courts concerned, in respect of administrative and systemic deficiencies and lack of resources with particular reference to the transcription, processing and transmission of the records in automatic review cases. The task team consulted members of the administrative staff at the relevant courts and the two Chief Magistrates of the clusters referred to, as well as the Regional Head of the Office of the Chief Justice. Subsequently, the task team prepared a full report which was submitted to us in November 2017.

[35] In the report, the team identified various systemic and administrative deficiencies including staff shortages and lack of resources, and technological and personnel challenges pertaining to the use of outdated DCRS (Digital Court Recording Systems) equipment and software and transcription services, which were being phased out pending the introduction of a new wholly digital CRT (Court Recording Technology) system. The team also identified a number of persons at each of the various courts which it was of the view had been negligent in the discharge of their duties and in respect of whom disciplinary action was to be taken.

[36] The team further pointed out that as a result of our judgment the Acting Deputy DG: Court Services in the Department of Justice had issued a Circular¹⁴ in

¹⁴ No. 71 of 2017.

October 2017 to all Clerks of the Criminal Courts and Court and Area Court Managers, in which their attention was drawn to the relevant legal provisions and departmental prescripts including those set out in Circular 14 of 2010¹⁵ which provided that all magistrates were to keep personal review and appeal registers which were to be checked, monthly, not only by the magistrate of the district or the responsible senior magistrate concerned¹⁶ but also by the Court and Area Court Managers.¹⁷

[37] A repeated refrain in the report, which was emphasised a number of times, was that there were inadequate control measures in place and a 'general' lack of proper checking and monitoring by the administrative component as well as by members of the magistracy, both in regard to incomplete records as well as in regard to review register entries. The team found that 'in general' magistrates were not keeping proper personal review registers, as prescribed in terms of Circular 14 of 2010 and overall there was a lack of communication between the Clerks of the relevant magistrates' courts and the Registrar's office, in regard to the 'tracking and tracing' of automatic review matters and queries pertaining thereto.

[38] The team reported that together with the Area Court Managers the Regional Head would monitor compliance with the requirements of Circular 71 of 2017, and a monthly audit on outstanding reviews would be introduced for each cluster, the result of which would be submitted to the Director Court Operations and the Provincial Head: Office of the Chief Justice, for reporting and 'high level monitoring' purposes, including for further deliberation at PEEC meetings. We note that as part of their

¹⁵ Which was circulated to all magistrates by the Chief Magistrates' (Heads of Court) Forum on 8 March 2010.

¹⁶ In terms of Circular 14/2010.

¹⁷ In terms of Circular 71/2017.

recommendations as to how to deal with this problem the Chief Registrar of this Court and the Provincial Head: OCJ agreed that there should be a monthly 'schedule' ie a list as well as a monthly audit of outstanding reviews from the magistrates' courts.

[39] It is disconcerting that notwithstanding these laudable attempts at putting a system in place which will prevent a recurrence of egregious delay in such matters and which will adequately monitor and ensure timeous compliance with their duties in this regard by magistrates and administrative managers, almost a year after the judgment we handed down there are still magistrates who appear not to understand the urgency associated with automatic review matters and the importance of resolving queries in regard to such matters, expeditiously. And clearly there is still no proper monitoring and control system in place at an administrative level, both locally as well as at the Registrar's office. Had there been a proper system of control and monitoring in place this matter would have been picked up and the query attended to long ago. Instead, it appears that there are still magistrates, Clerks and Court and Area Court Managers who are not attending to their duties in regard to these matters, and the current system that is in place is still not able to detect defaulters and allows for outstanding reviews to linger, unresolved, for lengthy periods of time. This is not in the interests of justice and cannot be allowed to continue.

[40] Were it not for the magistrate deciding eventually to respond of her own accord to the outstanding query it would probably have remained undetected and unresolved.

[41] It has become obvious to us that apart from having to rely only on attempts by Court and Area Court Managers and Chief Magistrates to enforce stringent

compliance at the level of the magistrates' courts, in order to eradicate this problem there should be an active and complementary support system in place at the level of this Court whereby the Chief Registrar not only keeps a record/list of outstanding reviews but takes pro-active steps to follow up on any outstanding queries in relation to such matters, and on a monthly basis reminds recalcitrant magistrates and managers to attend to them, on pain of being reported to the Magistrates' Commission and the relevant Chief Magistrates.

[42] In *Jacobs et al* we warned¹⁸ that if an accused's constitutional right of review was effectively stymied and rendered nugatory because of egregious delay, his constitutional right to a fair trial will have been infringed and this may constitute a failure of justice which will result in this Court not only declining on review to certify that the proceedings were in accordance with justice, but also setting them aside or making any other order in connection with them as would seem likely to promote the ends of justice. We pointed out that judicial pro-activism required that this Court move beyond being a merely passive bystander lamenting lengthy delays in the automatic review process without doing something practical in order to attempt to remedy systemic deficiencies and indeed, in the interests of justice the Court had a duty not only to the accused in the particular review before it but also to other unrepresented accused who might have been sentenced at a particular magistrate's court where there was a clear problem in the timely processing and transmission of the records in automatic review matters, to ensure that effective measures were taken to resolve such deficiencies.

¹⁸ Note 6 at para [40].

[43] We wish to reaffirm the sentiments we expressed in *Jacobs* and to urge the relevant stakeholders to conduct a careful and thorough re-appraisal of the entire system which has been adopted in regard to automatic reviews, with particular reference to the issue of undue delay, both in regard to the forwarding of the records in such matters to this Court, as well as in regard to the way in which queries which have been raised by this Court are processed and responded to. To this end we have provided for an order which directs the Regional Head of the Department of Justice to conduct a full retrospective review of the system which has been put in place since the date of the Head's report to this Court in November 2017, with particular reference to the number of automatic reviews referred from all magistrates' courts in the Western Cape to this Court and the outcome of such matters (including matters which were subject to queries). In addition, we have provided for an order directing the Regional Head to investigate the circumstances which gave rise to the fact that the review query was not attended to, and whether anyone of the functionaries or officials concerned were derelict in their duties in this regard.

[44] In addition we are of the view that as far as the magistrate is concerned the matter should be referred to the Magistrates Commission, for it to consider whether her conduct in relation to the delay warrants the institution of disciplinary proceedings. In discharging its duty in this regard we would hope that the Commission will also actively engage the other role-players in formulating an effective strategy that will prevent any future unnecessary and unreasonable delays by magistrates within this division in submitting cases for review, and in responding to queries in such matter. A progress report in this regard, should similarly be submitted to the Registrar of this court on or before 30 September 2018.

[45] In the result, we make the following order:

45.1 The proceedings in *S v Fransman* are declared to be in accordance with justice (in respect of both conviction and sentence), and the record in this matter is returned herewith.

45.2 In regard to the matter of *S v Ntsikelelo Kowa*:

45.2.1 the conviction and sentence on count 1 (the contravention of s 65(1)(a) of the Road Traffic Act 93 of 1996 by driving a motor vehicle whilst under the influence of intoxicating liquor), are set aside on the grounds that the proceedings in respect of this count are not in accordance with justice; and

45.2.2 The conviction and sentence in respect of count 2 (the contravention of s 12 of the Road Traffic Act, 93 of 1996 by driving a motor vehicle without a licence) are declared to be in accordance with justice; and the record in this matter is returned herewith.

45.3 The Chief Registrar of the High Court shall furnish a copy of this judgment to the Director-General of the Department of Justice, the Regional Heads of the Department of Justice and the Office of the Chief Justice for the Western Cape, the Director of Public Prosecutions for the Western Cape, the Magistrates' Commission, the Regional Court President (Western Cape) and the Chief Magistrates and judicial administrative/'cluster' head(s) for the Citrusdal magistrates' court, as well as the head of such court.

45.4 The Magistrates' Commission is directed to conduct an enquiry into the failure by the presiding magistrate in the *Fransman* and *Kowa* matters to

attend to the outstanding query from this court dated May 2017 until May 2018, with a view to considering whether such conduct was improper, negligent and/or remiss in any way and if so, shall consider whether disciplinary proceedings should be held in regard thereto, and the Secretary of the Commission shall report back to this court in regard to the outcome of such enquiry and disciplinary proceedings, if any, on or before 1 October 2018.

45.6 The Regional Head of the Department of Justice is directed to conduct an enquiry in order to determine:

45.6.1 the circumstances which resulted in the query which was addressed to the magistrate in May 2017 in respect of the aforesaid matters only being responded to in May 2018, with particular reference as to

45.6.2 whether the Clerk of the Criminal Court and the Court and/or Area Court Managers of the Citrusdal Magistrate's Court and/or any other officials were negligent and/or remiss in their duties in regard to the aforesaid query and/or in failing to taking steps to ensure that it was attended to timeously, and pursuant thereto

45.7 The Regional Head shall furnish this Court as well as the Secretary of the Magistrates' Commission on or before 1 October 2018 with his report in this regard, which report shall indicate whether any disciplinary action was taken in terms of the preceding paragraph and the outcome thereof.

45.8 The Regional Head of the Department of Justice shall (together with the Chief Magistrate(s) and judicial administrative/'cluster' head(s) for the Citrusdal magistrates' court and with the assistance of the Regional Head

of the Office of the Chief Justice and the Chief Registrar, as well as the Magistrates' Commission), conduct a full retrospective review of the system which was put in place in regard to the processing, forwarding, monitoring and control of automatic reviews from all magistrates' courts in the Western Cape since the date of the Regional Head's report to this Court in November 2017, with particular reference to the issue of undue delay, both in regard to the forwarding of the records in such matters to this Court, as well as in regard to the way in which queries which have been raised by this Court in relation to such matters are processed and responded to, and shall provide this Court with a comprehensive report in this regard, by no later than by 15 November 2018

RCA HENNEY

Judge of the High Court

ML SHER

Judge of the High Court