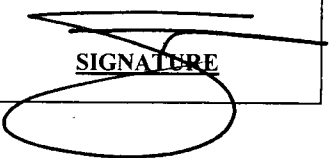


IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

DELETE WHICHEVER IS NOT APPLICABLE	
(1) REPORTABLE: YES / NO.	
(2) OF INTEREST TO OTHER JUDGES: YES / NO.	
③ REVISED.	
17/2/2018 <u>DATE</u>	 <u>SIGNATURE</u>

A88/15.

Date: 19/2/15.

High Court Reference No: 820/14

Magistrates Serial No: SH141/2014

Case No: 8/2014

MAGISTRATE

SEBOKENG

**THE STATE V SOLLY SOLOMON ZWELAKHE MBANGENI AND SARAH
MATLAKALA MATIKANE**

REVIEW JUDGMENT

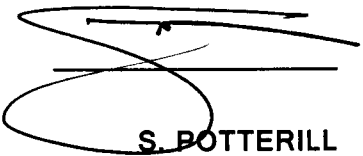
POTTERILL J

- [1] The accused before the court are charged with murder. The state's case and accused 1's case has been closed.
- [2] During the defence case of accused 2 the Acting Regional Court Magistrate realised that Mr. Thoabala, acting on behalf of accused 2, was not an admitted attorney.
- [3] The Magistrate due to the irregularity sent the matter on special review for the proceedings to be set aside.
- [4] The comment of the National Director of Public Prosecutions was requested and they concurred that where a legal representative did not have a right to appearance the irregularity is of such a nature that it would result in a miscarriage of justice and the proceedings must be set aside. They did suggest that the Magistrate enquire from the Law Society whether Mr. Thoabala had a right of appearance when representing accused 2.
- [5] The Law Society has confirmed that Mr. Thoabala had no right of appearance and has not been admitted as an attorney.

[6] In view of the Law Society's confirmation that Mr. Thoabala is not an admitted attorney and has no right of appearance a miscarriage of justice resulted and it must follow that the proceedings must be set aside – *S v Nkosi and Others* 2000 (1) SACR 592 (T).

[7] Accordingly the following order is made:

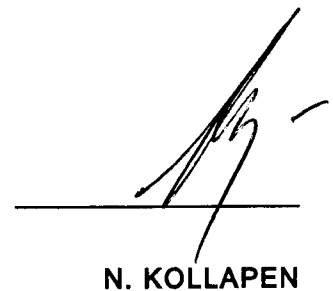
The proceedings are set aside and the trial is to start *de novo*.



S. POTTERILL

JUDGE OF THE HIGH COURT

I agree



N. KOLLAPEN

JUDGE OF THE HIGH COURT