

A144/11S



**IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG DIVISION, PRETORIA)**

A144/11S

HIGH COURT REF NO: 822/2014

REVIEW CASE NO: SR 9/2014

2015-03-05

THE STATE

VS

PERCY SEGOE AND TWO OTHERS

ACCUSED

SPECIAL REVIEW JUDGMENT

TEFFO, J

1] Four accused, namely, Mr Percy Segoe, Mr Sebeko Mazibuko, Mr Sabelo Athur Nkosi and Mr Emmanuel Buthelezi are standing trial where they are facing one count of conspiracy/incitement to commit robbery, 15 counts of attempted murder, one count of attempted robbery with aggravating circumstances, five counts of malicious damage to property, three counts of murder, one count of possession of prohibited firearm, one

count of unlawful possession of firearm, one count of unlawful possession of fully automatic ammunition, one count of unlawful possession of ammunition and three counts of theft of motor vehicles.

2] Their trial commenced on 18 May 2012 where accused 1 was represented by Adv Myburg, accused 2 and 4 by Adv Van Wyk and accused 3 by Mr Bungani. On 19 June 2014 prosecution was stopped against accused 4 and he was acquitted on all counts.

3] During the course of the proceedings before the court *a quo*, it came to light that Mr Bungani was suspended from the roll of attorneys and therefore lacked right of appearance. According to a letter from the Law Society of the Northern Provinces (LSNP), Mr Bungani was suspended from the roll of attorneys from 6 June 2014. He appeared for accused 3 in the above matter on 19 and 20 June 2014 when the matter proceeded while not authorized to appear for lack of a fidelity fund certificate. The matter was then sent on special review to the High Court, North Gauteng for clarification on the legal position regarding the predicament of the court *a quo* with regard to the proceedings before it where Mr Bungani appeared on 19 and 20 June 2014 without authorization to do so.

4] The matter was allocated to my brother, Coetzee J and he requested the National Director of Public Prosecutions (NDPP)' comments on the matter. The comments were received and noted. Due to his unavailability to deal with the matter, the matter came before me. I am delighted to the NDPP for their remarkable comments.

5] After careful consideration of the complete record of the proceedings I am satisfied that when Mr Bungani represented accused 3 during the period 18 May 2012 to 28

March 2014, he was a "legal practitioner" for all intents and purposes as defined in the constitution.

6] In *S v Mamefja* 1979(1)SA 767(T) referred to in *Marques* 2013(2) SACR 369(GNP) at 371, the court found that the circumstances where the High Court may exercise its inherent power to review lower court proceedings are only "where grave injustice might otherwise result or where justice might not be attained."

7] The issue for determination pertains to the legality of the proceedings before the court *a quo* after 6 June 2014.

8] Section 8(4) of the Attorneys Act 53 of 1979 reads:-

"Any practitioner who has been struck off the roll or suspended from practice shall not, while he or she is so struck off the roll or suspended, continue to practice as a practitioner directly or indirectly for his or her own account or in partnership or association with any other person, or except with the written consent of the society concerned, and, if he or she is a person who, in terms of section 34(1)(b) of the Internal Security Act 74 of 1982, has been struck off the roll, also with the written consent of the Minister, be employed in any capacity connected with the profession of a practitioner."

9] It follows from the provisions referred to *supra* that on 19 and 20 June 2014 accused 3 was not properly represented. I am of the view that the proceedings of the court *a quo* on 19 and 20 June 2014 were irregular and not in accordance with justice. They therefore stand to be set aside.

10] The matter is still pending in the court *a quo*. A number of witnesses have already testified and more witnesses are still to be called. Taking into account the stage the trial has reached, the inconvenience the State could face in having to establish whether the material witnesses would still be available, I am of the view that re-instituting the criminal prosecution will not serve the interests of the complainants or justice in general. I am persuaded that it will be in the interests of justice to only set aside the proceedings of 19 and 20 June 2014.

11] The proceedings of 19 and 20 June 2014 are therefore reviewed and set aside and the matter is remitted to the court *a quo* for finalisation.

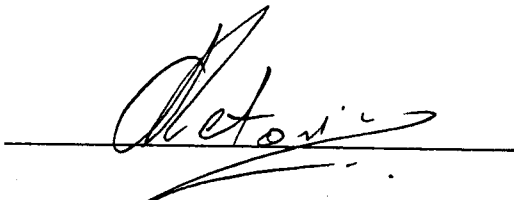


M J TEFFO

JUDGE OF THE HIGH COURT

(NORTH GAUTENG DIVISION, PRETORIA)

I agree



C PRETORIUS

JUDGE OF THE HIGH COURT

(NORTH GAUTENG DIVISION, PRETORIA)

And it is so ordered.