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

**CASE NO.A919.2013
DATE: 14 NOVEMBER 2013**

**MAGISTRATE: BETHAL HIGH COURT REF NO.: 1016 MAGISTRATE'S SERIAL
NO.: 18/13 MAGISTRATE'S CASE NO.: 21/13**

THE STATE V LINDOKUHLE ZULU AND F A S

REVIEW JUDGMENT

JANSEN AJ

1. This matter came before us by way of a special review in terms of section 304(4) of the Criminal Procedure Act 51 of 1977 from the Magistrate's Court for the regional division of Mpumalanga held at Bethal. There were two accused, namely a Lindokuhle Zulu and a F A S Both pleaded guilty to the following charge: - *"theft of stock or produce read with the provisions of section 1, 11, 12, 14 and 15 of the Stock Theft Act 57 of 1959 in that on or about 23 December, 2012 and at or near Emzinani in the district of Pongola, the*

accused did unlawfully and intentionally steal stock or produce - namely a horse, the property or in the lawful possession of a Wille Masego".

2. Both accused were found guilty on the charge on 11 October 2013.
3. However, when the court resumed on 18 October 2013 for sentencing, it transpired that accused number two, namely F A S, was only 17 years old.
4. This fact was confirmed by accused number two's mother and it also appeared from his birth certificate. As a result, the trials of accused numbers one and two were separated and the Magistrate referred the matter for a special review to a Judge of the High Court, with the request that the conviction be set aside in that the procedure prescribed by the Child Justice Act 75 of 2008 had not been followed, due to the Magistrate being unaware of the fact that the accused was a minor.
5. In the result, the following order is made:

The conviction of accused number two namely F A S on 11 October, 2013, on a charge of theft of stock or produce read with the provisions of section 1, 11, 12, 14 and 15 of the Stock Theft Act 57 of 1959 is hereby set aside, in order for the proceedings to start *ab initio* in terms of the Child Justice Act 75 of 2008.

M.iyl. JANSEN
ACTING JUDGE IN THE HIGH COURT
/
P.M. MABUSE JUDGE IN THE
HIGH COURT