

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No: 100/2011

In matter between:

THE STATE

V

SIMPHIWE HLONGWANE

Accused

CORAM: C.J. MUSI, J et KUBUSHI, AJ

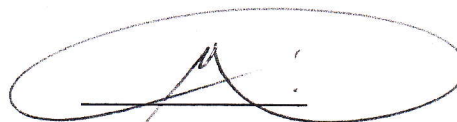
JUDGMENT BY: C.J. MUSI, J

DELIVERED ON: 26 MAY 2011

[1] The accused was convicted of Arson by the magistrate Harrismith. He was sentenced as follows:

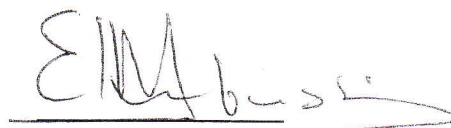
“Fined R4000.00 or 8 (eight) months imprisonment. In terms of section 103 (2) accused not declared unfit.” Quoted without emendation.

- [2] The accused was unrepresented and the matter was sent on special review. My brother Lekale AJ noticed that the accused was not invited to testify although he indicated that he wished to testify. He then directed a query to the magistrate wherein he asked him to give reasons why the accused was not invited to testify.
- [3] The magistrate, in his reply, concedes that it was an oversight and that the accused did not have a fair trial as a result of the oversight.
- [4] I agree. This irregularity is such a gross departure from the established rules of procedure that it can not be said that the accused had a fair trial. The whole proceedings are rendered abortive by the irregularity. The whole proceedings ought to be set aside.
- [15] I accordingly make the following order:
1. The conviction and sentence are set aside.

A handwritten signature, possibly "C. J. Musi", is enclosed within a hand-drawn oval.

C. J. MUSI, J

I concur

A handwritten signature, possibly "K. Bushi", is written over a horizontal line.

KUBUSHI, AJ

/ar