

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review No: 351/2011

In the review in the following cases:

THE STATE

and

- | | | |
|-----|--------------------------------|------------|
| (1) | THEBOHO THAELE AND 2 OTHERS | A3448/2010 |
| (2) | XEXILE RUBEN PANE AND 2 OTHERS | A3579/2010 |
| (3) | KEITH CAPTAIN MAFE | A4348/2010 |
| (4) | SKHALO MAFUNA AND 1 OTHER | A4572/2010 |
| (5) | JOHANNES LODIEWIEKUS ROESTOF | A4638/2010 |
| (6) | ANDREW THAMSANQA MOKOMA | A5284/2010 |
| (7) | THABISO JOHANNES NCHONCHO | A149/2011 |
| (8) | PHAMELA BENJAMIN MANARE | A499/2011 |

CORAM: KRUGER, J et MATHEBULA, AJ

JUDGMENT BY: KRUGER, J

DELIVERED ON: 15 SEPTEMBER 2011

- [1] This is a special review dealing with the request that the proceedings in the above eight cases be set aside due to the prolonged illness of the magistrate and that they commence *de novo* before another presiding officer.

[2] These eight cases are all part-heard before Mr A K Kajee, an acting magistrate, sitting at Welkom.

[3] The details of the cases are as follows:

1. S v THEBOHO THAELE and 2 others - Case A3448/2010

Charges: 1 Malicious injury to property.

2 & 3 Housebreaking with intent to steal and theft.

Plea: 25 January 2011: All three not guilty all 3 counts.

Mechanically recorded. Postponed to 9 March 2011 (part heard).

9 March 2011:

Postponed to 15 April 2011: mechanically recorded.

15 April 2011:

Postponed to 28 May 2011, part heard, postponed for inspection *in loco*.

30 May 2011:

Mechanically recorded, postponed to 11 July 2011

11 July 2011:

Magistrate ill, case postponed to 24 August 2011.

24 August 2011:

Magistrate ill, case postponed to 16 September 2011

pending application to set proceedings aside due to illness of Mr Kajee. Accused numbers 1 – 3 in custody; bail for accused number 3 set at R1000,00.

2. S v XIXILE RUBEN PANE and 2 others - Case A3579/2010

Charge: Assault with intent to do grievous bodily harm.

Plea: 28 February 2011: All the accused not guilty.

Mechanically recorded, postponed to 30 March 2011.

30 March 2011:

Legal representative unavailable. Postponed to 15 June 2011.

15 June 2011:

Legal representative unavailable. Postponed to 28 July 2011.

28 July 2011:

Other Presiding Officer. Postponed to 17 November 2011.

3. S v KEITH CAPTAIN MAFE – Case A4348/2010

Charge: Reckless/Negligent driving

Plea: 2 March 2011: Not guilty.

Mechanically recorded, postponed to 4 May 2011.

4 May 2011:

Mr Kajee not at court.

1 August 2011:

Mr Kajee not at court, postponed to 19 September 2011.

4. S v SKHALO MAFUNA and 1 other - Case A4572/2010

Charge: Assault with intent to do grievous bodily harm.

Plea: 9 March 2011: both accused not guilty.

Trial commences. Mechanically recorded,
postponed to 19 April 2011.

19 April 2011:

Postponed because doctor (witness) not available,
postponed to 11 May 2011.

11 May 2011:

Other Presiding Officer, postponed to 15 June 2011.

15 June 2011:

Doctor not available, postponed to 1 August 2011.

1 August 2011:

Other Presiding Officer, Mr Kajee ill, postponed to 14
September 2011.

5. S v JOHANNES LODEWIEKUS ROESTOF – Case

A4638/2010

Charge: Theft

Plea: 1 April 2011: not guilty.

Mechanically recorded, postponed to 27 June 2011.

27 June 2011:

Other Presiding Officer, postponed to 18 August 2011.

18 August 2011:

Other Presiding Officer, postponed to 18 September 2011
because Mr Kajee not available.

6. S v ANDREW THAMSANQA MOKOMA – Case

A2584/2010

Charge: Theft

Plea: 12 April 2011: not guilty.

Trial commences before Mr Kajee, mechanically
recorded, postponed to 27 May 2011.

27 May 2011:

Mechanically recorded, postponed to 14 June 2011.

14 June 2011:

Other Presiding Officer, postponed to 26 August 2011.

26 August 2011:

Other Presiding Officer, postponed to 26 September 2011.

7. S v THABISO JOHANNES NCHONCHO and 1 other –

Case A149/2011

Charge: Robbery

Plea: 7 April 2011: Both accused not guilty.

Trial commences before Mr Kajee. Mechanically recorded, postponed to 17 May 2011.

17 May 2011:

Other Presiding Officer, postponed to 1 June 2011.

1 June 2011:

Other Presiding Officer, postponed to 21 June 2011.

21 June 2011:

Other Presiding Officer, postponed to 28 July 2011.

28 July 2011:

Other Presiding Officer, postponed to 25 August 2011.

25 August 2011:

Other Presiding Officer, postponed to 16 September 2011 for review.

8. S v PHAMELA BENJAMIN MANARE – Case A499/2011

Charge: Assault with intent to do grievous bodily harm.

Plea: 20 April 2011: Not guilty.

Trial commences before Mr Kajee, mechanically recorded, postponed to 1 June 2011.

1 June 2011:

Witness absent, postponed to 15 July 2011.

15 July 2011:

Other Presiding officer, Mr Kajee ill, postponed to 16 September 2011 for special review.

- [4] Mr Kajee has been diagnosed with lymphoma. According to a letter received from the Specialist attending to Mr Kajee dated 5 August 2011, attached to the request for Special Review of the Acting Senior Magistrate at Welkom, Mr Kajee will receive treatment for at least the next 6 months. As his medical team is based in Cape Town, Mr Kajee will not be able to work in the Free State. It is not clear when Mr Kajee will be able to resume his duties.

- [5] The Acting Senior Magistrate points out that an accused is

entitled to a speedy trial, and with reference to **S v MOKOENA** 2005 (2) SACR 280 (O) he states that it will be in the interests of justice that the proceedings in these cases (all part-heard before Mr Kajee) be set aside, and that the trials commence *de novo* before another magistrate. Such order should be made.

[6] **ORDER:**

1. It is declared that Magistrate A K Kajee is unfit to continue with the following trials:
 - (a) S v Theboho Thaele and 2 others - Case A3448/2010;
 - (b) S v Xexile Ruben Pane and 2 others - Case A3579/2010;
 - (c) S v Keith Captain Mafe - Case A4348/2010;
 - (d) S v Skhalo Mafuna and 1 other - Case A4572/2010;
 - (e) S v Johannes Lodewiekus Roestof - Case A4638/2010;
 - (f) S v Andrew Thamsanqa Mokoma - Case A5284/2010;
 - (g) S v Thabiso Johannes Nchoncho - Case A149/2011;
 - (h) S v Phamela Benjamin Manare - Case A499/2011.
2. The proceedings in all the above cases are set aside.
3. The Prosecuting Authority is authorised to commence with

proceedings *de novo* in all the above cases before another judicial officer.

A. KRUGER, J

I agree

M.A. MATHEBULA, AJ