

NOT REPORTABLE
HANDED DOWN: 21 APRIL 2009

/bh

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

REVIEW CASE NO: LR14/2009
HIGH COURT REF NO: 135
MAGISTRATE: LOUIS TRICHARDT

In the matter between:

THE STATE

Versus

TSHUINDUKA KEVIN MALULEKE

ACCUSED

REVIEW JUDGMENT

VAN DER MERWE, J

This matter was sent for special review in terms of the provisions of section 304A of Act 51 of 1977. The reason for this special review is that the magistrate proceeded to deliver judgment without having afforded either the prosecutor or the defence attorney, the opportunity of addressing him on the merits of the matter. The accused was convicted on counts 3 and 4. The prosecutor immediately informed the magistrate that an irregularity had occurred in as much as she and the defence had been deprived of the

opportunity of addressing the court. The prosecutor therefore requested that the matter be sent on special review, which was done.

The matter was sent to the Director of Public Prosecutions for his comments. A helpful memorandum was received from the staff of the Director. Advocates Ngobeni and Lakhi-Hatia both agree that the accused's constitutional rights to a fair trial has been affected by failing to afford him an opportunity to address the court before judgment on the merits of the case. The validity of the proceedings has therefore been destroyed and the conviction should be set aside.

I agree with this point of view.

The conviction is set aside and the matter is remitted to the magistrates' court for a trial *de novo* before another magistrate.

W J VAN DER MERWE
JUDGE OF THE HIGH COURT

I agree,

JUDGE OF THE HIGH COURT