



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

Date: 25/09/09

Magistrate

WITBANK

Case number: C2063/2007

High Court reference number: 1121

THE STATE VERSUS TERENCE MABUZA & WILLIAM BESALAKNE
JIYANE

REVIEW JUDGEMENT

Pretorius J

This case came to court as a special review in terms of section 304(4) of Act 51 of 1977.

The accused were represented by Mr Mashamba. They pleaded not guilty. The state and the two accused adduced evidence. The state and defence closed their

In **S v Muller and Others 2005 (2) SACR 570 (E)** the facts of the matter were similar to the facts in the present case. Pickering J with whom Plasket J concurred found at 575 G-H:

“The accused is given the right to a public trial to ensure that justice is seen to be done. The right to a public trial would include a right to participate fully in the proceedings, be it by way of adducing and challenging evidence, or by way of addressing court on the merits of the case after the conclusion of evidence. It would include a right to participate meaningfully in the conduct of the trial, from the pleading stage of the proceedings up to the pronouncement of the verdict. If the accused is represented by a legal practitioner, the right would include the cross- examination of witnesses and the challenging of evidence in the presence of the accused, unless lawfully removed from the proceedings by lawful order. ”

In the circumstances, having regard to the record, the magistrate's remarks, the Director of Public Prosecutions remarks and the authorities it is quite clear that the failure to afford the parties the opportunity to address the court is a gross irregularity. The accused rights to a fair trial in accordance with the provisions of section 35 (3) of the Constitution of the Respondents have been flouted.

The proceedings were not in accordance with justice.

The following order is made:

1. The conviction is set aside

C. Pretorious

Judge of the High Court

I agree,

M F LEGODI
Judge of the High Court