

FREE STATE HIGH COURT, BLOEMFONTEIN
REPUBLIC OF SOUTH AFRICA

Review: 616/2009

In the review between:-

THE STATE

and

PULE ISAAC MALUKA

CORAM: H.M. MUSI, JP

DELIVERED ON: 12 NOVEMBER 2009

JUDGMENT

H.M. MUSI, JP

[1] During May 2009 the accused appeared before the magistrates' court at Tseseng on charges under the provisions of Act 93 of 1996. The accused was legally represented and pleaded not guilty to the charges. Thereafter the State led its witnesses and closed its case. The accused testified in his defence and closed his case. The matter was then postponed to a date that does not appear from the record for purposes of hearing arguments on the merits. On the date to which the matter had been

postponed the magistrate who heard the matter was not available and it could not proceed.

[2] The record of the proceedings has now been referred to this Court with the following note:

- “1. This above matter was dealt with by Mr. Sepenyane who was temporarily employed after his retirement. His term has since expired.
2. The matter is partly heard and at a stage where it cannot be disposed of in accordance with the provision of section 275 of Act 51/1977 as the presiding officer has not pronounced a verdict.
3. Endeavours to find Mr. Sepenyane to finalise the case have proved futile.
4. The matter should be referred to the Honourable Judge so as to give an appropriate direction.”

[3] It is beyond comprehension that a person who had been permanently employed by the Government of the Republic of South Africa as a magistrate and who is now retired can simply vanish without trace. Be that as it may, in these circumstances the trial has so start afresh before another

magistrate. This could simply have been done without any need for an order from this court. However, I deem it necessary, in order to avoid any confusion, to exercise the inherent powers of a Superior Court and formally set aside the proceedings.

[4] The following order is made:

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

H.M. MUSI, JP

/sp