



**IN THE HIGH COURT OF SOUTH AFRICA
EASTERN CAPE LOCAL DIVISION, BHISHO**

Reference number: E1223/23

Review number: 5/2024

In the matter of:

THE STATE

versus

BULELWA MAZALENI

ACCUSED

REVIEW JUDGMENT

STRETCH J.:

[1] This part-heard matter was sent on special review due to the fact that the legal practitioner representing the accused, being an attorney in private practice, did not have a valid fidelity fund certificate when his client pleaded to the charge and when the first prosecution witness testified.

[2] Mr Sinclair from the Office of the Deputy Director of Public Prosecutions is of the opinion that this constitutes a gross irregularity and that the proceedings should be set aside. He is thanked for his helpful report in this regard.

[3] Section 73(2) of the Criminal Procedure Act 51 of 1977 states that an accused person is entitled to be represented by a legal adviser at criminal proceedings, provided the legal adviser is not, in terms of any law, prohibited from appearing at the proceedings in question.

[4] Section 84 of the Legal Practice Act 28 of 2014 renders it mandatory for an attorney practising for his own account, to be in possession of a fidelity fund certificate.¹ The act of practising without a fidelity fund certificate has been described by our courts as an irregularity that is of so fundamental and serious a nature, that the proper administration of justice and the dictates of public policy require it to be regarded as fatal to the proceedings in which it occurred.²

[5] In the circumstances, the Bhisho Office of the Deputy Director of Public Prosecutions has recommended that the proceedings should be set aside. I agree.

[6] The proceedings are rendered a nullity *ab initio*, and they are set aside. Should the prosecution elect to do so, the trial should proceed *de novo* before a different magistrate.

I.T STRETCH
Judge of the High Court

I agree:

¹ See *Law Society of the Northern Provinces v Le Roux* (185/2015) [2015] ZASCA 168 (26 November 2015); *NW Civil Contractors CC v Anton Ramaano Inc.* (a judgment handed down in the Limpopo Local Division by A.M.L. Phatudi J under case number 993/2016, on 14 May 2018)

² See *S v Van Eeden* 2018 (2) SACR 218 (NCK) at [43]

M. LOWE
Judge of the High Court

Date handed down: 22 July 2024