



**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE HIGH COURT, CAPE TOWN)**

Case No: 65/2025

Magistrate's Court Case No: H46/2023

In the matter between:

THE STATE

and

HALFANI RAJABU

Accused

Judgment delivered on: 1 April 2025

REVIEW JUDGMENT

MTHIMUNYE, AJ

[1] This matter came before this court by way of special review. The referral of the matter to this Court was at the instance of the presiding District Court Magistrate.

The accused, Mr Halfani Rajabu, is facing one count of contravening the provisions of Section 5(b) of the Drugs and Drug Trafficking Act 140 of 1992 (Read with the provisions of Section 51(2) of the Criminal Law Amendment Act 105 of 1997) – Dealing in Drugs. Alternatively, for contravening the provisions of Section 4(b) of the Drugs and Drug Trafficking Act 140 of 1992 – Possession of Drugs.

- [2] In the court *a quo*, on his first appearance, the accused was represented by Mr Soeker who remained on record until 04 June 2024 when his mandate was terminated. On the same day, the accused's newly appointed legal representative Mr Scott came on record for the accused.
- [3] On 13 November 2024, the charge was put to the accused and the accused subsequently pleaded not guilty to the main and alternative charge. The court proceeded with the hearing of evidence of the first witness, Constable Manyebesi. However, due to the inconsistencies in the interpretation of the Swahili interpreter, the matter was then postponed to 23 January 2025 for the record to be transcribed and for the replacement of the Swahili interpreter.
- [4] On 23 January 2025, Mr Scott failed to attend court. Mr Van Vught, the new legal representative of the accused, advised the court that there was a reason why Mr Scott was not present at court. Mr Van Vught further informed the court that he was attending to a few of Mr Scott's matters when it came to his attention that Mr Scott was struck from the roll and that he in fact, could not appear in court for the duration of this trial.
- [5] Mr Van Vught in consultation with the accused expressed the view that the proceedings should be sent to the High Court on special review to be set aside and that it be ordered that the proceedings should start *de novo*. The State and the presiding magistrate agreed with the suggestion of Mr Van Vught. The court

then postponed the matter to 9 April 2025 for the High Court to decide on the further conduct of this matter.

[6] The question that arises in this matter is whether the proceedings must be set aside owing to the lack of authority of Mr Scott to appear on behalf of the accused. Furthermore, whether his conduct constituted a gross irregularity that vitiated the proceedings.

[7] In terms of section 24(1) of the Legal Practice Act 28 of 2014 (“LPA”), a person may only practice as a legal practitioner if he or she is admitted and enrolled to practice as such in terms of this Act. Section 1 of the LPA defines a legal practitioner as an advocate or attorney admitted and enrolled as such in terms of the section 24 or 30 of the LPA. Section 24(1) of the LPA provides that a person may only practice as a legal practitioner if he or she is admitted and enrolled to practice as such in terms of this Act.

[8] While on the other hand, section 33(4)(a) of the LPA provides that:

“(4)A legal practitioner who is struck off the Roll or suspended from practice may not –

- (a) render services as a legal practitioner directly or indirectly for his own account, or in partnership, or association with any other person, or as a member of a legal practice; or*
- (b) be employed by, or otherwise be engaged, in a legal practice without the prior written consent of the Council, which consent may not be unreasonably withheld, and such consent may be granted on such terms and conditions as the Council may determine.”*

[9] Our adversarial system of litigation is fundamentally based on licensed legal practitioners whose role is to assist the courts in executing their adjudicative functions. When a legal practitioner is either suspended from practice or removed

from the roll of practicing advocates, they forfeit their right of audience in court. Therefore, when an individual without this right appears in court claiming to represent a client, such an appearance compromises the integrity of the proceedings and taints the proceedings with gross irregularity.

[10] In the matter of ***S v Mkhise and Others*** 1988 (2) SA 868 (A), Sebastian de Jager, who had not been admitted as an advocate, purported to represent persons before the court while masquerading as an advocate. The Supreme Court of Appeal found that the lack of authority in criminal proceedings to be so fundamental and irregular as to nullify the entire trial proceedings.

[11] It is quite clear from the provisions of the LPA, that Mr Scott being struck off the roll of advocates was not allowed to render any services to the accused. In my view, having regard to all the relevant considerations discussed above, Mr Scott appeared in the criminal matter under review, in contravention of section 24 and 33 of the LPA. Thus, these proceedings must be set aside in toto. I am mindful that starting the matter *de novo* may be prejudicial to the accused's right to a speedy trial.

[12] However, I share the views expressed in ***S v Van Eden*** 2018 (2) SACR 218 (NCK) at para 46, where the court stated:

“In my view this irregularity 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” and “when considerations of public interest are paramount, hardship in a particular case, should it arise, is to be regretted but cannot be avoided.”

[13] The proceedings in the criminal trial under review stand to be reviewed and set aside in toto. In the result, I would make the following order:

13.1 The criminal proceedings against the accused in the Magistrate's Court in the District of Bellville, under case number H46/2023 are hereby reviewed and set aside in their entirety.

13.2 A decision whether to re-instate prosecution in the criminal trial is left to the discretion of the Director of Public Prosecution, Western Cape.

13.3 Should the prosecution be re-instated; the trial is to be conducted before a different magistrate.

S MTHIMUNYE

JUDGE OF THE HIGH COURT

I agree and it so ordered:

J LEKHULENI

JUDGE OF THE HIGH COURT