



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

Review 2/25

In the matter between

THE STATE

and

KEITH MEYERING

ACCUSED

CORAM: THULARE J; BHOOPCHAND AJ

Delivered: 05 August 2025

Summary: Criminal procedural law. Death of an Accused after pleading, during an adjournment and before conviction. Procedure to be applied to terminate charges and cancel extant arrest warrants. Principle that death terminates prosecution and criminal liability is personal, grounded in the common law. No direct statutory or caselaw in point. Review Courts approach to judicial review and remittal to referring Court in a special review.

ORDER

1. The order of the George District Magistrates' Court pertaining to Accused, Keith Meiring under case number D221/23 to withdraw charges and cancel the extant arrest warrant is reviewed and set aside,
2. The matter is remitted to the George District Magistrates Court' to act in accordance with paragraph 10 of this judgment.

JUDGMENT

THULARE J

[1] This is a special review. The matter concerns the procedure applicable in two instances. The first relates to when an Accused dies after pleading to the charges preferred against them, and the second to any warrants of arrest that were issued during the life of the Accused. The purpose of this special review was explained by the District Magistrate of George. The Accused pleaded not guilty on 11 July 2024 to a charge under s 65(2)(d) of the National Road Traffic Act 93 of 1996 before Magistrate Henderson. The trial commenced. On 8 October 2024, the Accused failed to appear and a warrant of arrest was authorised and issued immediately. The matter was brought before Magistrate Olivier, the presiding officer, requesting this special review, on 19 February 2025. The Prosecutor informed the Court that the Accused had died and handed up a death certificate. The Prosecutor requested the warrant of arrest be cancelled and the charges against the Accused withdrawn. The Prosecutor did not apply under s118 of Act 51 of 1977 (the CPA'). Magistrate Olivier states he was unaware that the Accused had pleaded, and the matter was partly heard before Magistrate Henderson. Magistrate Olivier submits that he erroneously cancelled the warrant of arrest and withdrew the charges against the Accused contrary to s 106 of the CPA. Magistrate Olivier requested the special review on 5 June 2025.

[2] The information provided by Magistrate Olivier was supplemented from the bundle of documents, including the record of proceedings relating to the Accused's

prosecution, accompanying the review. The trial in this matter commenced on 11 July 2024 after the Accused pleaded not guilty to the charge of driving under the influence of alcohol. The State called its first witness on that date. The trial resumed on 27 August 2024, and the State tendered further evidence. The trial was then postponed to 17 September 2024. The Accused failed to appear timeously in Court. When he did appear later that day, the Magistrate referred to the issue of a warrant for his arrest that morning. She informed the Accused that she was withdrawing the authority for the warrant after she accepted his explanation for failing to appear that morning. The following Court Day was scheduled for 8 October 2024. The Accused once again failed to appear. The Accused's lawyer informed Magistrate Henderson that he did not receive any response to a call to the Accused the previous day. Magistrate Henderson issued a new warrant of arrest for the Accused. The death certificate indicates that the Accused died on 4 October 2024, four days before the trial was to resume.

[3] Section 118 of the CPA relates to the nonavailability of the judicial officer to continue with the trial after an Accused has pleaded not guilty and no evidence has been adduced. The trial may continue before any other judicial officer of the same Court. Section 118 is about judicial continuity. It is not about the death of the Accused, nor is it about terminating proceedings due to the death. It ensures that a trial can proceed before a different magistrate if the original one becomes unavailable **before** any evidence is led. Section 118 does not apply to the peculiar facts of this case. The Accused had pleaded not guilty to the charge, the trial had commenced, evidence had been led, and the Accused died during the trial. Magistrate Olivier is thus incorrect in suggesting that the Prosecutor should have applied under s118 for him to deal with the death of the Accused and the issue of the outstanding warrant of arrest.

[4] Magistrate Olivier did not require statutory authority to deal with the situation that eventuated. Magistrate Henderson was unavailable for unknown reasons. Magistrate Olivier did not need section 118 authority to act in this limited administrative capacity. His role was not to continue the trial, but to record the death and terminate the

proceedings. This amounted to a procedural necessity and not a continuation of adjudication.

[5] As Magistrate Olivier correctly surmised, the withdrawal of the charge and the cancellation of the warrant against the Accused was procedurally incorrect. Withdrawal of a charge implies prosecutorial discretion under section 6 of the CPA. Section 6 applies to two situations. The National Director of Public Prosecutions (the NDPP) or any person conducting a prosecution at the instance of the State may in the first scenario, before an Accused pleads to a charge, withdraws that charge. The first scenario does not apply to the circumstances of this case. The second situation allows for the same personnel to stop the prosecution on a charge at any time after an Accused has pleaded, but before conviction. The second situation requires the consent of the NDPP, or any person authorised by the NDPP. The information provided by Magistrate Olivier does not elaborate on whether the Prosecutor obtained any permission from his superiors, let alone any permission to request a withdrawal of the charge or the cancellation of the warrant of arrest. Therefore section 6(a) does not apply, as a charge may only be withdrawn before an Accused has pleaded. Furthermore, a prosecution may be stopped, not withdrawn, after an Accused has pleaded, and before conviction has occurred. In the latter instance, section 6(b) envisages a situation where the Accused is entitled to be acquitted by the Court. It does not envisage a situation where the Accused has died. The reference to a person authorised by the NDPP would mean that Prosecutors may withdraw charges before an Accused has pleaded but would require the consent of the NDPP or her delegate to stop a prosecution after the Accused has pleaded and before conviction occurs.

[6] Magistrate Olivier's reliance on section 106 of the CPA has little relevance to the cancellation of the arrest warrant or the withdrawal of the charges against the Accused. Section 106 applies to the plea of the Accused alone. The Accused pleaded to the charge preferred against him and the charge cannot be withdrawn unless proper procedure is followed. Section 106 does not apply to the procedural disposal of a charge before or after an Accused has pleaded.

[7] Whilst dealing with the procedural disposal of the charge against the Accused in circumstances sketched by Magistrate Olivier, a valid question would be whether the charge could be dismissed or struck from the roll. Dismissal is inappropriate as it implies that the Accused is exonerated or that the case against him is without merit. A striking out of a matter implies that the case is removed from the Court's schedule for that day or indefinitely. The Court refuses to proceed with the matter due to a procedural defect, absence of a party or a lack of readiness to proceed. The case is paused, not terminated. Death terminates the proceedings because the Accused can no longer stand trial, not because the charges are invalid. Termination is the cue to the appropriate procedure that should have been implemented.

[8] Before proceeding to examine the procedure appropriate to the special review, the Court shall deal with the cancellation of the arrest warrant that was authorised and issued by Magistrate Henderson. Section 170 of the CPA concerns the failure of the Accused to appear after an adjournment to remain in attendance. Section 170 renders an Accused's failure to appear at adjourned proceedings on the next date and place, a punishable offence. Section 43 of the CPA applies to warrants of arrest that may be issued by a Magistrate or Judge at the request of the NDPP, a Prosecutor, or a commissioned police officer. Section 43 warrants are usually pre-trial warrants issued to secure the initial arrest of a suspect. They may be cancelled by the person who issued it, or if unavailable, by a person with like authority. Section 170 warrants of arrest are in-court procedural warrants. Section 170 provides its own mechanism for the cancellation of a warrant. Section 170 (1) provides for a summary enquiry of the Accused. The situation contemplated is an impossibility as the Accused has died.¹ Neither section 43 nor 170 is authority for Magistrate Olivier to have cancelled the arrest warrant issued by Magistrate Henderson.

¹ See *S v Engelbrecht* (41/918/2011) [2012] ZAGPJHC 38; 2012 (2) SACR 212 (GSJ) (23 March 2012) at para 7 where the Court states: 'The issue of a warrant for the arrest of someone known to be deceased would be absurd and a *brutum fulmen* or exercise in futility. The purpose of issuing a warrant of arrest is for the warrant to be carried out. A warrant can obviously not be carried out upon a deceased.'

[9] Surprisingly, and after an extensive search, there is no statutory or case law authority on point. The Court is cognisant of its responsibility to provide guidance and clarify a point of procedure as it will serve as a binding precedent to the lower Courts under its jurisdiction. The cancellation of the arrest warrant is a necessary administrative step. The withdrawal of charges is a procedural error as it implies the possibility of reinstatement. A review is concerned with the legality of a decision.

[10] This Court relies on the common law principle that criminal prosecution is a personal action.² The principle that a criminal trial abates or terminates upon the death of the Accused is a deeply entrenched rule of the common law repeatedly confirmed and applied by our Courts. As the death of the Accused rendered the trial moot, it must be formally stopped. Magistrate Olivier's role was limited to recording the death of the Accused, cancelling the arrest warrant, and ensuring that the record reflects termination of the proceedings. It follows that the cancellation of any extant arrest warrant should be done under this procedure. The procedure is best described as an abatement or termination of proceedings upon the death of an Accused.

[11] In the premises, the decision to withdraw the charges against the Accused and cancel the arrest warrant in case number D221/23 of the George District Magistrate's Court is reviewed and set aside. The matter is remitted to the Court to deal with it as specified.

DM THULARE
JUDGE OF THE HIGH COURT

I agree,

² In *S v P* 1972 (2) SA 513 (NC), the Court dealt with a situation where the Accused died after conviction and before the hearing of an appeal. The court held that an appeal by a convicted person is a personal proceeding that lapses upon the death of the Appellant. *S v Msimango and Another* (187/2005) [2009] ZAGPJHC 34; [2009] 4 All SA 529 (GSJ) ; 2010 (1) SACR 544 (GSJ) (27 July 2009) deals with a situation where a witness dies during a criminal trial.

AJAY BHOOPCHAND
ACTING JUDGE OF THE HIGH COURT