



**IN THE HIGH COURT OF SOUTH AFRICA  
(EASTERN CAPE DIVISION, MAKHANDA)**

**[Reportable]**

Case No:CA&R113/2025

Date delivered: 22 July 2025

In the matter between:

**THE STATE**

and

**C[...] K[...]**

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**JUDGMENT**

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**Introduction**

1. This matter was sent on special review by the Regional Magistrate, sitting in Fort Beaufort. The accused child (the child), who was 14 years' old at the time of his trial, was convicted of the murder of a 14 year old boy. The child was 12 years' old at the time of the alleged commission of the offence. In her memorandum

accompanying the record, the magistrate said that she erred in convicting the child of murder because the child had pleaded to the competent verdict of culpable homicide. She requested that the conviction for murder be set aside and that another verdict be substituted.

2. The record of the proceedings reflects that when the charge of murder was put to the child, who was legally represented, he pleaded guilty. His legal representative, presumably from LegalAid South Africa because the child had elected to apply for legal aid, informed the court that the plea was not in accordance with his instructions and that the child intended to plead guilty to culpable homicide, having indicated as much during consultation. The magistrate then established from the child that his plea of guilty was to a charge of culpable homicide.

3. A statement in terms of s 112 (2) of the Criminal Procedure Act 51 of 1977 (the CPA) was then read into the record. I shall not reproduce the whole statement but it is relevant to mention that the child stated that he wrongfully and negligently stabbed the deceased by stabbing him with a knife on his body. He further stated that after the deceased had pushed him and hit him, and he fell down, he was angry and went home and grabbed a knife. He returned to where the deceased was. The deceased picked up some stones and the child went to him with the intention to scare him. The child struck a blow on the deceased's body but did not intend to kill him. The prosecutor accepted the plea to culpable homicide.

4. What happened thereafter is a little difficult to follow. The magistrate said, and I paraphrase, that she was not accepting the plea, and that it was "not holding up" even for a conviction of culpable homicide. The following exchange took place between the magistrate and the legal representative:

"Legal representative: Even on culpable homicide?"

Court: No, remember you said you are pleading on culpable homicide. Legal representative: Yes, your Worship.

Court: The State put the charge of murder.

Legal representative: Of murder, yes your Worship.

Court: So the plea as it stands at the moment on what you are saying you are pleading on, the court is satisfied with that.”

5 The matter then stood down after the legal representative asked if he and the prosecutor could approach the magistrate in chambers. When the matter resumed, the legal representative placed on record that the proceedings had been adjourned for he and the prosecutor to “find each other and also to approach the court”. The magistrate recorded that a statement had been handed in earlier with which she was not satisfied, particularly on the charge that it was said the child was pleading to, and it was not accepted. Nothing was placed on record of what took place in the magistrate's chambers.

6. The legal representative, on behalf of the child, then made the following written admissions in terms of s 220 of the CPA:

- “1. I admit that I stabbed the deceased on the chest with a knife.
2. I further admit that I foresaw that by stabbing him on the chest I might kill him.
3. I therefore accept full responsibility for my actions, furthermore I don't have a defence thereto.”

7. The post mortem examination report and a photograph album were submitted as exhibits.

8. The prosecutor closed the State case and submitted that the child should be found guilty of murder. On behalf of the child the legal representative closed his case. He did not address the court other than to say that the child took full responsibility for his actions.

9. In her judgment the magistrate said that she was satisfied that the child was not pleading guilty to the charge of murder and that the evidence was satisfactory for the offence of murder. She accordingly convicted the child of murder.

10. It does not appear from the record that the child formally pleaded not guilty to the charge of murder.

11. The child has not yet been sentenced.

12. In her memorandum accompanying the record, the magistrate stated that she erred in convicting the child of murder as he had pleaded to culpable homicide, and that when she read the s 112 (2) statement she wrongly interpreted the fetching of the knife as some sort of intent.

13. Once the State has restricted the *lis* between it and an accused person, by an acceptance of a plea of guilty on an alternative charge or competent verdict, the court does not have the power to reject the plea. See *Tshilidzi v S* [2013] ZASCA 78 and the authorities referred to therein. Such rejection constitutes a gross irregularity (*Tshilidzi* at paragraph [4]).

14. It is not altogether clear whether the magistrate rejected the plea because it did not support a conviction of culpable homicide, or because the child appeared to be admitting intent and was therefore pleading guilty to murder. Her rejection of the plea and the subsequent meeting in chambers appear to have precipitated the child's s 220 admissions.

15. I was concerned about the conduct of the trial, particularly because this was a very young child and because the s 220 admissions were radically opposed to the s 112 (2) statement. I was of the view that at least the prosecutor and the legal representative had not served the best interests of the child. A trial in which the prosecutor was prepared to accept a plea on the competent verdict of culpable

homicide effectively changed into a murder trial. I was concerned that once the proceedings had been reviewed and set aside, as they had to be, the child would face a charge of murder when in previous proceedings the State had restricted the *lis* to culpable homicide.

16. I requested an opinion from the Director of Public Prosecutions, Makhanda. I received a prompt, thorough and helpful response from Ms Vos, Deputy Director of Public Prosecutions. She agreed that the proceedings should be reviewed and set aside. She pointed to deficiencies in the s 112 (2) statement and expressed the view that the prosecutor should not have accepted the plea, that the magistrate should have realised that all the elements of culpable homicide were not admitted and should have entered a plea of not guilty in terms of s 113 (1) of the CPA. I note that although she did not say so on record, the magistrate recorded, on the J15 charge sheet, a plea of guilty to the competent verdict of culpable homicide, and that it was changed in terms of s 113 of the CPA. The judgment recorded on the J15 was guilty as charged on the main count. If indeed the magistrate intended to enter a plea of not guilty in terms of s 113 (1) of the CPA, the charge would have remained as culpable homicide and not murder. Reintroduction of the charge of murder was not permitted. The subsequent events after the rejection of the plea to culpable homicide were in my view grossly irregular and severely prejudicial to the child.

17. This court cannot substitute the verdict with one of culpable homicide. The s 112 (2) statement is insufficient to sustain a conviction of culpable homicide. There is no elaboration of the bare admissions of negligence and unlawfulness, and causation of death is not admitted. It is also worth mentioning that the s 220 admissions were insufficient to warrant a conviction of murder. Intention in the form of *dolus eventualis* was not fully admitted, in that having foreseen the possibility that by stabbing the deceased he might cause his death, the child did not state that he reconciled himself to this possibility.

18. Most important of all, Ms Vos stated that she could not find in the record any indication that criminal capacity on the part of the child had been established.

Section 7 (2) of the Child Justice Act 75 of 2008 (the CJA) provides:

“A child who is 12 years or older but under the age of 14 years and who commits an offence is presumed to lack criminal capacity, unless the State proves that he or she has criminal capacity in accordance with section 11.”

19. Section 11 (1) provides:

“The State must, for purposes of plea and trial, prove beyond reasonable doubt the capacity of a child who is 12 years or older but under the age of 14 years to appreciate the difference between right and wrong at the time of the commission of an alleged offence and to act in accordance with that appreciation.”

20. The record of the proceedings does not reflect any reference to proof of criminal capacity on the part of the child. This defect in itself warrants the setting aside of the proceedings.

21. There was yet a further defect in the proceedings. Section 63 (3) of the CJA provides:

“Before plea in a child justice court, the presiding officer must, in the prescribed manner—

- (a) inform the child of the nature of the allegations against him or her;
- (b) inform the child of his or her rights; and
- (c) explain to the child the further procedures to be followed in terms of this Act.”

22. Before the child pleaded, the magistrate asked the legal representative if the explanations in terms of the CJA had been given to the child, including competent verdicts and the provisions of s 103 of the Firearms Control Act 60 of 2000. The legal

representative informed the magistrate that these requirements had been observed.

23. This was insufficient. Section 63 (3) of the CJA specifically requires the explanation and information to be provided by the presiding officer. Regulation 37 of the CJA sets out in detail the prescribed manner in which the information and explanations must be provided by the presiding officer.

24. It must be remembered that amongst the objects of the CJA are the protection of the rights of children and provision for the special treatment of children in a child justice system. There are no shortcuts.

25. The following order will issue:

(a) The proceedings and conviction for murder under case number S/R 1/2025 held in the Regional Court sitting in Fort Beaufort are reviewed and set aside.

(b) If the prosecuting authority decides to prosecute the child de novo, the proceedings must be heard by a different magistrate.

(c) The Registrar is requested to forward this judgment to Ms W Vos, Deputy Director of Public Prosecutions, Makhandla, and to Ms Imkitha Salman-Kiva, email address I[...].

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**J M ROBERSON**  
**JUDGE OF THE HIGH COURT**

**I agree**

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**J G A LAING**  
**JUDGE OF THE HIGH COURT**