



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

REVIEW: 59/2025

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO

09/09/2025

In the matter between:

THE STATE

Applicant

and

MASINGA, THEMBA NELSON

Respondent

JUDGMENT ON REVIEW

YACOOB J:

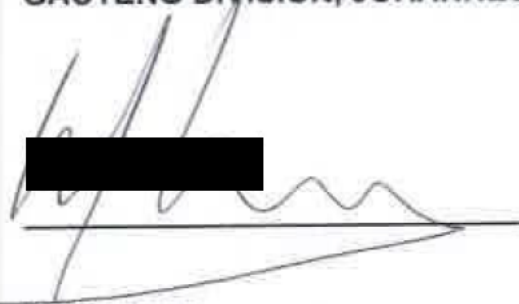
1. This matter was remitted for special review in terms of section 304(4) of the Criminal Procedure Act, 51 of 1977 ("the CPA"), by the District Court in Boksburg.
2. Mr Masinga was charged with housebreaking with intent to rob and robbery and appeared in the Vosloorus Regional Court. He and his co-accused were initially represented by the same legal representatives, employed by Legal Aid South Africa ("LASA"). However, upon a conflict arising, LASA instructed a private legal practitioner to represent Mr Masinga.

3. Mr Masinga was then assisted by a Mr Mathebula, on whose advice he pleaded guilty, and was convicted and sentenced to six years' imprisonment.
4. However, it thereafter emerged that Mr Mathebula, at the time he initially appeared to assist Mr Masinga, had been a candidate attorney. During the later period of his involvement in the proceedings, he was no longer a candidate attorney, he had not been admitted as an attorney, and his right of appearance had expired. The person who had been instructed to appear for Mr Masinga by LASA was Mr Mathebula's erstwhile principal, a Mr Mabule, and not Mr Mathebula.
5. It is clear that Mr Masinga was not represented by a legal practitioner as he is entitled to be. This is a clear breach of his rights to a fair trial encapsulated in section 35(3) of the Constitution of the Republic of South Africa, 1996, as well as his right to legal assistance in terms of section 73 of the CPA.
6. I am satisfied that the proceedings in which Mr Masinga was convicted and sentenced are vitiated by this irregularity and that they must be set aside and begin *de novo*.
7. I therefore order that:
 - 7.1. The conviction and sentence of Mr Masinga on 23 January 2025 in case number VSH120/2023 are unlawful and set aside.
 - 7.2. The matter is remitted to the Regional Court, Vosloorus for trial *de novo*.



S. YACOOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG

I agree.



W. KARAM
ACTING JUDGE OF THE HIGH COURT
GAUTENG DIVISION, JOHANNESBURG