



**IN THE HIGH COURT OF SOUTH AFRICA
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable / Not reportable

Case no: R26/2025

In the matter between:

THE STATE

and

MOKHOTHU ALCHURCH SEITSHIRO

ACCUSED

Neutral citation: *The State v Seitshiro* (R26/2025) [2025] ZAFSHC 293 (16 September 2025)

Coram: Loubser J and De la Rey AJ

Heard: 12 September 2025

Delivered: 16 September 2025

Summary: Special Review in terms of s 304A of the Criminal Procedure Act – whether the accused was afforded a fair trial before sentencing.

ORDER

- 1 The proceedings and the conviction of the accused on all three charges in Wesselsbron case no. A218/2024 is hereby set aside.
 - 2 The accused is to be released from custody immediately.
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JUDGMENT

Loubser J (De la Rey AJ concurring):

[1] This is a special review in terms of s 304A(a) of the Criminal Procedure Act 51 of 1977 (the Act) which provides as follows:

'If a magistrate or regional magistrate after conviction but before sentence is of the opinion that the proceedings in respect of which he brought in a conviction are not in accordance with justice, or that doubt exists whether the proceedings are in accordance with justice, he shall, without sentencing the accused, record the reasons for his opinion and transmit them, together with the record of the proceedings, to the registrar of the provincial division having jurisdiction, and such registrar shall, as soon as is practicable, lay the same for review in chambers before a judge, who shall have the same powers in respect of such proceedings as if the record thereof had been laid before him in terms of section 303.'

[2] The regional magistrate of Welkom referred the record of the present matter to the High Court for review or directives in view of certain concerns she had with the conduct of the trial of the accused in the Wesselsbron Magistrates' Court.

[3] It appears from her report that her concerns pertain to the following: the evidence in court was presented in a piecemeal fashion in that evidence in chief was first heard on count 1, and after cross-examination, the witness was sworn in again to testify regarding count 2, after which cross-examination continued again, and so forth. Secondly, the accused was not informed of the minimum sentences applicable. Thirdly, the verdict on the merits of the case was handed down first, and the accused was found guilty on all three charges. Only on a later day did the magistrate hand

down reasons for the verdict, and the matter was then further postponed for the handing down of additional reasons for the verdict. Thereafter, the magistrate informed the accused that the matter would be referred to the regional court on a future date to be set down for sentence in that court. This never happened; the proceedings were never formally stopped in terms of s 116 of the Act on the said future date and then referred to the regional court for sentence.

[4] In addition, the regional magistrate expressed her concern whether the magistrate had reached a just decision in respect of the verdicts of guilty in respect of all three counts. She was also of the view that the rights of the accused to a speedy and fair trial were infringed. The proceedings did not appear to be in accordance with justice, she informed.

[5] I have scrupulously studied the record of proceedings, and I am in full agreement with the views expressed by the learned regional magistrate. To begin with, the accused first appeared in the trial court on 28 October 2024, when he was already in custody. Today, he is still in custody, some 11 months later. On that day he pleaded not guilty to three charges put to him. He was represented by an attorney of Legal Aid South Africa. This attorney and the prosecutor appearing for the state were both recently appointed and had very little experience.

[6] The first count was one of assault with intent to do grievous bodily harm on 24 June 2024 by hitting the complainant with a clenched fist and with a steel pipe. It was alleged that the accused was in a domestic relationship with the complainant at the time, which meant that a minimum sentence of ten years' imprisonment would be applicable in case of a conviction. He was not informed of such by the court. The second count was in relation to the contravention of a protection order granted to the same complainant on 6 October 2024. It was alleged that the accused had contravened that protection order on 15 September 2024 in that he had threatened to kill her. The third count was one of malicious injury to property belonging to Retabile Keten in that the accused broke down the door of his house. This also happened on 15 September 2024, and according to later evidence presented, in the presence of the complainant in counts 1 and 2. The events in count 2 took place at the same time as the events in count 3.

[7] The first witness who was called to testify for the state, was the complainant in counts 1 and 2. In her evidence in chief, she should have testified in respect of all three the charges, whereafter she should have been cross-examined on that evidence she gave. Instead, she was required to testify with regards to the first count only, whereafter she was cross-examined on that evidence alone. After that, she was called to the witness stand again, and sworn in again to testify about count 2 whereafter, she was again cross-examined before she proceeded to testify about the events in count 3. This procedure went on, even when the accused testified in his defence.

[8] This procedure was manifestly wrong. Nowhere in the Act is such a procedure provided for. It is contrary to common law and the correct procedure is a well-established and acknowledged practice in our criminal courts. In addition, the accused became prejudiced by the wrong procedure, because it protracted the proceedings in that a witness had to duplicate his/her evidence in chief when it came to count 2 and 3, for instance. It also caused unnecessary duplication in cross-examination.

[9] The wrong procedure was also followed when the reasons for the verdict were handed down a number of days after the verdict itself. It speaks for itself that it is desirable that reasons be given together with the order. It must be stated in a judgment convicting the accused. An accused, after all, has an inherent right to know the reasons for his conviction.¹

[10] Eventually, the proceedings were further delayed by the appointment of a new Legal Aid practitioner for the accused, which caused closing arguments to be presented only on 7 February 2025. The matter was then remanded to 26 February 2025 for judgment. Judgment was not handed down on that day, because of the absence of the magistrate for various reasons. On 14 March 2025, the magistrate informed that she was not ready yet to deliver judgment. She then postponed the matter to 1 April 2025 'for judgment and sentence'. This could have created the impression with the accused that she had already decided to convict him on all the counts, which should have been avoided. The accused is entitled to a fair trial. On 1

¹ *S v Van Wyk* 2006 (2) SACR 22 (NC) par 6-7

April 2025, the magistrate was absent due to ill health. At last, on 4 April 2025, the magistrate only handed down her verdict. As we have seen, the reasons for the verdict followed a few days later. In her reasons, the magistrate said in relation to count 3 that there was no witness that specifically saw the accused break the door. She also mentioned that there was no evidence that a steel pipe or a 'bobbejaan spanner' was found in the possession of the accused at the scene of the assault, save for the evidence of the complainant herself. The magistrate mentioned in her reasons that the two police officers who were also present at the scene, were not called by the state in this respect .

[11] These issues mentioned by the magistrate raise a serious concern as to the conviction on counts 1 and 3. As far as count 1 is concerned, the complainant testified that the accused hit her with his fist in her face, and there was blood in her nose and her mouth. She received no medical attention since the bleeding stopped soon afterward by itself. In the premises, there was no proof beyond a reasonable doubt that the accused was guilty of assault with intent to do bodily harm. It was apparently no more than a common assault, and the minimum sentence was not applicable anymore. As for count 2, that is the violation of a protection order, there is no more than the word of the complainant against the word of the accused. His denial that he ever threatened to kill the complainant, can then be reasonably and possibly true.

[12] Although the matter was never formally referred to the regional court for sentence, it somehow did find its way to the regional magistrate. The record of proceedings was not complete, however, and a period followed during which the full record and the assistance of the trial magistrate was awaited. On 1 August 2025, there was still no clarity whether the matter was formally referred for sentence, which prompted the regional magistrate to submit the matter for a review to this court. According to her report, the state and the defence have both expressed their dissatisfaction with the situation and have requested a review and the setting aside of the convictions of the accused.

[13] I agree with this suggestion. Having regard to the wrong procedures followed in the trial, the inordinate delays when it came to the sentencing stage, the concerns relating to the conviction on all three counts and the fact that the accused was held in

custody for almost a year while all the things happened to which reference is made herein, I am of the view that the accused was not afforded a fair trial. The justice system has clearly failed the accused, despite his constitutional right to a fair trial. His conviction on all three charges therefore stands to be set aside.

Order

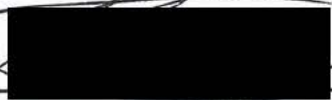
[14] The following order are therefore made:

- 1 The proceedings and the conviction of the accused on all three charges in Wesselsbron case no. A218/2024 is hereby set aside.
- 2 The accused is to be released from custody immediately.



P J LOUBSER
JUDGE OF THE HIGH COURT

I concur.



H E DE LA REY
ACTING JUDGE OF THE HIGH COURT