



**THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

Review Nos: 19/2025, 20/2025, 21/2025,
23/2025, 24/2025, 27/2025

REPORTABLE

In the matters between

THE STATE

Applicant

versus

TAKUNDA MUTSINZE

**Accused in review in no:19/2025
(Magistrate's court case no: 23/2251/2024)
DR98/2025**

ANTHON CHISSICO

**Accused in review no : 20/2025
(Magistrate's court case no: 23/3013/2024)
DR97/2025**

ARON DZOWA

**Accused in review no : 21/2025
(Magistrate's court case no: 23/4501/2024)
DR99/2025**

DOMINGO BENJAMIN TOME

**Accused in review no : 23/2025
(Magistrate's court case no: 23/4803/2024)
DR101/2025**

ANAND SINGH

**Accused in review no : 24/2025
(Magistrate's court case no: 23/5424/2024)
DR102/2025**

KENNEDY MUCHINERIPi MAZURU

**Accused in review no : 27/2025
(Magistrate's court case no: 23/2593/2024)
DR103/2025**

ORDER

Accordingly, we make the following order:-

The following sentences are set aside and substituted with sentences of caution and discharge:-

1. The sentence of 5 days direct imprisonment without the option of a fine imposed on Takunda Mutsinze under Magistrate's Court Case no: 23/2251/2024 on 22 March 2024;
2. The sentence of 20 days direct imprisonment without the option of a fine imposed on Anton Chissico under Magistrate's Court Case no: 23/3013/2024 on 11 April 2024;
3. The sentence of 30 days direct imprisonment without the option of a fine imposed on Aron Dzowa under Magistrate's Court Case no: 23/4501/2024 on 10 May 2024;
4. The sentence of 4 months direct imprisonment without the option of a fine imposed on Domingo Benjamin Tome under Magistrate's Court Case no: 23/4803/2024 on 7 June 2024;
5. The sentence of 12 months direct imprisonment without the option of a fine imposed on Anand Singh under Magistrate's Court Case no: 23/5424/2024 on 19 June 2024;
6. The sentence of 15 months direct imprisonment without the option of a fine imposed on Muchineripi Mazuru under Magistrate's Court Case no: 23/2593/2024 on 21 June 2024.
7. The review clerk of the Durban High Court is directed to send a copy of this judgment to the Legal Aid Board without delay.

REVIEW JUDGMENT

A.M. ANNANDALE, AJ: (HARRISON, J concurring)

[1] The Chief Magistrate, Durban identified the need for the records in the six cases which serve before us to be submitted to the High Court on special review in terms of s 304(4) of the Criminal Procedure Act, 51 of 1977 (the Criminal Procedure

Act) as he was concerned that there was an irregularity in the manner in which the proceedings had been conducted.

[2] The cases before us do indeed raise matters of significant concern.

[3] In each of the cases before us, the accused persons were charged with offences under the Immigration Act 13 of 2002 (the Immigration Act), pleaded guilty in terms of s112(1)(a) of the Criminal Procedure Act, were found guilty upon their plea without any further questioning as the section envisages, and then sentenced to periods of direct imprisonment ranging from five days to fifteen months without an option of a fine. The magistrate in all cases bar one was Mr. D Yozi. The magistrate in review 19/2025 was Mr. X Manjezi. In every instance the accused persons were legally represented.

Incompetent sentences and failures no automatic review

[4] In every case the magistrate committed a reviewable irregularity because s112(1)(a)(i) of the Criminal Procedure Act limits the sentencing jurisdiction of a court to the imposition of ‘any competent sentence, other than imprisonment or any other form of detention without the option of a fine’ (emphasis added). The reason for the sentencing limitation lies in the fact that a court does not question an accused person who tenders a plea under s112(1)(a) to ensure that they properly admit all the elements of the offence, but convicts the accused simply on their plea. The sentence limitation is thus an important safeguard.

[5] To compound matters, had the accused persons not been represented, three of the sentences would have been subject to routine judicial review in terms of s302(1)(a)(i) of the Criminal Procedure Act by virtue of the fact that they exceeded a period of three months and Mr Yozi had held the substantive rank of Magistrate for a period of less than seven years. Mr Yozi had been appointed on 14 August 2023, a mere ten months before the otherwise automatically reviewable sentences were imposed. Section 302(3) of the Criminal Procedure Act however removes this safeguard where accused persons are assisted by a legal advisor. These matters therefore did not serve before the High Court in the normal course shortly after the irregular sentences were imposed when it might have been possible to reverse the

prejudice suffered by the accused (at least in part). They were only referred to this court more than a year after the incompetent sentences had been imposed and the periods of imprisonment had been served.

[6] In submitting these matters for special review, the Chief Magistrate Durban explains that Mr Yozi has since resigned and was therefore “not in a position to provide comment.” Mr Manjezi is still employed as a magistrate but has been transferred to the Eastern Cape.

The incompetent sentences in each case

[7] All of the matters are variations on the same unfortunate theme but to contextualise the order made it is necessary briefly to outline the relevant circumstances of each case.

[8] Mr Takunda Mutsinze is the accused person in review 19/2025 (Magistrate’s court case number 23/2251/2024). On 22 March 2024 he pleaded guilty in terms of s112(1)(a) of the Criminal Procedure Act to a charge of contravening s49(1)(a) of the Immigration Act, which prohibits persons from entering or remaining in the Republic of South Africa without a valid permit and was sentenced to five days direct imprisonment without the option of a fine.

[9] Mr Chissico is the accused person in review 20/2025 (Magistrate’s court case number 23/3013/2024). He was charged with the same offence. On 11 April 2024 he pleaded guilty in terms of s112(1)(a) of the Criminal Procedure Act. He was convicted and sentenced to 20 days direct imprisonment without the option of a fine.

[10] Mr Dzowa, the accused person in review case 21/2025 (Magistrate’s court case number 23/4501/2024), was charged with the same offence. On 10 May 2024 he tendered a plea of guilty in terms of s112(1)(a) of the Criminal Procedure Act and was sentenced to 30 days direct imprisonment without the option of a fine.

[11] Mr Tome, the accused person in review case 23/2025 (Magistrate’s court case number 23/4803/2024) was charged with the same offence and was sentenced to 4 months direct imprisonment without the option of a fine following his s 112 (1)(a)

plea on 7 June 2024. As that sentence exceeded three months it would have been automatically reviewable if Mr Tome had not been represented.

[12] Mr Singh, the accused person in review case 24/2025 (Magistrate's court case number 23/5424/2024) was charged with the same offence and was sentenced to 12 months direct imprisonment without the option of a fine following his plea of guilty in terms of s 112(1)(a) of the Criminal Procedure Act on 19 June 2024. The fact that it was marked not reviewable because Mr Singh was defended meant that this miscarriage of justice was left to be uncovered by the checking system of the magistracy.

[13] Mr Mazuru, accused person in review case 27/2025 (Magistrate's court case number 23/2593/2024) pleaded guilty to a similar charge of having contravened s49(6) of the Immigration Act for failing to abide with the conditions of his visitor's visa. He was sentenced to 15 months direct imprisonment without the option of a fine. Again, as he was represented, this serious irregularity was left to the vagaries of the magistracy's checking system.

Additional matters of concern

[14] These matters raise several concerns over and above the imposition of manifestly irregular sentences.

[15] First, there appears to have been an inordinate delay. All the cases were sent on special review on the basis of requests to that effect by the Chief Magistrate dated 5 August 2025 and despatched to the high court under cover of letters all dated 23 September 2025. In the requests the Chief Magistrate states in each instance that the cases were "discovered during a routine monitoring of finalised criminal cases." The cases span the period 22 March 2024 to 21 June 2024. If there was indeed routine monitoring of finalised cases, as there ought to be to provide safeguards against circumstances such as these, it is inconceivable that the widespread pattern of irregularity with which we are here concerned would take between fifteen and seventeen months to detect.

[16] Second, the Chief Magistrate did not send all the cases together, or at least under cover of an explanatory memorandum to the review clerk that all the special reviews engaged the same issue. Instead, each of the special reviews was separately referred.

[17] Third, in every case, the accused were represented by Legal Aid attorneys. In each case the sentence imposed was incompetent. Despite this, the matters only came to this court's attention in October 2025, some 15 months after the most recent of the incompetent sentences had been imposed and all of the sentences had been served. It is disturbing that this only happened through the intervention of the Chief Magistrate, which underlines the fact that the legal aid attorneys were all wholly remiss in the execution of their duties to protect their clients' rights.

The appropriate orders

[18] A copy of this judgment shall be sent to the offices of the Legal Aid Board.

[19] All of the sentences are irregular and improper and must be set aside.

[20] Given the unfortunate timelapse and the fact that all the accused would have long since served the terms imprisonment which were incompetently imposed, it would be both unjust and futile to remit the matter for the imposition of different sentence or for the trial to start *de novo*. In the unfortunate circumstances of this case, the appropriate order is in my view to substitute the sentence imposed with one of a caution and discharge. This is permitted in terms of s304(2)(c)(ii) and (iv) of the Criminal Procedure Act.

[21] Accordingly, we make the following order:-

The following sentences are set aside and substituted with sentences of caution and discharge:-

[1] The sentence of 5 days direct imprisonment without the option of a fine imposed on Takunda Mutsinze under Magistrate's Court Case no: 23/2251/2024 on 22 March 2024;

- [2] The sentence of 20 days direct imprisonment without the option of a fine imposed on Anton Chissico under Magistrate's Court Case no: 23/3013/2024 on 11 April 2024;
- [3] The sentence of 30 days direct imprisonment without the option of a fine imposed on Aron Dzowa under Magistrate's Court Case no: 23/4501/2024 on 10 May 2024;
- [4] The sentence of 4 months direct imprisonment without the option of a fine imposed on Domingo Benjamin Tome under Magistrate's Court Case no: 23/4803/2024 on 7 June 2024;
- [5] The sentence of 12 months direct imprisonment without the option of a fine imposed on Anand Singh under Magistrate's Court Case no: 23/5424/2024 on 19 June 2024;
- [6] The sentence of 15 months direct imprisonment without the option of a fine imposed on Muchineripi Mazuru under Magistrate's Court Case no: 23/2593/2024 on 21 June 2024.
- [7] The review clerk of the Durban High Court is directed to send a copy of this judgment to the Legal Aid Board without delay.

A.M. ANNANDALE, AJ

I concur

G.M. HARRISON, J