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**THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT**

HIGH COURT REF NO: R06/2025

MAGISTRATE CASE NO. LC173/2025

MAGISTRATE SERIAL NO. 01/2025

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) OF INTERESTS TO MAGISTRATES: YES

(4) REVISED.

DATE 17 November 2025

SIGNATURE

In the matter between:

THE STATE

And

A[...] S[...] M[...]

(THE ACCUSED)

REVIEW JUDGMENT

RATSHIBVUMO DJP

[1]. A plethora of mistakes has marred this case from its inception to this date. What is saddening is that these errors could have been avoided if just one of the numerous role players in the adjudication of this matter had been vigilant enough.

This review aims to rectify these errors. This is a perfect example of how a valued signature, such as that of a judicial officer, can have enormous and sometimes undesired consequences when applied without careful consideration or discretion. Some of those consequences could be irreversible.

[2]. The accused in this matter was arrested on 03 August 2025 and appeared before the Magistrate at Mashishing Magistrate's Court, facing charges of assault by threats and malicious damage to property, wherein a neighbour's door to the house, valued at R564.95 was damaged.

[3]. Due to reports of mental illness brought to the court's attention, the accused was admitted to a mental institution for observation in accordance with sections 77 and 78 of the Criminal Procedure Act, No. 51 of 1977 (the Act). On 19 August 2025, a psychiatrist prepared a report in which the accused was found to suffer from mental illness and was considered to lack criminal capacity at the time of the incident. The psychiatrist also requested that Form MC 21 be completed and submitted to the institution. Form MC 21 provides for the involuntary admission of a patient at a mental institution under section 77(6)(a)(ii) of the Act, read with section 37 of the Mental Health Care Act, No. 17 of 2002 (the Mental Health Care Act).

[4]. On 01 September 2025, the Deputy Director of Public Prosecutions, Adv. Magwanyana (the DDPP) drafted a cover letter to the Public Prosecutor handling the case in court (the Public Prosecutor). In the letter, he instructed her to complete Form MC 20 and to ask the magistrate to sign it, then have it sent to the relevant mental institution. Form MC 20 should be distinguished from Form MC 21, which the psychiatrist requested. The scribing of this letter marked the genesis of the errors in this case.

[5]. The Public Prosecutor obliged without asking why the form to be completed differed from the one requested in the report she had in her hands. She handed over Form MC 20 to the Magistrate, who signed it without any question. Unlike Form MC 21, Form MC 20 directs the detention of a patient in a mental health

institution to be kept as a State patient, pending a judge's decision in chambers as outlined in section 47 of the Mental Health Care Act.

[6]. It appears the Magistrate did not read the psychiatric report handed over to him by the Public Prosecutor, although it formed part of the record placed before him. If he did, he would have realised that the Form he was asked to sign by the Public Prosecutor differed from the one requested in the psychiatric report. It also appears that he did not exercise the discretion expected of him as a judicial officer, as everything submitted to him by the Public Prosecutor was the State's application. He was still required to exercise his judicial discretion bestowed on him by section 77(6)(a)(ii) of the Act, which provides,

“6(a) If the court which has jurisdiction in terms of section 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court **may**, if it is of the opinion that it is in the interests of the accused, taking into account the nature of the accused's incapacity contemplated in subsection (1), and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court shall direct that the accused-

(i) where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence-

(aa) be admitted to and detained in an institution stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002...” [Emphasis added].

[7]. The proper exercise of that discretion required the Magistrate to know what the Act mandates him to do in specific circumstances of an accused appearing before him and what the consequences of signing each form would be. A simple perusal of section 77 of the Act would have prepared him to exercise that discretion better when asked to sign a form. Adding to the error from the DDPP and the Public Prosecutor, the Magistrate signed the form without engaging it, thereby

committing the accused into a mental institution as a State patient, and she has since been admitted there.

[8]. On 09 September 2025, after realising the mistake made in the covering letter, the DDPP sent a corrected letter to the Public Prosecutor. By the time this letter reached the Public Prosecutor, it was too late, as the Magistrate had already signed Form MC 20, thereby declaring the accused a State patient.

[9]. On 25 September, the Control Prosecutor submitted documents for special review to the Clerk of the Court, requesting that the High Court review and set aside the Magistrate's order, as per his signature on Form MC 20, and substitute it with Form MC 21.

[10]. The review file was presented before a Judge who was acting in this Division at the time. He has since ceased acting as a Judge. When it was submitted for review, the record was covered under Form J4, which is commonly used for automatic review proceedings. On 29 September 2025, the Judge signed J4, thereby confirming that the proceedings were in accordance with justice, and returned the file. No judgment was written, and no reasons were provided for the decision. The fact that no judgment was written or reasons were not furnished is indicative that, in all likelihood, the Judge did not consider this a special review case with issues being brought to his attention for review. The pages constituting a special review were located at the very bottom of the file, with nothing on the front of the file to indicate that the case was a special review. Nevertheless, the signing of J4 marked another error.

[11]. It was only on 09 October 2025, after the confirmation of the review through the signing of J4, that the Acting Chief Magistrate wrote to the Judge President of this Division, requesting her intervention. This judgment is the result of that intervention.

[12]. After raising the query with the DDPP and the Magistrate who presided over the matter, they all admitted to their contributions to the errors referred to above. In answering the question on the jurisdiction of this Court to hear a special review on

similar issues that had been laid before another judge before, the DDPP made a submission relying on *Molaudzi v The State* 2015 (8) SACR 341 (CC), that the High Court has powers to relax the doctrine of *res judicata*. He also quoted from the Constitution of the Republic of South Africa, where section 173 thereof provides,

“The Constitutional Court, the Supreme Court of Appeal, and the High Court of South Africa each has the inherent powers to protect and regulate their own process and to develop the common law, taking into account the interests of justice.”

[13]. He further referred this court to a review judgment from the Free State High Court, penned by Daffue J (Reinders J concurring) of *S v M*¹, in which the sequence of events mirrors those *in casu*. The essence of the judgment, of which I am in complete agreement, is that, when it is clear that a judge confirmed a review case in error, this can be rectified by another judge. If the decision by the Magistrate is to be set aside, the Full Bench of this Division should take that decision as outlined in the Act.² The above background facts make it clear that the confirmation of this case when it was sent for special review was an error, as it was not reviewed.

[14]. In admitting his mistake, the Magistrate asked that his decision in signing Form MC 20 should be set aside and that the matter be remitted back to him to sign the correct form, which is Form MC 21.

[15]. Any approach other than remedying the situation by correcting these errors immediately would not be in the interests of justice, given that the accused remains detained in a mental institution, which would not have occurred had the Magistrate who first handled the matter paid the necessary attention. It is incumbent on us as judicial officers to be diligent and always remember that the accused persons who appear before us, some of whom have waited several days, weeks or months, and in some cases, in detention, to have us make that one-line pronouncement on their fate, which for them, could mean life or death. If we

¹ (38/2016) [2018] ZAFSHC 28 (15 March 2018).

² See section 304 of the Act.

remain conscious of this, applying our minds to such matters would be an effort worth taking.

[16]. The interest of justice demands that the accused in this case be freed of the State patient title without delay. A continuous stay in a mental institution as a State patient could see her detained longer than she would as an involuntary patient, as provided under section 77(6)(a)(ii) of the Act, read with section 37 of the Mental Health Care Act. Remitting the case to the Magistrate is unnecessary, given the potential for further delay, solely for the purpose of signing a correct form. I will therefore set aside the Magistrate's decision and substitute it with the endorsement of Form MC 21.

[17]. For the reasons given above, the following order is made.

17.1 The Magistrate's decision dated 10 September 2025, in which he signed Form MC 20, is set aside and replaced with the signing of Form MC 21.

TV RATSHIBVUMO
DEPUTY JUDGE PRESIDENT

I agree.
P VENTER
ACTING JUDGE OF THE HIGH COURT

DATE: 17 NOVEMBER 2025