



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

Not reportable

Case no: R47/2025

In the matter between:

THE STATE

and

TIISETSO MOTSOENENG

Neutral citation: *S v Motsoeneng* (R47/2025) [2025] ZAFSHC 390 (5 December 2025)

Coram: MHLAMBI J *et* MOLITSOANE J

Heard: In Chambers

Delivered: This judgment was handed down electronically by circulation to the parties' representatives by email and released to SAFLII. The date and time for hand-down is deemed to be 12h00 on 5 December 2025.

Summary: Criminal Procedure – s 67A of Criminal Procedure Act 51 of 1977 – failure of accused on bail to appear in court – bail forfeited to State – magistrate conducted summary inquiry and convicted accused – procedure held to be irregular – failure to appear while on bail statutory offence requiring formal charge-sheet and trial – State must prove guilt beyond reasonable doubt – summary inquiry impermissible.

ORDER

The conviction and sentence are set aside

JUDGMENT

Mhlambi J et Molitsoane J

[1] The matter was referred to this Court for special review by the acting senior magistrate, who believed that the procedure used to hold an inquiry into the accused's failure to appear and to convict him, even though he was out on bail and the bail had been forfeited to the State, was irregular. The accused should have been charged by the State under s 67A of the Criminal Procedure Act 51 of 1977 (the CPA).

[2] The accused was charged with assault with the intent to cause serious bodily harm. He was out on bail but failed to appear in court, resulting in his bail money being ultimately forfeited to the State. An investigation into his failure to appear was conducted, and he was convicted and sentenced to three months in prison.

[3] Section 67A of the CPA addresses the criminal liability of a person on bail for failing to appear or meet bail conditions, and states that any person released on bail who, without good cause, fails to appear on the scheduled date and at the designated location, or to stay until the proceedings are finished, or who fails without good reason to comply with a bail condition set by the court under s 60 or 62, including any changes or additions under s 63, commits an offense and, if convicted, can be fined or sentenced to up to one year in jail.

[4] In *S v Mabuza*¹, it was held that, when an accused is charged with the statutory offence created by s 67A, the charge-sheet must be drawn, and a formal trial must be held. The State must prove the accused's guilt beyond a reasonable doubt. In *S v Theko*,² the court stated that the insertion of s 67A of the CPA criminalised the failure of

¹ *S v Mabuza* 1996 (2) SACR 239 (T).

² *S v Theko* [2010] ZAGPPHC 146; 2010 (2) SACR 339 (GNP).

an accused on bail to appear or to comply with the bail condition. In terms of this section, an accused who has been released on bail and who fails without good cause to appear shall be guilty of an offence and shall, on conviction, be liable to a fine or to imprisonment not exceeding one year. Section 67A does not empower the court to enquire in a summary manner whether that section had been contravened.

[5] It follows that the conviction and sentence imposed following the summary enquiry held by the magistrate should be set aside. Accordingly, I make the following order:
The conviction and sentence are therefore also set aside.

J J MHLAMBI
JUDGE OF THE HIGH COURT

I concur and it is so ordered.

P E MOLITSOANE
JUDGE OF THE HIGH COURT