REPORTABLE

In the High Court of South Africa

(Western Cape Division, Cape Town)

Case No: A190/2024

In the matter between:

THE STATE **APPELLANT**

And

SHAFIEK KHAN **RESPONDENT**

Neutral citation: *The State v Khan* (Appeal Case no A190/2025) [2025] ZAWCHC…(21 January 2026)

Coram: ERASMUS J *et* LEKHULENI J

Heard: 15 August 2025

Delivered: 21 January 2026

Summary: Appeal by the Director of Public Prosecutions against sentence on five fraud charges – Sentence imposed by the trial court startlingly inappropriate – Appeal Court noting gross irregularities on the record vitiating the entire proceedings – Proceedings set aside – Matter remitted to the regional court to be heard *de novo* before another Regional Magistrate.

JUDGMENT

LEKHULENI J (ERASMUS J Concurring):

Introduction

[1] This is an appeal by the State against the sentence imposed on the respondent by the Bellville regional court. The respondent, an accountant and tax practitioner registered with the South African Revenue Service (SARS) as such, was convicted by the Bellville regional court on 13 September 2022 on five counts of fraud. The five counts of fraud were premised on the respondent's fraudulent under-declaration of his gross income for the years 2004 to 2008 when he submitted his annual tax returns to SARS, and on his exaggeration of some of his expenses.

[2] The State alleged that in 2004 and 2005, the respondent under-declared his income and caused SARS to suffer tax prejudice in the sum of R105 11.36 and R116 947.10, respectively (counts 1 and 2). The State alleged further that in 2006 and 2007 (counts 3 and 4), the respondent under-declared his gross income, which caused SARS to suffer tax prejudice in the sum of R108 646.60 and R486 907.30, respectively. On count 5, the State alleged that in the 2008 fiscal year, the respondent under-declared his gross income and caused SARS to suffer tax prejudice in the sum of R350 836.25.

[3] At the commencement of the trial, the respondent pleaded guilty to the charges and was subsequently convicted on the five counts on 13 September 2022. On the 13 January 2023, the court a *quo* imposed sentence on the respondent and took counts 1, 2, 3 and 5 together for the purposes of sentence and sentenced the respondent to five years imprisonment which was wholly suspended for five years on condition that the respondent is not convicted of fraud, theft, or contravention of s 104 of the Income Tax Act 58 of 1962, committed during the period of suspension and that the respondent pays the sum of R1,000,000 to the SARS on or before 1 June 2023. On count 4, the trial court sentenced the respondent to two years correctional supervision in terms of s 276(1)(h) of the Criminal Procedure Act 51 of 1977 (the CPA).

[4] Aggrieved by the sentence imposed by the trial court, the Director of Public Prosecutions of the Western Cape invoked the provisions of s 310A of the CPA and applied for leave to appeal in this court (not the lower court) before a judge in chambers against the sentence imposed by the court a *quo*. The Director of Public Prosecutions contended that the sentence imposed by the trial court was startlingly and inappropriately lenient in the circumstances and sought leave before a judge in chambers to appeal the sentence.

[5] In addition, the Director of Public Prosecutions complied with the provisions of s 310A(3) of the CPA in that at least 14 days before the day appointed for the hearing of the application for leave to appeal by a Judge in chambers, she caused to be served by the deputy sheriff upon the respondent in person a copy of the notice for leave to appeal, together with a written statement of the rights of the respondent in terms of s 310A(4) of the CPA. The application and the statement of rights were duly served upon the respondent, and the latter opposed the Director of Public Prosecutions' application for leave to appeal.

[6] The Director of Public Prosecutions provided this court with a proper return of service, confirming that a copy of her application for leave to appeal, together with the written statement of the rights of the respondent in terms of that subsection, had been properly served upon the respondent. The application for leave to appeal, submitted by the Director of Public Prosecutions in terms of s 310A, was considered in chambers without the respondent, who did not appear despite being properly notified. On 6 February 2024, Le Grange ADJP, as he then was, granted the application during a session in chambers.

[7] The Director of Public Prosecutions now sought to prosecute the appeal against the sentence imposed by the Regional Magistrate on 13 January 2023. In a nutshell, at issue is whether the sentence imposed by the Regional Magistrate on the respondent on 13 January 2023 was shockingly inappropriate in the circumstances such that it should be set aside by this court and replaced with a more stringent sentence, commensurate with the seriousness of the crime.

Background Facts

[8] Before I can give a succinct background on this matter, I must point out that, upon reading the record of proceedings from the court a *quo*, we noted several procedural irregularities that have contaminated and compromised the integrity of those proceedings. I will address these irregularities later in this judgment when I consider this appeal on the merits. As foreshadowed above, the respondent faced five counts of fraud for under-declaring his annual taxable income when he submitted his annual tax returns. On 29 July 2019, the respondent appeared before the Bellville regional court 1, and the five charges levelled against him were put to him. The respondent, who was legally represented, pleaded guilty to the five counts of fraud.

[9] A statement in terms of s 112(2) of the CPA was prepared and read into the record. In the s 112(2) statement, the respondent admitted that he indeed defrauded SARS and that he knew that if he submitted the whole amount of his gross income to SARS, he would be required to pay more tax and thus intentionally declared amounts lower than his actual gross income to avoid paying tax owed to SARS in respect of all five counts. He also admitted that when he completed and signed the IRP5 forms for 2004 to 2008 and submitted his alleged gross income to SARS, he knew that the information he had submitted was in fact false.

[10] The respondent stated that he did not want to disclose his actual gross taxable income to SARS. After considering the matter, the legal and factual admissions the respondent made, the court below was satisfied that the respondent admitted all the elements of the offences he was charged with and correctly convicted him on the five counts of fraud. After that, pre-sentence reports were submitted, which included evaluations from both the correctional officer and the probation officer.

[11] In mitigation of sentence, the respondent's attorney called the respondent to the witness stand to testify. The respondent presented a detailed account of his personal circumstances, emphasising the profound shame and trauma that the criminal case

had inflicted on him and his family. The State Advocate cross-examined the respondent on the evidence he gave in mitigation, particularly his lack of remorse. In response, the respondent disputed this and explained that he had no intention whatsoever to deprive SARS or anyone of what is due to them. The respondent raised a defence to the charges levelled against him, and the Regional Magistrate in court 1 subsequently changed the respondent's plea from guilty to not guilty in terms of s 113 of the CPA. Thereafter, the Regional Magistrate in regional court 1 recused himself from the case and postponed the case to regional court 3. The Regional Magistrate in court 1 further directed that the trial would start *de novo* before the Regional Magistrate in regional court 3 in terms of the allocation.

[12] After several postponements and due to COVID-19 interruptions, the matter eventually appeared before another Regional Magistrate in regional court 3. The magistrate in court 3 invoked s 118 of the CPA and proceeded with the matter where the previous magistrate left off. The matter did not start *de novo* as directed by the Regional Magistrate in regional court 1. The respondent's attorney instead prepared admissions in terms of s 220 of the CPA, and after hearing the evidence of one witness for the State, the Regional Magistrate in regional court 3 convicted the respondent of the five counts of fraud. The defence submitted updated pre-sentence reports and addressed the court in mitigation of sentence.

[13] The State, thereafter, led the evidence of Ms Francionette Basson, a SARS criminal investigator in aggravation of sentence. Ms Basson testified, amongst others, that the respondent was living beyond his means. Ms Basson testified that, as a registered tax consultant and as someone with a financial background, the respondent should have acted in the interest of society and SARS. The witness pointed out that the respondent could have paid the outstanding income tax when approached by SARS, as he had the necessary funds in his accounts, or could have sold one of his properties, but elected not to do so. Despite the respondent's knowledge that SARS was investigating his returns, the respondent purchased expensive clothing, vehicles, and immovable properties and failed to declare his full income, including rental income.

[14] Furthermore, the witness testified that the respondent misled the public by indicating in his letterhead that he had a B Compt degree, whilst he knew that he did not have such a degree. In conclusion, Ms Basson indicated that SARS was of the view that direct imprisonment would be the appropriate sentence for this kind of crime, given the length of time over which the respondent made no effort to submit his outstanding returns and made no effort to pay his taxes due to SARS.

[15] After considering all the mitigating and aggravating factors, the Regional Magistrate in court 3 imposed a wholly suspended sentence and correctional supervision as stated in paragraph 3 above. It is this sentence that the State assails, contending that it was shockingly lenient.

Discussion

[16] I am mindful that sentencing is pre-eminently a matter of the trial court's discretion. (see *S v Rabie* 1975 (4) SA 855 (A) at 857D-F). I am also cognisant that interference with a sentence on appeal is not justified in the absence of a material misdirection or irregularity, or unless the sentence imposed is so startlingly inappropriate as to create a sense of shock. *S v Moosajee* [1999] 2 All SA 353 (A), para 8. Thus, the imposition of a sentence is the prerogative of the trial court. The exercise of its discretion in that regard is not to be interfered with merely because an appellate court would have imposed a heavier or lighter sentence.

[17] In *S v Sadler* 2000 (1) SACR 331 (SCA) para 7, the Supreme Court of Appeal held that it must be recognised that the admonition discussed above cannot be taken too literally and requires substantial qualification. The court observed that if it were taken too literally, it would deprive an appeal against sentence of much of the social utility it is intended to have. The court noted that where there exists a striking, startling, or disturbing disparity between the trial court’s sentence and that which the appellate court would have imposed, interference is justified. In such situations, the trial court’s discretion is regarded as having been unreasonably exercised.

[18] In the present matter, it is common cause that the respondent was found guilty of serious offences. The respondent planned and committed these offences over

several years. The tax returns the respondent filed were a perversion of the truth. They were, to the knowledge of the respondent, false. Notwithstanding an investigation by SARS officials, the respondent continued to provide false documents to SARS as proof of his alleged low income. The State pointed out in its evidence in aggravation of sentence that the respondent had, in the 2008 tax year, filed his tax returns and declared that his gross income was R15 840. SARS subsequently informed him that it was conducting an audit of his tax return, and the respondent submitted a revised tax return, but still under-declared his gross taxable income.

[19] In addition, the respondent provided two different sets of income for the 2005 and 2006 financial years. When he applied for a home loan, the respondent indicated that his net profit for 2005 was R960 583 and for 2006 was R1027 447. However, when he completed his returns to SARS, he stated that his net profit for 2005 was R56 358 and for 2006 was R64 955.

[20] What is highly concerning is that SARS informed the respondent of an audit of his tax income on 13 May 2009. A letter of assessment from SARS, dated 25 November 2010, informed him that he owed SARS tax in the sum of R2 948 647. Notwithstanding that, the respondent proceeded to purchase a BMW X5 on 28 May 2010 and a BMW X1 on 6 January 2011. The respondent owed SARS a cumulative amount for the tax years 2004 to 2008, amounting to R1 168 447. 61. Ms Basson from SARS explained to the trial court what the adjusted inflation amount was at the time of sentencing. Her evidence was that with inflation, the amount of R1 168 447.61 had grown to R3 507 088.00. This did not include any penalties or interest, which SARS could impose.

[21] Clearly, the respondent, as a registered tax consultant and as someone with a financial background, should have acted responsibly and in the best interest of society and the fiscus. The respondent owned several properties, some registered in his wife's name, who was unemployed. As correctly pointed out by Ms Hendry-Sidaki, counsel for the appellant, the respondent could have paid back the outstanding income tax when SARS approached him, as he had the necessary funds in his account and could have sold one of his properties, but he elected not to do so.

[22] In my view, the court a *quo* was very sympathetic to the respondent. The sentence imposed by the court a *quo* was too lenient and failed to reflect the gravity of the charges for which the respondent was convicted. It is important to emphasise that this was a 'white-collar' crime committed by the respondent, a registered tax practitioner, over a period of five years. Marias JA in *S v Sadler (Supra)* at 335G-336B, decried 'white-collar' crime and called for stiffer sentences to discourage would be perpetrators.

[23] Significantly, fraud is a serious crime which has a corrosive impact on society. Even if it is not a violent crime, it remains a serious offence that not only affects a particular complainant but also the country's economic growth. *S v Nieuwenhuizen* (20339/14) [2015] ZASCA 90 (29 May 2015) para 12. More so, the respondent's conduct was premeditated and persistent for five years. The money the respondent defrauded SARS and the country at large is substantial. Clearly, the respondent engaged in this criminal activity exclusively for personal gain, which, to me, reflects avarice and nothing less. A wholly suspended prison sentence and correctional supervision were, in my view, a strikingly inappropriate sentence.

[24] Concerningly, the court a *quo* noted that the respondent had not expressed his remorse orally, but that his statement was evident to show that he was remorseful. In my view, the court a *quo* erred in this regard. The fact that the respondent pleaded guilty to all the charges does not automatically mean that he was genuinely remorseful. The respondent had not heeded SARS's warnings to rectify his non-compliant tax status. Instead, the respondent ignored this plight and continued to maintain a flamboyant lifestyle he could not afford. He purchased high-end vehicles at a considerable expense rather than settling his outstanding tax liabilities.

[25] In *S v Matyityi* 2011 (1) SACR 40 (SCA) at para 47, the court emphasised that before a court could find that an accused was genuinely remorseful, it needed to have a proper appreciation of what motivated the accused to commit the deed; of what had since caused a change of heart; and of whether he or she had a true appreciation of the consequences of his or her actions. For remorse to be a valid consideration, the penitence must be sincere, and the accused must take the court fully into his confidence. Unless that happens, the genuineness of contrition alleged

to exist cannot be determined. See *S v Jiminez* 2003 (1) SACR 507 (SCA) at 515; *S v Seegers* 1970 (2) SA 506 (A) at 511G-H.

[26] In this case, the respondent did not testify and did not afford the court insight into his contrition. Accordingly, there was no basis on which the court a *quo* could find remorse on the part of the respondent. To this end, I agree with Ms Hendry-Sidaki that if the respondent had true remorse after his initial arrest, it would have been evident in his subsequent conduct. A genuine sense of contrition would have led the respondent to become tax-compliant after his arrest, as evidenced by his subsequent tax returns. On the contrary, the respondent did not file tax returns for 2009 to 2012 and did not submit returns from 2013 to 2022. I am mindful that he was not charged for this tax period. However, his subsequent actions clearly demonstrate a lack of sincere contrition on his part.

[27] In my view, the State's evidence against the respondent was overwhelming and therefore, the act of pleading guilty is negated as a mitigating factor. A plea of guilty in the face of an open-and-shut case against an accused person is a neutral factor. *S v Barnard* 2004 (1) SACR 191 (SCA) at 197. As foreshadowed above, the respondent planned and committed these offences over a period of 5 years. The respondent fraudulently and deceitfully reduced his tax liability by failing to disclose his gross income, exaggerating his expenses, and presenting the same to SARS. This, in my view, is a very serious offence. On a conspectus of all the evidence presented, I am of the view that a wholly suspended prison sentence was lenient and strikingly inappropriate. But for the gross irregularities highlighted hereunder, I would have proposed a sentence of direct imprisonment.

Gross irregularities vitiating the entire proceedings of the court a *quo*

[28] As foreshadowed above, the trial proceedings at the court a *quo* are riddled with gross irregularities that contaminated the entire proceedings. I turn to deal with these irregularities numerically. *First*, the Regional Magistrate in regional court 1, who heard the matter for the first time, entered a plea of not guilty in terms of s 113 of the CPA after the respondent raised a defence during mitigation of sentence. The Regional Magistrate in regional court 1 subsequently recused himself from the

proceedings and directed that the matter should start *de novo* before another Regional Magistrate in court 3. It is not clear from the record what led the Regional Magistrate in court 1 to recuse himself from the proceedings after meeting the respondent's legal representative and the State Advocate in chambers.

[29] At the hearing of this appeal, the State Advocate who was involved in the matter at the trial court advised this court that the presiding officer in regional court 1 recused himself because he was appraised or had sight of the admissions the respondent made as detailed in his statement in terms of s 112(2) of the CPA and did not want to prejudice the respondent in doing the trial. With respect, I do not agree with this proposition. For completeness s 113(1) of the CPA provides:

> 'If the court at any stage of the proceedings under section 112(1)(a) or (b) or 112(2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or *if the court believes for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution:* Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.' (emphasis added)

[30] It is common cause that the respondent gave evidence in mitigation. On the strength of his evidence on cross-examination by the State Advocate, the Regional Magistrate had doubts as to whether the respondent was guilty of the offence to which he had pleaded guilty and accordingly recorded a plea of not guilty. Simply put, the respondent raised a defence which triggered the application of the procedure laid down in s 113. Once the plea of guilty was changed to not guilty, the Regional Magistrate in regional court 1 was bound to proceed with the trial. Section 113 expressly provides for the continuation of the matter before the judge or magistrate before whom the accused pleaded guilty. (see *S v Moses* 2019 (1) SACR 75 (WCC) at para 32). This much follows from the words in s 113(1) that upon

altering the plea, the court shall 'require the prosecutor to proceed with the prosecution'. In other words, the presiding officer before whom the accused pleaded guilty must proceed with the trial of the accused.

[31] The fact that the accused's previous convictions had been disclosed to the court after he was convicted pursuant to his guilty plea is inconsequential. Notwithstanding that the court had sight of the accused's previous convictions, it does not bar the judge or the magistrate from proceeding with the trial after a plea of not guilty is entered in terms of s 113 of the CPA. The full bench of this division observed in *S v Moses (supra),* that the legislature must have appreciated, when it provided that the alteration of the plea might be allowed at any time before sentence was imposed, that that might be after the disclosure of the accused's previous convictions. If the legislature had intended that in such circumstances the prosecutor should proceed with the prosecution before a different judicial officer, it would surely have said so as, for example, it did in s 105A(6)(c) and 105A(9)(d).

[32] As stated above, there is nothing on record that justified the recusal of the Regional Magistrate. Furthermore, there was no application whatsoever that was made by any of the parties requiring the Regional Magistrate in court 1 to recuse himself. A presiding officer's recusal from a case must be based on valid, reasonable grounds, in general involving a conflict of interest, personal bias, or a reasonable apprehension of bias by an objective observer. In *President of the Republic of South Africa v South African Rugby Football Union* 1999 (4) SA 147(CC) para 48, it was stated:

> 'It must be assumed that they can disabuse their minds of any irrelevant personal beliefs or predispositions. *They must take into account the fact that they have a duty to sit in any case in which they are not obliged to recuse themselves.* At the same time, it must never be forgotten that an impartial judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse herself or himself if there are reasonable grounds on the part of a litigant for apprehending that the judicial officer, for whatever reasons, was not or will not be impartial.' (emphasis added)

[33] In my opinion, in the circumstance of this case, it was irregular for the Regional Magistrate in regional court 1 to recuse himself.

[34] *Secondly,* when the Regional Magistrate in regional court 1 recused himself, he ordered that the matter should start *de novo* before another presiding officer. I must emphasise that it was legally impermissible for the Regional Magistrate to make such an order. It is trite that a magistrate's court is a creature of statute and, accordingly, its powers are limited to those conferred upon it by statute. *Santam Insurance Co Ltd v Liebenberg NO and Another* 1976 (4) SA 312 (N) at 323H. There is no statutory authority for a magistrate to order that the trial should be instituted *de novo* before another court. Accordingly, where such a declaration is required, the matter should be referred to the High Court for the setting aside of the proceedings and a direction that the hearing of the matter should proceed *de novo*. *S v Mbothoma en 'n Ander* 1978 (2) SA 530 (O) at 533.

[35] The only power that is vested upon a magistrate's court to order that proceedings commence afresh are those contained in s 93*ter*(11)(a)(*bb*) of the Magistrates Act 32 of 1944 as amended, which provides that if the assessor dies or in the opinion of the presiding officer becomes unable to act as an assessor at any stage before the completion of the proceedings concerned, the presiding judicial officer may, in the interests of justice and after due consideration of the arguments put forward by the accused person and the prosecutor direct that the proceedings continue before the remaining member or members of the court or direct that the proceedings start afresh. That section does not apply to the facts of the present case. Accordingly, the Regional Magistrate in Court 1 lacked the statutory authority to order that the proceedings be conducted *de novo* before another magistrate. Since that order is incompetent, the subsequent proceedings before the Regional Magistrate in court 3 were a nullity.

[36] This was confirmed in *S v Richter* 1998 (1) SACR 311 (C), where the magistrate could not continue with the trial after becoming aware of the accused's previous convictions. She ordered that the matter be heard *de novo* before another court. The magistrate's order was held to be an irregularity, as there is no statutory authority for a magistrate to order that the trial be instituted before another court. The court

emphasised that where such a declaration is required, the matter should be referred to the High Court for the setting aside of the proceedings.

[37] However, I must emphasise that an exception to the above is where there is a supervening impossibility, as was the case in *S v Stoffels and 11 Similar Cases* 2004 (1) SACR 176 (C), where a presiding magistrate recused himself as he faced a charge of murder and was provisionally suspended from office by the Magistrates Commission. Such recusal constituted an absolute supervening impossibility which nullified the proceedings.

[38] *Thirdly,* when the matter appeared before the Regional Magistrate in regional court 3, the presiding officer of that court invoked s 118 of the CPA and proceeded with the matter, notwithstanding that evidence had been led before the original magistrate. It must be stressed that it was not open to the Regional Magistrate in court 3 to invoke s 118 of the CPA in such circumstances. Section 118 of the CPA provides that:

> 'If the judge, Regional Magistrate *or magistrate before whom an accused at a summary trial has pleaded not guilty* is, for any reason, not available to continue with the trial *and no evidence has been adduced yet*, the trial may be continued before any other judge, regional magistrate or magistrate of the same court.' (emphasis added)

[39] The wording of this section makes it abundantly clear that it is limited in application. Firstly, it is confined to a plea of not guilty and secondly, it cannot be invoked once evidence has been adduced. The section is not intended to apply in instances where the accused pleaded guilty. The purpose of s 118 of the CPA is to cater for situations where the judicial officer becomes unavailable after the plea, but before evidence has been led. Bearing in mind that it is always in the interest of justice that the trial should commence and be finalised speedily before the same magistrate who takes the plea, the section ensures that a plea explanation, if any, is taken at an early stage by one magistrate, and that the actual trial can commence before a different magistrate if the original magistrate is unavailable. *David v Regional Court Magistrate & Others* 2018 (1) SACR 702 (ECB), paras 19 and 21.

[40] In my view, s 118 must only be invoked where the original presiding officer is objectively unavailable, as it is extremely desirable that a trial should be commenced and completed before the same judicial officer. In the present matter, it cannot be said that the original presiding officer was objectively unavailable to continue with the trial.

[41] The Regional Magistrate of Court 1 recused himself and ordered that the matter start *de novo*. This ruling was made after evidence in mitigation of sentence was led. When the matter appeared before the Regional Magistrate in court 3, the respondent was not asked to plead, and the matter proceeded putatively in terms of s 118. In her judgment on the merits, the Regional Magistrate in court 3 considered the admissions the respondent made before her in terms s 220 of the CPA, as well as the admissions the respondent made in his statement in terms of s 112(2) of the CPA before the Regional Magistrate who recused himself and convicted the respondent accordingly. In my view, it was grossly irregular and impermissible for the Regional Magistrate in court 3 to proceed with the trial in terms of s 118 of the CPA.

[42] At the hearing of this appeal, both counsels for the State and the respondent after serious engagement with the court, conceded that it was impermissible for the Regional Magistrate in court 3 to invoke s 118 of the CPA in the circumstances of this case. In any event, the order made by the Regional Magistrate in court 1 directing the matter to start *de novo* was legally incompetent, vitiating subsequent proceedings. Consequently, the proceedings before the Regional Magistrate in court 3, which ultimately led to the sentencing of the respondent, were a nullity.

[43] It is accordingly necessary that the proceedings before the two Regional Magistrates in relation to this matter, in so far as this may be necessary, be set aside and that the matter be remitted to the Regional Court to be heard *de novo* before another Regional Magistrate.

[44] I am mindful that the respondent may have served his sentence. Should the Director of Public Prosecutions decide to press charges against the respondent again, and the respondent pleads guilty and is properly convicted, the trial court

should consider the sentence he has already served. *S v Ndzishe & another* 2023 (2) SACR 419 (WCC) para 30.

Order

[45] In the result, I would propose the following order:

45.1 The proceedings of the court below are hereby set aside.
45.2 The conviction and sentence are hereby set aside.
45.3 The matter is remitted back to the regional court, Bellville, for trial before another Regional Magistrate, if the Director of Public Prosecutions still wishes to pursue charges against the respondent.

LEKHULENI J
JUDGE OF THE HIGH COURT

I agree, and it is so ordered:

ERASMUS N
JUDGE OF THE HIGH COURT

<u>APPEARANCES</u>

For the State: Adv Hendry-Sidaki
Instructed by: The Director of Public Prosecutions

For the Respondent: Adv Erasmus

Instructed by: CTC Stander and Associates