



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE NO. CA&R 160/2025

In the matter between:

THE STATE

and

JUMA SAIDI

ACCUSED

JUDGMENT ON REVIEW

Rugunanan J

[1] Central to this matter on review from the district Magistrate's Court at East London, is whether the proceedings before the magistrate are vitiated by the appearance of Mr Lodwa Mnyani when he purported to represent the accused during criminal proceedings that commenced on 7 March 2024. Mr

Mnyani is not a legal practitioner admitted and enrolled in accordance with the Legal Practice Act 28 of 2014 (hereafter the LPA or the Act depending on the context). Although the accused has secured alternative legal representation, the proceedings against the accused have since not been finalised.

[2] Seeking interlocutory intervention by this Court, at this stage, the magistrate directed a letter to the registrar of this Court. The letter which is dated 5 September 2025 reads:

‘RE: S v JUMA SAIDI - Special Review – Case No. A3630/23

1. It is hereby requested that the above-mentioned matter be placed before a judge in chambers for special review for the following reasons:
 - a. The accused in this matter was represented by Mr Lodwa Mnyani, a private legal practitioner.
 - b. The accused has been charged with the offence of contravening section 49(1) (a) read with sections 1(1), 9, 10, 10A, 10B and 25 of the Immigration Act 13 of 2002.
 - c. The accused pleaded guilty in accordance with section 112(2) of the Criminal Procedure Act 51 of 1977, and a guilty plea and guilty judgment were entered against the accused, whereafter upon further questioning by the court, the accused’s plea was amended to that of not guilty in accordance with section 113 of the Criminal Procedure Act.
 - d. This matter proceeded to trial and after the evidence of the State’s [first] witness, the accused’s legal representative’s authority to appear as a legal practitioner in court proceedings was placed into question by the State.
 - e. The court afforded Mr Mnyani a number of opportunities to satisfy the court of his right of appearance, and after not being provided with documentary evidence to the satisfaction of the court, the presiding judicial officer made contact with the offices of

the Legal Practice Council to enquire directly as to the legitimacy of Mr Mnyani to appear on behalf of the public in court proceedings.

- f. I attach hereto an email thread which evidences the exchange between myself, as the presiding judicial officer herein, and the Legal Practice Council, wherein it was confirmed by the Legal Practice Council that Mr Mnyani was registered as a candidate legal practitioner on the 10 October 2022, and that his Practical Vocational Training had expired on the 9 October 2023. Subsequent to the expiration of his Practical Vocational Training Mr Mnyani was not admitted as an attorney, and it is understood that he therefore had no right of appearance from the 10 October 2023.
 - g. Mr Mnyani placed himself on record and commenced representing the accused on the 7 March 2024. Accordingly, at the time that Mr Mnyani was representing the accused herein he had no right to appear as a legal practitioner in court proceedings.
 - h. Subsequent to the court initiating enquiries into Mr Mnyani's right of appearance, Mr Mnyani commenced distancing himself from this matter by first indicating that he would be instructing counsel to continue the defence of this case, and thereafter failed to appear on behalf of the accused, with the accused having to secure new legal representation.
2. As a result of the aforementioned, this matter is referred to the Honourable Court for the reviewing the aforementioned proceedings as being irregular on account of the accused's legal representative not having a right to appear, and it is respectfully requested that such proceedings be set aside.'

[3] That Mr Mnyani may well have represented the accused ably and competently at the trial is not the issue on the facts presented by the magistrate; nor is the contrary evinced in the record of the proceedings before the magistrate.¹

¹ The record comprises of a transcript of the proceedings on 27 March 2024; 18 April 2024 and 27 June 2024.

[4] A legal practitioner is defined in s 1 of the LPA as ‘an advocate or attorney admitted and enrolled as such in terms of sections 24 and 30, respectively’.

[5] It is without question that Mr Mnyani is not a legal practitioner admitted in accordance with the Act. Read in unison, s 24(1) and s 84(1) of the Act places an obligation on a legal practitioner enrolled as such to be in possession of a Fidelity Fund Certificate (certificate)². The obligation distinctly applies to an attorney or to an advocate who conducts his or her own practice and who renders legal services upon receipt of a request directly from a member of the public or from a justice centre. Putting it informally, Mr Mnyani is a non-practitioner who purported to practise as a legal practitioner albeit without holding a certificate. The crisp issue on review is whether his standing, as such, vitiates the proceedings in the trial court.

[6] The magistrate’s letter conveys that Mr Mnyani’s standing renders his involvement in the proceedings before her, ‘irregular’. But the lens through which the requested review process is to be undertaken by this Court is not identified. Given that s 304(4) of the Criminal Procedure Act 51 of 1977 does not apply, the intent, presumably, is that the matter be considered on the basis of

² The relevant sections read:

‘24 Admission and enrolment

(1) A person may only practice as a legal practitioner if he or she is admitted and enrolled to practice as such in terms of this Act.

...
84. Obligations of legal practitioner relating to handling of trust monies

(1) Every attorney or any advocate referred to in section 34(2)(b) other than a legal practitioner in the full-time employee of the South African Human Rights Commission or the State is a state attorney or state advocate and who practices or is deemed to practice –

(a) for his or her own account either alone or in partnership; or

(b) as a director of a practice which is a juristic entity,
must be in possession of a Fidelity Fund certificate.’

‘gross irregularity in the proceedings’ by recourse to s 22 of the Superior Courts Act 10 of 2013.³

[7] The purpose of a certificate is to afford the public protection against pecuniary loss due to possible misappropriation of trust funds. Section 84(1) of the LPA thus exists in the public interest. And by prohibiting legal practitioners from rendering legal services unless in possession of a valid certificate, the legislature seeks to ensure that a practitioner is not let loose on an unsuspecting member of the public.⁴

[8] In terms of s 93(8)⁵ of the Act, conduct by ‘any person’ in contravention of s 84(1) attracts criminal liability. The inclusion of the word ‘person’ and the offence created by the section plainly envisages that the prohibition against practising without a certificate is directed at legal practitioners and non-practitioners. This is supported by the analysis of similar provisions in the repealed Attorneys Act 53 of 1979 undertaken by the Supreme Court of Appeal in *NW Civil Contractors CC v Anton Ramaano Inc & Another*⁶ (*NW Civil*

³ S 22 provides a numerus clausus for the review of proceedings of the Magistrates’ Court and reads: ‘22 Grounds for review of proceedings of Magistrates’ Court –

(1) The grounds upon which the proceedings of any Magistrates’ Court may be brought under review before a court of a Division are –

(a) absence of jurisdiction on the part of the court;

(b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;

(c) gross irregularity in the proceedings; and

(d) the admission of inadmissible or incompetent evidence or the rejection of inadmissible or incompetent evidence.

(2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates’ Courts.’

⁴ *NW Civil Contractors CC v Anton Ramaano Inc & Another* [2019] ZASCA 143 (14 October 2019); 2020 (3) SA 241 (SCA) (*NW Civil Contractors*) para 14. See also *S v Serache and Others* (Review) [2025] ZANWHC 75 (6 May 2025) (*Serache*) para 25.

⁵ Quoted in relevant part, s 93(8) reads:

‘93. Offences and penalties –

...

(8) Any person who contravenes sections 84(1) or (2) or section 34 in rendering legal services –

(a) commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years or to both such fine and imprisonment;

(b) is on conviction liable to be struck off the Roll; and

(c) is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.’

⁶ *NW Civil Contractors* above n3 paras 16 and 17 in which case the court dealt with related provisions of the Attorneys Act 53 of 1979, namely sections 41(1) and 83(10).

Contractors) and its endorsement of the approach adopted in *Law Society of the Cape of Good Hope v Adams*⁷.

[9] For Mr Mnyani, the range of consequences for his conduct in his purported representation of the accused are expressly set out in s 93(8). First, the section ordains that the person commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding two years. Second, the person is on conviction liable to be struck off the roll. And third, the person is not entitled to any fee, reward or reimbursement in respect of the legal services rendered.

[10] Other than the prescribed legislated consequences, s 93(8) does not contemplate ‘a visitation of nullity’ for the impugned conduct.⁸ This pronouncement was made in *NW Civil Contractors* – a case that implicated an attorney who was not in possession of a valid fidelity fund certificate under the Attorneys Act when he purportedly represented the appellant. *NW Civil Contractors* was followed in *S v Serache and Others*⁹ (*Serache*), a decision of the North West Division, Mahikeng, involving a review of proceedings in

⁷ See *Law Society of the Cape of Good Hope v Adams* [2013] ZAWCHC 87; 2013 (2) SACR 480 (WCC) para 19 where the court held: ‘Section 83(10) plainly envisages that the persons at whom the prohibition is directed are persons who could notionally obtain a fidelity fund certificate. Only an admitted practitioner can obtain such a certificate. The offence which the Act creates in respect of non-practitioners who purport to practise as practitioners (ie without being an admitted attorney, notary or conveyancer) is contained in s 83(1). If s 83(10) applied only to non-practitioners, it would add nothing to section 83(1) and the reference therein to the absence of a fidelity fund certificate would in addition be nonsensical. Roux J, with whom Strydom J concurred, acknowledged in *Theledi* that his interpretation was ‘absurd’. I see no reason to adopt an interpretation which is both nugatory and absurd. Although it may have been more felicitous for s 83(10) to have referred to any practitioner who acts as such, I see no particular difficulty in interpreting the words “any person who... purports to act as a practitioner” as referring to a practitioner practising without a fidelity fund certificate, ie a practitioner who practices despite the fact that in terms of s 41 he or she may not lawfully do so. In a number of subsequent cases, including cases decided by the Supreme Court of Appeal, it has been taken for granted that an attorney who practices without a valid fidelity fund certificate contravenes section 83 (10)’ (Citations omitted).

⁸ In *S v Mazaleni* [2024] ZAECBHC 18 (22 July 2024) para 4, the court determined otherwise by unanimously expressing the view that ‘[t]he act of practising without a fidelity fund certificate has been described by our courts as an irregularity that is of so fundamental and serious a nature, that the proper administration of justice and the dictates of public policy require it to be regarded as fatal to the proceedings in which it occurred.’

⁹ *Serache* n 3 paras 30 and 33.

which a practising attorney appearing as legal representative at the trial for all the accused, did so without being in possession of a certificate.¹⁰

[11] Both *NW Civil Contractors* and *Serache* quoted with approval *Oilwell (Pty) Ltd v Protec International Ltd and Others*¹¹ in which Harms DP referred to Gane's translation of Voet, who said:

‘ “Things done contrary to the laws are not *ipso jure* null if the law is content with enacting a penalty against transgressors.

...

Nay indeed there is no lack of laws which forbid, and yet do not invalidate things to the contrary, nor impose any penalty upon them. Hence came into vogue the famous maxim “many things are forbidden in law to be done which yet when done holds good.” ’

[12] Harms DP elaborated:

‘This approach has been adopted in many judgments, more particularly in the leading case of *Standard Bank v Estate van Rhyn* 1925 AD 266 at 274, where Solomon JA also referred to a further statement by Voet (not as translated by Gane), that an important consideration is whether “greater inconveniences and impropriety would result from the rescission of what was done, than would follow the act itself done contrary to the law”. Voet concluded this section with a reference to H De Groot (Grotius to some) *Inleidinge* 1.2.2, where the author, dealing with the same subject, said that things done contrary to law are only void if the law so expresses itself (“de wet sulcks uytdrukt”), or if someone’s ability to perform the act has been curtailed, or if the deed “heeft een gestadigde onbehoorlickheid” (translated by Gane via Voet, as “if the act performed suffers from some obvious and ingrained disgrace”, but more correctly from some “unremitting impropriety”).’

(Underlined

emphasis added)

¹⁰ In *Serache*, Reddy ADJP (with Morgan AJ concurring) differed with the nullity approach adopted in the Eastern Cape by the Bhisho High Court when he made the following observation: ‘[30] My brother Titus AJ relies heavily on paragraph 4 in the judgment of *S v Mazaleni* which was delivered on 22 July 2024 in the Eastern Cape Division, Bhisho where Stetch J (Lowe J concurring) relied on, amongst others, *NW Civil Contractors CC v Anton Ramaano Inc.* (a judgment handed down in the Limpopo Local Division by A.M.L. Phatudi J under case number 993/2016, on 14 May 2018). The decision in *NW Civil Contractors CC* was, however, overturned by the Supreme Court of Appeal on 14 October 2019, reported as *NW Civil Contractors CC v Anton Ramaano Inc & another* (1076/2018 and 1024/2018) [2019] ZASCA 143 (14 October 2019).’

¹¹ *Oilwell (Pty) Ltd v Protec International Ltd and Others* [2011] ZASCA 29 (18 March 2011); 2011 (4) SA 394 (SCA).

[13] These comments are equally apposite in the present matter. Should the proceedings in the trial court be set aside, a re-trial would be imminent. The accused and the State's witness will again have to attend court. The testimony of the State's witness will have to be led afresh. Legal fees will be incurred for the accused's newly-appointed legal representative, with perhaps further costs incurred in obtaining a copy of the transcript of the proceedings.

[14] The synergy between s 24(1) and s 84(1) underscored by the offences and penalties in s 93(8) of the LPA, renders it difficult to envisage that the legislature had any intention other than that of punishing the person who did not comply therewith.¹² Against the backdrop of the compelling weight of *Serache* and *NW Civil Contractors*, it does not seem to me that, in addition, it was also intended by the legislature that absence of a certificate inherently occasions nullity.

[15] It is therefore obvious that these proceedings cannot be entertained on review within the specified stricture of section 22 of the Superior Courts Act. Practising without the required certificate is a serious breach of duty that constitutes a criminal offence¹³ and other remedies must be considered by the Legal Practice Council and pursued to align with the intention of the legislature.

[16] In the result:

¹² This sentiment is consistent with the principles of statutory interpretation drawn from authorities such as *Schierhout v Minister of Justice* 1926 AD 99 (*Schierhout*) and *Standard Bank v Estate Van Rhyn* 1925 AD 266 (*Standard Bank*) to which the courts in *NW Civil Contractors* and in *Serache* had regard. In *Schierhout* at 109 Innes CJ said: 'It is a fundamental principle of our law that a thing done contrary to the direct prohibition of the law is void and of no effect.' But that will not always be so. Whether that is so, as later cases have made clear, will depend upon a proper construction of the legislation in question.' In *Standard Bank* at 274, Solomon JA explained: 'The contention on behalf of the respondent is that when the Legislature penalises an act it impliedly prohibits it, and that the effect of the prohibition is to render the [act] null and void, even if no declaration of nullity is attached to the law. That, as a general proposition, may be accepted, but it is not a hard and fast rule universally applicable. After all, what we have to get at is the intention of the Legislature, and, if we are satisfied in any case that the Legislature did not intend to render the [act] invalid, we should not be justified in holding that it was.'

¹³ See the case examples cited in *NW Civil Contractors* n 3 para 18.

1. The review proceedings are removed from the roll.
2. The proceedings before the magistrate are to continue to finality with the accused being represented by his newly appointed legal representative, or such other legal representative whom he may elect to appoint; alternatively, a legal representative from Legal Aid South Africa if the accused so qualifies for such representation.
3. The Registrar of this Court is directed to forward a copy of this judgment for the attention of the Director of the Eastern Cape Provincial Office of the Legal Practice Council, East London, for investigation of the conduct of Mr Lodwa Mnyani.

M S RUGUNANAN
JUDGE OF THE HIGH COURT

I agree.

B METU
ACTING JUDGE OF THE HIGH COURT

Date delivered: 05 February 2026.