



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

Not reportable

Case no: R01/2026

In the matter between
THE STATE
and
KENNETH GOBIDOLO

Neutral citation: *S v Gobidolo* (R01/2026) [2026] ZAFSHC 66 (20 February 2026)

Coram: CHESIWE *et* OPPERMAN JJ

Heard: 19 February 2026

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 16h00 on 20 February 2026.

Summary: Criminal law and procedure – conviction – accused referred to psychiatric evaluation – conviction was entered without the issue of the accused's criminal responsibility having been properly determined – conviction set aside.

ORDER

1 The conviction of the accused on the charge of robbery with aggravating circumstances is hereby reviewed and set aside.

2 The matter is remitted to the trial court for the presiding officer to deal with the accused in terms of s 77(6)(a)(i), read with s 78(6) of the Criminal Procedure Act 51 of 1977.

JUDGMENT

Opperman J (Chesiwe J concurring)

[1] This matter serves before this Court on special review in terms of s 304A of the Criminal Procedure Act 51 of 1977 (the CPA). The accused was arraigned in the Regional Court on a charge of robbery with aggravating circumstances as defined in s 1 of the CPA. He was subsequently convicted.

[2] After conviction, and during the sentencing phase, the accused testified in mitigation of sentence. It was during this testimony that he disclosed, for the first time, that at the time of the commission of the offence he suffered from a mental condition which may have affected his conduct. In light of this disclosure, and in order to properly determine the accused's mental condition, he was referred for psychiatric observation at the Free State Psychiatric Complex.

[3] A psychiatric report was compiled and subsequently accepted by both the prosecution and the defence. The findings recorded therein are as follows:

- a) The accused suffers from a psychotic disorder characterised by auditory hallucinations and impaired judgment.
- b) Due to his mental illness, the accused does not possess the ability to understand court proceedings so as to make a proper defence, nor is he able to give proper instructions to his legal representative.

c) At the time of the commission of the offence, and as a result of mental illness, the accused was unable to distinguish between right and wrong.

[4] The findings of the psychiatric panel have far-reaching consequences. Section 77 of the CPA regulates the procedure where an accused is, by reason of mental illness or defect, incapable of understanding the proceedings so as to make a proper defence. Section 78 of the CPA deals with criminal responsibility at the time of the commission of the offence.

[5] The uncontested psychiatric findings establish both that the accused is presently unfit to stand trial and that he lacked criminal responsibility at the time of the commission of the offence. In these circumstances, the conviction cannot stand.

[6] It is trite that where it appears that an accused was not criminally responsible at the time of the commission of the offence, the court is obliged to set aside the conviction and to act in terms of s 78(6), read with s 77(6) of the CPA. A conviction in the face of such findings would constitute a material irregularity. The learned presiding officer has, correctly in my view, referred the matter on special review with the request that the conviction be set aside and that the matter be remitted to the trial court to enable it to act in terms of s 77(6)(a)(i) of the CPA.

[7] Having considered the record and the psychiatric report, and there being no dispute regarding the findings contained therein, I am satisfied that the proceedings were not in accordance with justice to the extent that the conviction was entered without the issue of the accused's criminal responsibility having been properly determined.

Order

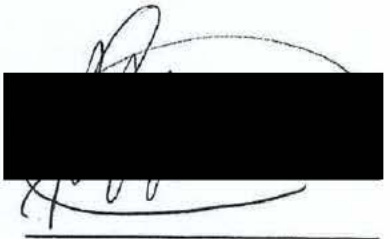
[8] In the result, the following order is made:

1 The conviction of the accused on the charge of robbery with aggravating circumstances is hereby reviewed and set aside.

2 The matter is remitted to the trial court for the presiding officer to deal with the accused in terms of s 77(6)(a)(i), read with s 78(6) of the Criminal Procedure Act 51 of 1977.


M OPPERMAN
JUDGE OF THE HIGH COURT

I concur

A handwritten signature in black ink, appearing to be 'S. Chesikwe', is written over a large black rectangular redaction box. The signature is fluid and cursive.

S CHESIWE
JUDGE OF THE HIGH COURT