IN THE HIGH COURT OF SOUTH AFRICA

MPUMALANGA DIVISION, MBOMBELA

(1) REPORTABLE: NO

(2) OF INTEREST TO OTHER JUDGES: NO

(3) REVISED: NO

SIGNATURE DATE 17/02/2026

CASE NO: R05/2025

(A82/2024)

In the matter between:

HENDRY DLAMINI	**APPLICANT**
and	
HONOURABLE ROELOFSE, AJ	**1st REPSONDENT**
THE DIRECTOR OF PUBLIC PROSECUTIONS, MPUMALANGA DIVISION	**2ndRESPONDENT**
SOUTH AFRICAN POLICE SERVICE, MBOMBELA	**3rd RESPONDENT**

This judgment was handed down electronically by circulation to the parties and/or parties' representatives by email. The date and time for hand-down is deemed to be 17 February 2026 at 10:00.

ORDER

---

1. The matter is removed from roll.
2. The judgment is to be brought to the attention of the attorney for the applicant, (Marthinus Boshoff Attorney) as well as the National Prosecuting Authority, Mpumalanga Division.

REVIEW JUDGMENT

P Venter, AJ

Introduction

[1] "Truth is ever to be found in simplicity, and not in the multiplicity and confusion of things." -Isaac Newton

[2] This judgment is not aimed at addressing the merits of the applicant's prayers. It is aimed at addressing the question of whether the Local Division of the High Court has jurisdiction to entertain a review in respect of a finalised criminal matter from its own Division. This applicant has now featured before this Division on a number of procedural platforms, some running parallel with one another, all stemming from the same origin. It is necessary to reflect on the history of the procedures in a time sequence.

[3] The origin from which it was spawned is a criminal matter CC26/2023 which served before the first respondent, in this High Court Division. The accused was convicted on a charge of Murder r/w the provisions of s51(1) of the Criminal Law Amendment Act 1997, (Act 105 of 1997) and to a second charge of Attempted Murder. He was sentenced on the 20th March 2024, to life imprisonment on the murder charge in terms of s51(1) r/w Part I schedule 2 of the Criminal Law Amendment Act 1997, (Act 105 of 1997) and to 10 years imprisonment on the second charge of attempted murder. The term of imprisonment on the second count was ordered to run concurrently with the life imprisonment imposed on the first count.

[4] When an accused is not satisfied with the final result of a criminal trial in the High Court, he usually would follow the established process of appeal set out in s315 and s316 of the Criminal Procedure Act,1977 (Act 51 of 1977), with s316 being the point of departure.

[5] In terms of the Criminal Procedure Act,1977 (Act 51 of 1977)

s315. Court of appeal in respect of superior court judgments.

> *(1) (a) In respect of appeals and questions of law reserved in connection with criminal cases heard by a High Court, the court of appeal shall be the Supreme Court of Appeal, except in so far as subsections (2) and (3) otherwise provides.*
> *(2) (a) If an application for leave to appeal in a criminal case heard by a single judge of a High Court (irrespective of whether he or she sat with or without assessors) is granted under section 316, the court of judge or judges granting the application shall, if it, he or she or, in the case of the judges referred to in subsections (12) and (13) of that section, they or the majority of them, is or are satisfied that the questions of law and of fact and the other considerations involved in the appeal are of such a nature that the appeal does not require the attention of the Supreme Court of Appeal, direct that the appeal be heard by a full court.*

[6] Before engaging in the s315 procedure, the applicant first needs to obtain leave to appeal. The applications for condonation, leave to appeal and further evidence is governed by **section 316 (Act 51 of 1977):**

> *(1) (a) Subject to section 84 of the Child Justice Act, 2008, any accused convicted of any offence by a High Court may apply to that court for leave to appeal against such conviction or against any resultant sentence or order.*

[7] The above process in the Criminal Procedure Act 1977, (Act 51 of 1977) is virtually copied in the **Superior Courts Act, 2013 (Act 10 of 2013).**

> **Section 16. Appeals generally**
>
> *(1) Subject to section 15(1), the Constitution and any other law—*
> *(a) an appeal against any decision of a Division as a court of first instance lies, upon leave*
> *having been granted—*
> *(i) if the court consisted of a single judge, either to the Supreme Court of Appeal or to a*
> *full court of that Division, depending on the direction issued in terms of section Section 17(6);*
> *or*
> *(ii) if the court consisted of more than one judge, to the Supreme Court of Appeal;*

[8] ***Section 17(6)(a) (Act 10 of 2013):***

> *If leave is granted under subsection (2)(a) or (b) to appeal against a decision of a Division as a court of first instance consisting of a single judge, the judge or judges granting leave must direct that the appeal be heard by a full court of that Division, unless they consider—*
> *(i) that the decision to be appealed involves a question of law of importance, whether*

because of its general application or otherwise, or in respect of which a decision of the
Supreme Court of Appeal is required to resolve differences of opinion; or
(ii) that the administration of justice, either generally or in the particular case, requires
consideration by the Supreme Court of Appeal of the decision, in which case they must direct that the appeal be heard by the Supreme Court of Appeal.

[9] Following his conviction and sentence and feeling displeased with the outcome, on the 04th October 2024, the applicant lodged an application to the High Court (the trial court), for a special entry in terms of s317(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977) and condonation for late filing. His prayer was that a special entry be noted to the Supreme Court of Appeal, on an irregular process of denial of legal representation, alternatively that a full bench of this Division set aside the conviction and sentence. His application does not specify in terms of which provision the alternative prayer falls. Although the remedy he seeks have some characteristics of an application for leave to appeal, those words never feature in his application, neither is there any judgment delivered by the court a quo in respect of the granting of leave to appeal.

[10] The grounds for the special entry were the following:

(i) He was refused legal representation and/or not granted an opportunity to instruct new counsel;
(ii) The accused as a lay person was not provided with copies of the docket and not given an opportunity to prepare;
(iii) The chain evidence was admitted irregularly by the trial court;
(iv) The evidence of a witness was accepted or admitted without cross examination;
(v) Sentencing was irregular and not in accordance with the provisions of s51(1) of the Criminal Law Amendment Act 1997, (Act 105 of 1997);
(vi) The court did not guide the lay person on how to mitigate and obtain a presentence report.

[11] The respondent (second respondent in this review) opposed the application for a special entry, stating that it was an abuse of process. The accused made the

commencement of the trial impossible due to continuous changing of legal representatives. Even if the refusal of legal representation was irregular, it did not warrant a special entry to be made.

[12] The court a quo, made an order in granting the recording of a special entry in terms of s317(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), on the 16th October 2024 and settled the points of the special entry as envisaged in s317(4).

[13] Following the premeditated course on which the appellant embarked through a successful s317(1) application, he would in the normal course pursue his appeal with the Supreme Court of Appeal in terms of s318(1) Criminal Procedure Act,1977 (Act 51 of 1977).

[14] In a surprising change of course, on the 14th November 2024, through Nkosi TS Attorneys, he filled a Notice of Appeal in terms of s318(1) r/w s316 of the Criminal Procedure Act 1977, (Act 51 of 1977), under A82/2024 at the Local Division of the High Court, Mpumalanga. He essentially sited the same grounds enunciated in the application for special entry before the trial court, in his notice of appeal. The appeal was scheduled to be heard on the 21st February 2025 before a full bench panel of three judges.

[15] After reading the papers in preparation, the office of the Deputy Judge President (DJP), who was one of the full bench panel, on the 13th February 2025, sent communication to the attorneys of the appellant requesting they provide the authority which vest the Local Division of the High Court with jurisdiction to hear an appeal based on a special entry in terms of s317(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977). The communication called on the attorneys to respond by the 17th February 2025.

[16] Without responding to the communication form the DJP's office, the appellant filed a notice of removal from roll on the 19th February 2025. It followed that at the instance of the appellant the matter was removed from roll on the 21st February 2025.

[17] On the 23rd July 2025, after instructing, Marthinus Boshoff Attorneys, he filed a review application through notice of motion, under review case R05/25, which is the matter this court is seized with. His prayer is seeking 1. Condonation for late filing, 2. To have the conviction in the criminal trial (CC26/2023) set aside, 3. A de novo trial to be ordered, and 4. That he be given access to the police case docket. From the papers it is evident that there is no proof of service on any of the respondents.

[18] On the 18th August 2025, Marthinus Boshoff Attorneys, sent a correspondence letter to the office of the Judge President (JP), Mpumalanga High Court Division, requesting for permission to apply for review of the CC26/2023 matter. In the same communication, he informs the JP that he had already filed a review application with the registrar who registered a review under number R05/2025. In his correspondence he narrows down the issues of the review to the refusal by the trial court to grant a remand to the then accused in order to obtain new legal representation and by doing so deprived him of having a fair trial. He is of the view that the trial judge's refusal of a postponement for legal representation is not appealable and must be taken on review. He also informs the JP that he is aware of a pending appeal in the same matter. This was factually incorrect, because the appeal had been removed from roll on the 21st February 2025 at the instance of the appellant.

[19] On the 11th November 2025, the office of the Deputy Judge President (DJP), Mpumalanga Division of the High Court, sent a communication to the attorney in respect of the 18th August communication, requesting he provide authority permitting criminal trials finalised in the High Court to be reviewable under the Criminal Procedure Act. The attorney was directed to respond by the 21st November.

[20] On the 19th November a response was received wherein the attorney indicated he cannot refer to any specific provision from the Criminal Procedure Act or Superior Court's Act supporting a review procedure of criminal trials finalised in the High Court. He however referred to two judgments (S v Le Grange 2011(3) SA 92 (CC); Sizani v Mpofu 2017 (5) SA 577 (GJ), from which he says two separate Local Divisions of the High Courts considered a review of the conduct of a presiding judge within its own division.

[21] This court could not find the referred to cases after a diligent search. After a query was directed at the Attorney to provide correct details of the cited cases or to forward copies of the cases, the following was provided: Le Grange v The State (040/2008) [2008] ZASCA 102 (18 September 2008) and an unreported case Nonthuthuzelo Portia Sizani vs Mpofu N.O. and the Director of Public Prosecutions, Eastern Cape, (case no 642/2017) dd 12 December 2017 (ECG).

[22] The Le Grange v The State matter is an appeal to the Supreme Court of Appeal emanating from a conviction and sentence in criminal proceedings before the Northern Cape High Court Division, Kimberley where the right to a fair trial was challenged alleging bias conduct by the judicial officer.

[23] The Sizani v Mpofu matter is a review judgment by Pickering J from the Eastern Cape Local Division of the High Court on the refusal to recuse by an Acting Regional Court Magistrate from criminal proceedings.

[24] None of the two case references was on the point in issue, addressing the question by the DJP. More specifically, they do not provide authority for a review.

[25] On the 22 October 2025, in yet another surprising turn of events, the appellant through the same legal representative, Marthinus Boshoff Attorneys filed another appeal with the registrar of the Mpumalanga Division of the High Court under inexplicably the same appeal number A82/2024, which was previously removed from roll on the 21st February 2025. A date of hearing the appeal was allocated as 06 February 2026.

[26] On the 25th November 2025 he filed a notice of withdrawal of his appeal, stipulating that the appeal should be brought before the Supreme Court of Appeal in terms of s318 of the Criminal Procedure Act 1977, Act 51 of 1977.

[27] From acting on advice from two sets of legal representatives, this applicant made a litany of errors. After electing to follow the special entry process (s317(1) CPA), which

evidently was successfully granted, s318 of the CPA (Act 51 of 1977) directs the only forum to hear such special entry is the Supreme Court of Appeal.

[28] Section 318 reads: **Appeal on special entry under section 317**.

> *(1) If a special entry is made on the record, the person convicted may appeal to the Appellate Division against his conviction on the ground of the irregularity stated in the special entry if, within a period of twenty-one days after entry is so made or within such extended period as may on good cause be allowed, notice of appeal has been given to the registrar of the Appellate Division and to the registrar of the provincial or local division, other than a circuit court, within whose area of jurisdiction the trial took place, and of which the judge who presided at the trial was a member when he so presided.* (my emphasis)

[29] It is important to be aware of what the Supreme Court of Appeal said in **S v Khoza And Others 2010 (2) SACR 207 (SCA) at par [44]** *"The grounds open to a trial judge in refusing to note a special entry are restricted: that the application is not made bona fide; or that it is frivolous or absurd; or that the granting of the application would be an abuse of the process of the court.*
There is a further ground not expressly mentioned in s 317(1), but inherent in the section: when the irregularity appears from the record itself the special entry procedure, whilst convenient, may be unnecessary because of the wide powers of appeal enjoyed by the SCA in terms of s 316 of the Act." (my emphasis)

[30] In the matter of **Nkabinde v The State (115/17) [2016] ZASCA 75 (01 June 2017)** the SCA remarked as follows when dealing with the provisions of Section 317 at par [27]:
"The purpose of a special entry is to raise an irregularity in connection with or during the trial as a ground of appeal against conviction under s 318(1) of the Act. The latter section provides, inter alia, that if a special entry is made on the record, the person convicted may appeal to this Court against his conviction on the basis of the irregularity stated in the special entry. Recently this Court has held that the sole purpose of a special entry is to record an irregularity that does not appear on the

record. As is shown below, all of the so-called special entries are not proper special entries but grounds of appeal under s 316 of the Act, because they appear on the record. Some 60 years ago this Court held that the special entry procedure is of vital importance and should be utilised where the irregularity does not appear on the record of the proceedings. So, the statement in the application for leave to appeal to this Court that a special entry is 'simply a method of applying for an appeal in regard to irregularities on or off the record' is quite wrong." (my emphasis)

[31] Whether the refusal of postponement by the trial court in CC26/2023, to allow a new legal representative to be instructed, appears from the trial transcript, and if it is an 'irregularity in connection with or during the trial', is an issue best left to be decided by the Supreme Court of Appeal. That is not my domain to make any determination on.

[32] The applicant never applied for leave to appeal in terms of s 316 (Act 51 of 1977) or s17 (Act 10 of 2013) which would have been the most reasonable course of action. Both the appeals filed, despite never complying with s316 or s17 have been removed from roll.

[33] The letter directed at the office of the Judge President (dated 18th August 2025) seeking permission to apply for a review is not in accordance with any provision in the Criminal Procedure Act or Superior Court's Act.

Conclusion

[34] The sole issue that remains to be determined is whether the matter under R05/2025, is capable of review. Neither the Criminal Procedure Act, (Act 51 of 1977) nor the Superior Court's Act, (Act 10 of 2013) makes provision for a review by the Local Division of the High Court in respect of a matter that has already been finalised by the High Court. The absence of statutory authority fails to vest this court with jurisdiction to entertain such a review, since it is procedurally impermissible.

Order

[ ] In the result, the following order is made

1. The matter is removed from the roll.

2. The judgment is to be brought to the attention of the attorney for the applicant, (Marthinus Boshoff Attorney) as well as the National Prosecuting Authority, Mpumalanga Division.

P VENTER, AJ
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION, MBOMBELA

APPEARANCES

Counsel for the Applicant:	Marthinus Boshoff Attorney
Instructed by:	
Counsel for the Respondent:	Director of Public Prosecutions,
Instructed by:	Mpumalanga Division