

IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

(1) Reportable: No
(2) OF interest to other Judges: NO
(3) Revised: No

Case No. A99/2024

 28 APRIL 2026
SIGNATURE DATE

In the matter between:-

CYNTHIA NYATHI

First Appellant

MELVIN KAMBULE

Second Appellant

And

STATE

Respondent

JUDGMENT

INTRODUCTION

1. This is an appeal against the interim judgment of the Regional court magistrate dismissing an objection made by the appellants in terms of the provisions of section 85 of the Criminal Procedure Act 51 of 1977. The appellants are currently charged in the regional court: Pretoria as Accused 1 and Accused 3 respectively on charges of corruption. Accused 2 is not a party to this appeal.
2. The state opposed the appeal.

BACKGROUND

3. During the proceedings in the court a quo, the respondent delivered further particulars in the form of the contents of the police case docket to the legal representative of appellants after an application for further particulars in terms of the provisions of section 87 of Act 51 of 1977 was lodged.
4. The case was set down for trial following the disclosure of the police docket however the trial did not proceed after the appellants brought an objection against the charges in terms of section 85 of the Act and requested that the charges against the appellants be quashed. The appellant raised the issue on the admissibility of evidence contained in the police case docket together with an extra curial admissions and/or confession in terms of section 217.

APPEAL

5. In the appeal the appellants relied heavily on Section 35(5) of the constitution. The objection raised against by appellants on the decision of the magistrate in dismissing their application relates to their allegation that the charges formulated against the appellants are based or grounded on unconstitutionally obtained evidence and therefore inadmissible evidence.
6. The state argued that the argument raised on behalf of the appellants was not mounted on grounds listed in sections 85(1)(a) to 85(1)(e) of the Act, but that the fair trial rights of the appellants grounded and based on unconstitutionally obtained evidence.
7. In the appeal, the state complained that the majority of the questions contained in the appellant's request for further particulars were directed at the admissibility of evidence contained in the police case docket.

ON JUDGMENT

8. During the preparation of the judgment the appeal court had to consider the entire record and the arguments. The record as well as the appellant heads of arguments were finished in a hard copy and only the state heads of argument was or is on caseline. The court discovered that the power of attorney was not in the court file or on caseline. Subsequently, the court issued a directive for the parties to attend a virtual meeting which was set to inquire on the whether or not the appeal was accompanied by the power of attorney or to put it simply whether the appellants attorney had provided a power of attorney in the appeal.
9. On 09 December 2025 Marika Jansen Van Vuuren representing the state and Mr Tshepo Laka representing the first and second respondents attended the meeting(virtual). In the meeting Mr Tshepo Laka confirmed that he was standing in for Adv Laka SC who is representing the appellants. He further confirmed that the file he has with him did not indicate that there was a power of attorney obtained from the appellant and the record does not contain such. The state advocate Adv Marika Jansen Van Vuuren also confirmed that there is no power of attorney by the appellants in the record in her possession. At the end of the meeting Mr Laka indicated that the power of attorney can be made available to court at the later stage.
10. It is pertinent to deal with the decision or the results of the meeting first before I deal with the issue of power of attorney.

Variation of the Order of removal of the matter

11. After the hearing the court made an order that the matter is removed from the roll.
12. The removal was an error as the matter or the merits of the case was already heard. The appropriate order to have been made was to struck off the appeal on the reasons I shall provide later.

13. This court thus exercises its power in terms of Rule 42 to *mero motu* vary and rescind order made on 09 December 2025 removing the appeal from the roll. Rule 42 which provides as follows:

'(1) The court may, in addition to any other powers it may have, *mero motu* or upon the application of any party affected, rescind or vary:

(a) An order or judgment erroneously sought or erroneously granted in the absence of any party affected thereby;

[Para. (a) as substituted by GN R235 of 18 February 1966.]

(b) an order or judgment in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;

(c) an order or judgment granted as the result of a mistake common to the parties.

(2) Any party desiring any relief under this rule shall make application therefor upon notice to all parties whose interests may be affected by any variation sought.'

(3) *The court shall not make any order rescinding or varying any order or judgment unless satisfied that all parties whose interests may be affected have notice of the order proposed.*

14. The Uniform Rules of Court set out the requirements for filing a *power of attorney* in appeal proceedings from the High Court: Rule 7(2) provides that, "*The registrar shall not set down any appeal at the instance of an attorney unless such attorney has filed with the registrar a power of attorney authorising him to appeal and such power of attorney shall be filed together with the application for a date of hearing.* This rule means that an attorney must file authority (power of attorney) when requesting a hearing date for an appeal.

15. It is a peremptory procedural requirement to ensure that the attorney is duly authorised to act on behalf of the client. The filing of a power of attorney is essential to prosecute an appeal. Failure to provide the power of attorney is irregular. Consequently the appeal ought to be struck off the roll.

WHEREFORE THE COURT MAKES THE ORDER AS FOLLOWS:

ORDER:

1. The appeal is struck from the roll.
2. No order as to costs



Acting Judge Leso
High Court of Pretoria

I agree:



Judge O. Mooki
High Court Pretoria.

Heard : 10 September 2025
Delivered: 28 April 2026

(The judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the CaseLines system of the Gauteng Division)

APPEARANCES:

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