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**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION MBOMBELA (MAIN SEAT)**

**CASE NO: A39/2025**

- (1) REPORTABLE: YES / NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED: YES/NO

DATE 29/5/2026

SIGNATURE

In the matter between:

**JACOB ZENEZELE MNCWANGO**

**APPLICANT**

and

**THE STATE**

**RESPONDENT**

*This judgment was handed down electronically, circulated to the parties and their legal representatives by email. The date and time for the hand-down of the judgment is deemed to be 29 May 2026 at 10h00.*

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**JUDGMENT**

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**Vukeya J, Venter AJ (Concurring)**

[1] This is an appeal against the conviction and sentences imposed on the appellant by the Regional Magistrate, Mbombela on 20 January 2023. The appellant was charged, together with two others, with Fraud, alternatively Theft, and two counts of Money Laundering. The appellant was convicted of Theft and Money Laundering and sentenced to ten (10) years imprisonment, of which three (3) years imprisonment was suspended on certain conditions. He was also sentenced to three (3) years imprisonment for Money Laundering. It was ordered in terms of section 280 (2) of the Criminal Procedure Act 51 of 1977 (“CPA”)<sup>1</sup> that these sentences were to be served concurrently.

[2] The appellant brings an appeal against the conviction and sentence having been granted leave to appeal against both the conviction and the sentence by the Court *a quo*.

[3] It was alleged by the respondent that during 2012, the appellant and others falsely and with a common intent to defraud, misrepresented to the Department of Rural Development and Land Affairs, Mpumalanga (“DRDLA”) that they had rendered services to the benefit of the Endloveni Community. They presented a Memorandum, Resolutions, and an Invoice to DRDLA pretending that these were prepared by the Endloveni Community Project Association (“ECPA”), responsible for community projects and services for the Endloveni Community.

[4] It was also alleged that the accused misrepresented to DRDLA that services at the Endloveni Community were rendered by Sadia Enterprises Trading CC (“Sadia”)

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<sup>1</sup> 280. Cumulative or concurrent sentences, reads.—

(1)...

(2) Such punishments, when consisting of imprisonment, shall commence the one after the expiration, setting aside or remission of the other, in such order as the court may direct, unless the court directs that such sentences of imprisonment shall run concurrently.

for the infrastructural development of Endloveni Portion 2 and 29 of Hermansburg 450JT, whereas in fact and in truth no services were rendered by Sadia or any of the companies or close corporations alleged to be subcontracted under Sadia, namely, JM Mncwango Trading CC (“the CC”). It was further alleged that an amount of R2.95 million was paid into the bank account of Sadia, a company whose Director was Ms Thandi Mildred Mndawe (“Thandi Mndawe”). The amount deposited into Sadia by the DRDLA was, according to the allegations, distributed into other bank accounts, including the bank account of the CC.

[5] Evidence led at the trial in the court *a quo* is summarised hereunder as follows. Mr Esau Nkosi, a member of ECPA, testified that he only knew accused 3 as a mentor appointed by the DRDLA. The ECPA, representing the community of Endloveni for Community development, qualified for a grant of R2.95 million. When the amount was not received by the ECPA, Mr Esau Nkosi approached Mr Alex Sam Nkosi (“Alex Nkosi”), the Department’s Chief Director, to inquire as to its payment. It was discovered that the amount was paid to Sadia, as consented to by Thandi Mndawe. Mr Esau Nkosi did not know the appellant, who was the first accused in the Regional Court proceedings. He testified that he had never dealt with the appellant.

[6] Alex Nkosi, the Chief Director: Restitution Unit in the DRDLA, confirmed in evidence that the ECPA was entitled to a grant of R2.95 million authorised between 2007 and 2008. That amount, according to Alex Nkosi, was paid to the service provider for services believed to have been rendered. He became aware that the ECPA had not received the funds when he received a complaint from the community representatives of Endloveni that the funds had not been paid over. Alex Nkosi then held a meeting with Thandi Mndawe, and she informed him that indeed the money was paid to a service provider who would render services, and yet later it transpired that the services had not been rendered. Alex Nkosi confirmed that there was no relationship between the DRDLA and Mncwango, the appellant, and stated that no money was paid to the appellant by the DRDLA.

[7] Sergeant NR Bhiya (Sgt Bhiya), the Investigating Officer in the case, dealt with the complaint regarding the R2.95 million missing from the DRDLA, which was intended for the Endloveni Community's development. He first interviewed Thandi Mndawe, and she confirmed that the amount was deposited by her into a bank account of the CC's, a subcontractor of Sadia. He told the court that he obtained from the Bank an affidavit deposed to in terms of section 236 of the CPA, after which he was able to obtain the bank statements of both Sadia and the CC.<sup>2</sup> These statements were handed up and accepted as evidence in the trial under exhibits "F" and "G". He conceded during cross-examination that the names appearing in the FNB account and the names of the appellant were not the same and that the funds were received by the CC and not the appellant in his personal capacity.

[8] Sgt Bhiya further conceded that the CC should have been charged and not the appellant. He further stated that the appellant had admitted that he was the sole member of the CC. Two bank statements were admitted into the record through this witness, and in terms of a section 236 affidavit from an employee of the bank, namely, a bank statement from an FNB account held by Sadia and a Standard Bank ("Std Bank") account in the name of the CC. Sgt Bhiya provided evidence that Thandi Mndawe gave him a document, "an appointment letter", appointing the CC as a contractor to handle the construction at Endloveni.

[9] According to Sgt Bhiya's analysis of Sadia's FNB bank statement, an amount of R2 950 000. 00 was deposited into this account by the DRDLA on 14 March 2012. The documents, according to Sgt Bhiya, revealed that Grace Makoka, who was accused 2 at the time of trial, was given signing powers over the account of the CC

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<sup>2</sup> Section 236 Proof of entries in accounting records and documentation of banks reads—

(1) The entries in the accounting records of a bank, and any document which is in the possession of any bank and which refers to the said entries or to any business transaction of the bank, shall, upon the mere production at criminal proceedings of a document purporting to be an affidavit made by any person who in that affidavit alleges-

(a) that he is in the service of the bank in question;

(b) that such accounting records or document is or has been the ordinary records or document of such bank;

(c) that the said entries have been made in the usual and ordinary course of the business of such bank or the said document has been compiled, printed or obtained in the usual and ordinary course of the business of such bank; and

(d) that such accounting records or document is in the custody or under the control of such bank, be prima facie proof at such proceedings of the matters, transactions and accounts recorded in such accounting records or document." (Footnotes omitted.)

(Std Bank Account No: 3[...]) on 15 March 2012, which was one day after the money was deposited into Sadia's FNB Bank account by the DRDLA.

[10] Sgt Bhiya also testified that an amount of R1 000 000. 00 was transferred to the Std Bank account of the CC from Sadia's FNB account on 16 March 2012. Another amount of R1 000 000. 00 was transferred to the CC's Std Bank account on 17 March 2012. Again R300 000. 00 was transferred into the CC's account on 23 March 2012. From the reconstructed record of the cross-examination of Sgt Bhiya, it transpired that Sgt Bhiya confirmed that the bank statement did not reflect the names of the appellant and that the money was actually received by the Close Corporation, JM Mncwango Trading CC.

[11] Sgt Bhiya also conceded that no money was paid from the account of the CC into the personal account of the appellant. Although the witness conceded that the CC should have been charged separately, he stated that the appellant had told him that he was the sole member of the CC. When it was put to the witness that the appellant would deny receiving payments from the DRDLA, the witness told the court that the amount was paid into an account over which the appellant had signing powers.

[12] Mr Clement Mndawe Maseko's evidence was that as the Project Co-Ordinator for the DRDLA, he conducted an inspection on the delivery of services by Sadia to the Endloveni Community on instructions of the Chief Director. He discovered that no services were rendered by Sadia Enterprises Trading CC as per their quotation. He then compiled a report and furnished it to Alex Nkosi as requested.

[13] Thandi Mndawe, became a witness for the state after a guilty plea and sentence. She had been arraigned with the appellant and his co-accused on similar charges. At the time of the commission of the offence, this witness' company, Sadia Enterprises Trading CC, had been appointed as the service provider of the DRDLA. This came as an arrangement with Grace Makoka who was working for the DRDLA. Thandi Mndawe had to render certain services for the benefit of the Endloveni

Community and received an amount of R2 950 000. 00 for this purpose. She testified that after the payment was made by the DRDLA, she then had a meeting with Grace Makoka, who told her that the CC would be responsible for those services as a subcontractor. Makoka further told her to deposit an amount of R2 300 000. 00 into a Std Bank account held by the CC.

[14] Her evidence was that she made a payment of R2.3 million into the bank account of the CC as she had been informed that the CC would be the sub-contractor. In her evidence, Thandi Mndawe confirmed the details of her company, Sadia, and the transactions in which she transferred a total of R2 300 000. 00 into the bank account of the CC. A letter of appointment was also produced in evidence, and Ms Thandi Mndawe told the court that the letter of appointment was issued in favour of the CC for the services to be rendered at Endloveni Community.

[15] She testified that she did not know the appellant before her arrest and that the appellant never attended any meetings with DRDLA in relation to projects meant for the Endloveni Community.

[16] At the close of the state's case, the appellant elected to close his case without giving evidence, after which a conviction followed as aforementioned.

[17] Aggrieved by the conviction and the sentence imposed on him by the Regional Magistrate, the appellant noted an appeal against both the conviction and the sentence and contended that:

17.1. The court acted irregularly as there was no finding on the main count of fraud nor on count 2 of money laundering against the appellant, while he pleaded "Not-Guilty" on both counts.

17.2. In finding that the state did prove the elements of theft beyond a reasonable doubt, whereas the elements of unlawful consciousness, wrongfulness, and appropriation had not been proved. The Magistrate

should not have found that the appellant was aware of the misappropriation and/or the origin of the money.

- 17.3 The Magistrate also erred in finding that the appellant acted in furtherance of a common purpose with his co-accused and that it was impossible that the appellant did not know about the activities of JM Mcwango Trading CC as its sole member and a signatory to its bank account. According to the appellant, the Magistrate ought to have found that the evidence led about JM Mncwango Trading CC was inadmissible and ought not to have found that it was improbable that payments were not known to the appellant.
- 17.4. Admitting exhibits F and G1 to 4 as a section 236 statement entitling the state to hand in exhibit G1 to 4 was irregular, and it did not comply with the Criminal Procedure Act nor with the prescripts of Government Gazette 3619 of 21 July 1972.
- 17.5. By convicting the appellant for actions of a legal person, while there is no evidence that the appellant was personally involved in the deposits, these were transfers from the legal person's business account, whereas the appellant was charged in his personal capacity.

[18] The main contentious issue in this appeal is the question of whether the court was correct in accepting exhibits “F” and “G” as *prima facie* proof of the allegations in terms of section 236 of the CPA. It was argued on behalf of the appellant that the section 236 affidavit did not meet the requirements of an affidavit, and therefore admitting exhibits F and G1 to 4 as the statement, which is a section 236 certificate entitling the state to hand-in exhibit G1 to 4, was irregular and didn't comply with the CPA nor with the Regulations Governing the Administration of an Oath or Affirmation (“the Regulations”).<sup>3</sup>

[19] Section 236 deals with the admission of evidence which may be presented to the court as proof of entries in accounting records and documentation of banks. It

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<sup>3</sup> Prescribed by the Justices of the Peace and Commissioners of Oaths Act, 1963 (Act 16 of 1963), published under GNR1258 of 21 July 1972.

provides that the entries in the accounting records of a bank, and any document which is in the possession of any bank which refers to the said entries or to any business transaction of the bank, shall, upon its mere production at criminal proceedings of a document purporting to be an affidavit made by any person, be *prima facie* proof at such proceedings of the matters, transactions and accounts recorded in such accounting records or document.<sup>4</sup>

[20] The person deposing to the affidavit must allege in the affidavit that he or she is in the service of the bank in question; that such accounting records or document is or has been the ordinary records or document of such bank; that the said entries have been made in the usual and ordinary course of the business of such bank or the said document has been compiled, printed or obtained in the usual and ordinary course of the business of such bank. The deponent must further allege that such accounting records or document is in the custody or under the control of such bank.<sup>5</sup>

[21] Statements that do not comply with legislation and its scheme of regulations may be found to be defective to the extent that no reliance can be placed on them for purposes of section 236. The purpose of section 236 is to shorten the proceedings as it removes the need to call bank officials to hand in documents which should, in most cases, not even be in dispute, in a criminal trial.

[22] Exhibit “F” is a statement in terms of section 236 (1) and (2) of the CPA deposed to by Brenda Mitchell (“Ms Mitchell”). On the face of it, the statement meets the requirements of a section 236 statement. In this statement, Ms Mitchell alleges that she is in the service of Std Bank; that such accounting records are the ordinary records and documents of Std Bank; that the entries on the bank statements and in the accounting records have been made and compiled, printed or obtained in the usual and ordinary course of the business of Std Bank; and that the bank statements, accounting records and documents have been in the custody or under the control of Std Bank.

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<sup>4</sup> Section 236 of the CPA.

<sup>5</sup> *Ibidem*.

Although section 236 permits the admission of this type of evidence, it remains hearsay evidence if the deponent does not give *viva voce* evidence of the facts contained in the statement.

[23] Section 3(4) of the Law of Evidence Amendment Act 45 of 1988 (“the Evidence Amendment Act”) defines hearsay evidence as “evidence, whether oral or in writing, the probative value of which depends upon the credibility of any person other than the person giving such evidence.” This definition focuses on the declarant to determine whether the evidence is hearsay evidence. Undoubtedly, a section 236 statement is hearsay evidence if the person upon whose credibility the probative value of the evidence depends, is not called to testify at trial. Despite the fact that our hearsay law has been liberated by section 3 of the Evidence Amendment Act, section 236 is still a useful tool in dealing with the production of hearsay evidence as it elevates these types of documentary evidence to the status of *prima facie* proof, upon their mere production.

[24] Strict compliance with the requirements of section 236 is, however, necessary because this section constitutes a departure from the common law and allows hearsay evidence to be admitted upon the mere production of a document in a trial where, normally, the person who presents the evidence should be the person upon whom the probative value of the evidence depends. However, under section 236, if the statement is an affidavit, its mere production makes it admissible. This statement is therefore supposed to meet the requirements of an affidavit.

[25] A simple definition of an affidavit is that “it is a written declaration or statement sworn to or affirmed before a person who has authority to administer an oath, namely, a commissioner of oaths”. The Regulations (*supra*) prescribe how a Commissioner of Oaths should administer an oath. Regulations 3 and 4 read thus:

“3. (1) *The deponent shall sign the declaration in the presence of the commissioner of oaths.*

*(2) If the deponent cannot write he shall, in the presence of the commissioner of oaths affix his mark at the foot of the declaration: Provided that if the commissioner of oaths has any doubt as to the deponent's inability to write he shall require such inability to be certified at the foot of the declaration by some other trustworthy person.*

4. *(1) Below the deponent's signature or mark the commissioner of oaths shall certify that the deponent has acknowledged that he knows and understands the contents of the declaration and he shall state the manner, place and date of taking the declaration.*

*(2) The commissioner of oaths shall—*

*(a) sign the declaration and print his full name and business address below his signature; and*

*(b) state his designation and the area for which he holds his appointment or the office held by him if he holds his appointment ex officio.” [my underlining]*

[26] It was argued at the hearing of this appeal that there was no substantial compliance with the requirements of the above regulations and that the effect of this is that there was no affidavit in terms of section 236. Noticeably, Ms Mitchell signed the declaration, but the Commissioner of Oaths (“the Commissioner”) did not state whether the person taking the oath was male or female. He also did not state, 1) the date on which the oath was administered, 2) his full name as the Commissioner or at least, 3) an official date stamp to confirm that he was a member of the South African Police Service.

[27] The argument was that this non-compliance left the state with evidence under exhibits “G1 - G4,” which should not have been admitted, as it remained inadmissible hearsay. Exhibits G1 - G4 are the documents on which the state based its case against the appellant. These documents were introduced into the record through the evidence of Sgt Bhiya, who was evidently the Investigating Officer of the case and the Commissioner for the Section 236 statement. The appellant also took issue with this and contended that Sgt Bhiya not only took part in the commissioning of the section

236 statement but also presented evidence at the trial as the main witness who investigated the case and collected evidence. It was submitted on behalf of the appellant that he had an interest in getting a conviction and thus should not have acted as a Commissioner.

[28] It has been held in *Lohrman v Vaal Ontwikkelingsmaatskappy*<sup>6</sup> that, provided it appears with reasonable clarity how a declaration was stated to be the truth, namely either on oath or affirmation, the relevant part of the Regulations governing the attestation of affidavits is thereby complied with. It was stated, further, that the court enjoys a discretion in this regard.

[29] Surrounding the section 236 affidavit are three issues which this court must deal with in this judgment. Firstly, the question whether the statement of Ms Mitchell (“Exh F”) meets the prerequisites of an affidavit and secondly, whether Sgt Bhiya who was the Commissioner who and also tendered evidence relating to the section 236 statement, had an interest in the matter and thirdly, whether Sgt Bhiya could give evidence in relation to the facts contained in the statement.

[30] In dealing with the question whether Ms Mitchell’s statement meets the requirements of an affidavit, the starting point is the question whether there was substantial compliance with the requirements of Regulation 7 when her affidavit was obtained. Firstly, the declaration was signed by Ms Mitchell, but the Commissioner did not indicate whether the person taking the oath was male or female.

[31] Although the Court in *Absa Bank Ltd v Botha, N.O and Others*<sup>7</sup> dealt with a situation where the deponent, who was a female person, was referred to as “he”, it remarked as follows:

“Thus, if the deponent is a female, the commissioner of oaths would be required to use the pronoun “she”, and if the deponent is a male, the

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<sup>6</sup> *Lohrman v Vaal Ontwikkelingsmaatskappy* (Edms) Bpk 1979 (3) SA 391 (T) at 395.

<sup>7</sup> *Absa Bank Ltd v Botha NO and Others* (39228/12) [2013] ZAGPPHC 163; 2013 (5) SA 563 (GNP) (7 June 2013) at para 10.

commissioner of oaths would be required to use the pronoun “he”. In a case, such as this, where the commissioner of oaths certifies that the deponent has acknowledged that “he” knows and understands the contents of the declaration, but from the declaration itself it is apparent that the deponent is a female, because she declares as much, then the Court would be unable to place reliance on the certification of the commissioner of oaths because *ex facie* the affidavit it would be unclear whether the deponent is a male or a female. Hence, the Court would be unable give effect to the “presumption of regularity” for purposes of assuming that the declaration was sworn to (or affirmed) and signed in the presence of the commissioner of oaths. [my underlining]

[32] Similarly, in a situation where the Commissioner has failed to indicate whether the person making the declaration is male or female, it becomes difficult to conclude that such person swore to the declaration in the presence of the Commissioner. It is also difficult to conclude whether the statement was obtained legitimately, as it does not display the date on which the oath was administered. Sgt Bhiya also failed to include his full name as the Commissioner, nor an official date stamp to confirm the date, nor the fact that he was in the service of the police.

[33] In this situation, the witness would have to testify under oath as the probative value of the evidence depended on her. Sgt Bhiya gave evidence and tried to analyse the bank statements and the other exhibits which were handed up to the court.

[34] An issue was raised on behalf of the appellant during the trial that the statements and documents relating to section 236 could not be handed up through the evidence of Sgt Bhiya and that Ms Mitchell would have to be called to testify as the probative value of the exhibits depended on her. Considering the defects that existed in the purported affidavit by Ms Mitchell, even if the court *a quo* had found that the statements could not be handed up in terms of section 236, that would not be the end of the matter. Nothing would have prevented the respondent from calling Ms Mitchell, as the bank official, or, if no longer available, other bank officials in control of the

bank statements, who could testify positively to the bank statements, in evidence for the State.

[35] In terms of Regulation 7(1), a Commissioner shall not administer an oath or affirmation relating to a matter in which he has an interest. The appellant referred this Court to the case of *Ludi v Meyer and Others*<sup>8</sup> to support the submission that the Investigating Officer was not supposed to act as a Commissioner of Oaths in terms of this section 236 affidavit because he had an interest in the matter. This submission is, however, in direct contrast with the view held by Mangena AJ in *Ludi v Meyer (supra)* wherein the court stated as follows:

“The regulation provides that a commissioner of oaths shall not administer an oath or affirmation relating to the matter in which he has an interest. Since Ms Hendricks is an employee at the Pieter Swanepoel Attorneys, she, so it was submitted, has an interest in the matter. This cannot be correct. Regulation 7(2) provides that sub-regulation 1 shall not apply to an affidavit or a declaration mentioned in the schedule. Item 2 of the schedule provides that a declaration taken by a commissioner of oath who is not an attorney and whose only interest therein arises out of his employment and in the course of his duty. Ms Hendricks is not an attorney and commissioned the oath in the course of the performance of her duties. She has no other interest in the matter other than the one arising out of her duties on an [sic.] employee.”

[36] Quoted hereunder, is what Wallis JA (Ponnan, Schippers and Hughes JJA and Kgoele AJA concurring) stated in *Kouwenhoven*<sup>9</sup>:

“Commissioners of oaths are persons designated by the Minister of Justice as such by virtue of their office. The current designation includes no fewer than 77 categories of officers, ranging from members of the National Executive and a number of persons holding office in the administration of justice (but curiously not judges, although their secretaries are designated), to the chairperson of management of a children’s home in Pretoria. In terms of s 7 of the statute all of these are authorised to administer an oath or affirmation or

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<sup>8</sup> *Ludi v Meyer and Others (Reasons)* (5356/2023) [2025] ZAMPMBHC 13 (24 January 2025) at para 8.

<sup>9</sup> *Kouwenhoven v Minister of Police and Others* 2022 (1) SACR 164 (SCA) at para 34.

take a solemn or attested declaration within the area for which they are a commissioner. Regulation 7(1) precludes a commissioner from performing these functions ‘relating to a matter in which they have an interest’. The authorities already cited say that this must be a pecuniary interest or an interest whereby the rights and obligations of the commissioner would be affected” [my underlining]

[37] In *S v Sihlobo*<sup>10</sup> the Court stated that:

“According to Regulation 7(1), a commissioner of oaths is prohibited from administering an oath or affirmation in which he or she has an interest. Regulation 7(2) stipulates that the provisions of sub-regulation 1 shall not apply to an affidavit or a declaration mentioned in the schedule. The schedule provides that Regulation 7(1) does not apply to any affidavit or declaration taken by an officer who is in the service of the State, provided: his only interest in the declaration arises out of the performance of his duties in such service; the primary interest in the declaration is that of the State.” [my emphasis]

[38] Clearly, Sgt Bhiya was an employee of the South African Police Service, and when he obtained the statement of Ms Mitchell, he was performing his duties. There is no evidence that he would have experienced either financial gain or financial loss whether or not he obtained the statement. His only interest in obtaining the statement arose out of the performance of his duties under the service of the South African Police Service and not out of any personal interest. The primary interest in obtaining the statement was that of the State. Regulation 7(1), therefore, does not find application in the circumstances under which Sgt Bhiya obtained the section 236 statement from Ms Mitchell.

[39] A Commissioner of an affidavit must not be an “interested party” in the matter. He cannot give evidence as to the content of the affidavit. All he or she can give evidence on is that a statement was written down (by him or her or someone else), that

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<sup>10</sup> *S v Sihlobo* [2004] JOL 12831 (Tk) at para 18.

the maker of the statement took an oath that this was a true statement, that such oath was given before a commissioner of oaths, and that the maker of the statement signed the document in the presence of the Commissioner. Once there is a written document, such as an affidavit, sought to be adduced into evidence, the only evidence which the Commissioner could give pertains only to the circumstances of the making of the affidavit and does not go to the content of the affidavit, as the probative value of the evidence depends on the credibility of another, namely, the signatory/deponent to the affidavit.

[40] In essence, there was no substantial compliance with the requirements of the above Regulations and the effect of this is that there was no affidavit in terms of section 236. In other words, the evidence convicting the appellant of Theft and Money Laundering was based on hearsay evidence from Sgt Bhiya and documents that should not have been admitted unless *viva voce* evidence was led. Therefore, the appeal stands to be upheld as the evidence relating to the theft is intertwined with the evidence of money laundering, and the charges were all dependent on the section 236 evidence.

[41] The appellant further contended that the court *a quo* failed to pronounce the verdict on the main count of Fraud and on the second count of Money Laundering; he argued that on those grounds the convictions ought to be set aside as the court acted irregularly.

[42] It is a fundamental duty of a presiding officer to deliver a judgment and verdict on the record. A failure to announce an acquittal is indeed an irregularity. When a presiding officer fails to pronounce a “not guilty” verdict in open court, the resulting omission often constitutes a procedural irregularity that may make the proceedings irregular or invalid, requiring appellate intervention or a correction of the court record. While a verbal announcement is essential for transparency, if the verdict was formally recorded in the case file (minute order or court record), but not spoken, a higher court can confirm the acquittal based on the record.

[43] In *Tuta v The State*<sup>11</sup> the Constitutional Court was faced with a situation where an unsigned *ex tempore* judgment was part of the transcribed record, and that judgment was ambiguous on the issue of putative self-defence. The *ex tempore* judgment differed materially from the signed judgment later provided in that matter, and it was only in the second judgment that the issue of putative self-defence was clarified. The Constitutional Court made remarks about patent errors in *ex tempore* judgments and the general need for clear reasons to be contained in a judgment. The Constitutional Court proceeded to state that:

“However, in my view, it better accords with the constitutionally entrenched rights of an accused to a fair trial and the duties of a court to pronounce with finality upon the case before it.”

[44] The above re-emphasises the rights of an accused person to a fair trial and the court's duty to give reasons for its judgment and pronounce its verdict with finality to ensure a fair trial for the accused person.

[45] In *casu*, the Magistrate convicted the appellant on the alternative charge of Theft in respect of count 1 of Fraud and was supposed to deliver a verdict of “Not Guilty” on the Main Count; she, however, omitted to do so. Furthermore, she proceeded to hand down a verdict of “Guilty” on count 3, omitting count 2. In respect of count 1, it is obvious that she would not have convicted the appellant both on the Main Count and on the alternative, and, therefore, it can be reasonably concluded that she intended to discharge the appellant on the main count of Fraud.

[46] In respect of count 2, there are no clear reasons relating to whether the Magistrate intended to convict or to acquit the appellant. However, it can be said that she erred when she failed to pronounce a verdict for the benefit of the accused. Because of the findings made in this judgment regarding the documents handed in by

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<sup>11</sup> *Tuta v The State* (2024 (1) SACR 242 (CC) at para 62.

way of section 236, it is prudent to state that this Court is justified in concluding that the appellant should have been acquitted in respect of count 2.

[47] In the result, I propose that the following order be made:

- (1) The appeal in respect of the alternative charge of Theft (count 1) and count 3 (Money Laundering) is upheld.
- (2) The appellant is found not guilty and discharged on the Main Count (count 1 of Fraud) and on count 2 of Money Laundering.

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**L VUKEYA**  
**JUDGE OF THE HIGH COURT**

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**P VENTER**  
**ACTING JUDGE OF THE HIGH COURT**

**Appearances:**

For the Applicant:                      Adv Du Plessis

Instructed by:                              Coert Jordaan Attorneys

For the Respondent: Adv Phatudi

Instructed by: National Prosecuting Authority

**Date of Hearing: 14 November 2025**

**Date of Delivery: 29 May 2026**