



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

Not reportable

Case no: A143/2023

In the matter between:

MOEKETSI DAVID MAKHONGOANA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Makhongoana v The State* (A143/2023) ZAFSHC 382 (30 July 2026)

Coram: LOUBSER J *et* CHESIWE J

Heard: 27 July 2026

Delivered: 30 July 2026

Summary: Appeal against conviction and sentence – record of proceedings in trial incomplete – appeal removed from roll on a prior occasion for same reason.

ORDER

On appeal from: Regional Court, Kroonstad:

1 The appeal is struck from the roll for the last time.

2 Mr. Leeuw, the Court Manager of the Kroonstad Magistrate's Court, or his successor if he is no longer holding that position, is ordered to provide the Registrar of this Court with a report in the form of an affidavit on or before 15 September 2026 dealing with the questions raised in this Ruling.

3 In the report, it must clearly be indicated whether a reconstruction is possible or not.

JUDGMENT

Loubser J (Chesiwe J concurring)

[1] The appellant in this appeal is contesting his conviction and sentence on 9 serious charges in the Regional Court of Kroonstad under case number SH 86/2014. He was sentenced to *inter alia* two life imprisonments and five imprisonments of fifteen years each. This court is today again faced with the problem that the record of proceedings in the Regional Court is incomplete in vital respects. The evidence of the complainant on Count 1 dated 4 April 2016 and the evidence of the appellant dated 8 August 2016 still do not form part of the record.

[2] This problem already existed on the record when the appeal came before Chesiwe J and Boonzaaier AJ on 17 November 2025. They consequently made an order removing the appeal from the roll, and they ordered the court manager of the Kroonstad court, Mr. Leeuw, to ensure that the records are transcribed on or before 31 January 2026. On 30 January 2026, Mr. Leeuw submitted an affidavit to the registrar of this Court. In this affidavit he reported that the presiding officer, who is now retired, does not possess his notes on the matter anymore, and that the prosecutor indicated that the case file is no

longer available at court. Therefore, a reconstruction of the record of 4 April 2016 and 8 August 2016 could not be done.

[3] However, this affidavit is not satisfactory. Firstly, in an earlier affidavit dated 22 May 2025, the same Mr. Leeuw reported that they managed to retrieve the recording of 8 August 2016, but that the audio of 4 April 2016 remained outstanding. The question that now arises, is what has happened to the recording of 8 August 2016? Secondly, there is no indication that enquiries were made with Mr. Fourie of Legal Aid SA, who represented the appellant in the trial. Does he or Legal Aid SA not have a file with notes concerning the proceedings of the two dates? Thirdly, he reports that the prosecutor does not have the case file anymore. The case file must certainly be somewhere in the Magistrate's Court offices of Kroonstad; there is no indication that a diligent search was made to trace the court file. It speaks for itself that the notes of the magistrate and the prosecutor might be in that file, and that it could assist with a reconstruction of the missing parts of the record.

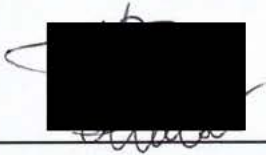
[4] Without those parts a court of appeal would not be in a position to pay due consideration to the appeal before it. It is therefore crucial that, at least, a reconstruction can be done. For this reason, a last effort must be made to reconstruct the record. The appeal will therefore be struck from the roll for the last time, with clear directives to Mr. Leeuw or his successor if he is perhaps no longer the Court Manager of Kroonstad.

[5] The following orders are made in the premises:

1 The appeal is struck from the roll for the last time.

2 Mr. Leeuw, the Court Manager of the Kroonstad Magistrate's Court, or his successor if he is no longer holding that position, is ordered to provide the Registrar of this Court with a report in the form of an affidavit on or before 15 September 2026 dealing with the questions raised in this Ruling.

3 In the report, it must clearly be indicated whether a reconstruction is possible or not.



PJ LOUBSER
JUDGE OF THE HIGH COURT

I concur:



S CHESIWE
JUDGE OF THE HIGH COURT

Appearances

For the appellant:

S Kruger

Instructed by:

Legal-Aid South Africa
Bloemfontein

For the respondent:

S Smith

Instructed by:

National Prosecuting Authority
Bloemfontein