



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

**Reportable
CASE NO: M412/2020**

In the matter between:

LEBOGANG ELIZABETH MOTEANE

APPLICANT

and

**THE PRESIDING MAGISTRATE,
MAGISTRATES' COURT, MR PAKO N.O.**

FIRST RESPONDENT

**DEPARTMENT OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

SECOND RESPONDENT

**THE DIRECTOR OF PUBLIC
PROSECUTIONS, NORTH WEST**

THIRD RESPONDENT

Coram : PETERSEN ADJP et REDDY J
Heard on : 5 JUNE 2026

Delivered: This judgment was handed down electronically, circulated to the parties' representatives via email, uploaded to CaseLines, and released to SAFLII. The date and time for the handing down of the judgment are deemed to be 15h00 on 24 August 2026.

Summary: Criminal procedure – Review of criminal proceedings in the magistrates' court under section 22 of the Superior Courts Act 10 of 2013 – Applicant convicted of theft and awaiting sentence – Complaint of non-disclosure of the contents of a police docket relevant to the count on which the applicant was convicted – Applicant failing to plead reliance on any ground enumerated in section 22(1) – A court cannot read a ground of review into the founding papers – Principle in *Wahlhaus* restated - A superior court will intervene in unterminated proceedings only in rare cases where grave injustice might otherwise result – Complaint directed at the correctness of the magistrate's ruling constituting, at best, an error of law justiciable on appeal and not a gross irregularity in the proceedings – Principle of subsidiarity precluding direct reliance on section 35(3) of the Constitution where legislation provides a remedy – Application dismissed – No order as to costs.

JUDGMENT

PETERSEN ADJP (REDDY J concurring)

Introduction

[1] The applicant stands convicted of theft in the Regional Court for the Regional Division of North West, sitting at Mogwase. The criminal proceedings have not been finalised, as the applicant, although convicted on one count of theft, has not yet been sentenced. Before sentence could be imposed, she instituted the present proceedings seeking an order reviewing and setting aside the entirety of the proceedings in the Regional Court.

[2] The review is founded upon an alleged procedural irregularity arising from the non-disclosure of the contents of a police docket said to be material to count 1, the count on which the applicant was convicted. According to the applicant, the failure to disclose the docket deprived her of the opportunity to properly prepare her defence and effectively challenge the State's case, thereby infringing her constitutional right to a fair trial.

[3] The third respondent opposes the application, contending that the review is both procedurally incompetent and substantively without merit. The central issue in opposition is that the applicant has sought to invoke this court's review jurisdiction without identifying any statutory grounds on which that jurisdiction may be exercised and, in substance, seeks to challenge rulings and findings that fall to be determined on appeal once the criminal proceedings have concluded.

Background

[4] The material facts are largely common cause. The applicant was charged in the Regional Court on three counts of theft arising from the alleged misappropriation of monies at the Brits Police Station on 29 December 2014. The prosecution treated the conduct as constituting a continuing offence. At the commencement of the trial, the applicant pleaded not guilty and furnished a written plea explanation. An important feature of that explanation was the contention that the defence had not been furnished with the contents of the police docket registered under Brits CAS 446/12/2014. It was alleged that the information contained in that docket was central to count 1 and that, without disclosure thereof, the applicant was unable adequately to prepare her defence. An objection was accordingly raised before the commencement of the evidence.

[5] The Regional Magistrate ruled on the objection and directed that the trial proceed. The applicant's complaint in these proceedings is that the Regional Magistrate neither adequately addressed the objection nor returned to it in the judgment delivered at the conclusion of the trial. The trial extended over several years during which the applicant enjoyed continuous legal representation. The State presented the evidence of several witnesses, including Mr Sitchofe, Mr Moromani,

Mr Sarila and Colonel Jenner. The applicant's defence included an alibi and challenged the reliability of the State's evidence concerning the alleged theft.

[6] At the conclusion of the trial, the applicant was convicted on count 1 and acquitted on counts 2 and 3. The acquittals were based upon the Regional Magistrate's conclusion that convictions on those counts would have constituted an impermissible duplication of convictions. The matter was thereafter postponed for sentence. Before sentence could be imposed, the applicant launched the present review proceedings. During the course of the prosecution, she had also made representations to the National Director of Public Prosecutions regarding its continuation. Those representations were unsuccessful, and the prosecution proceeded to trial.

The review application

[7] The applicant's case rests on the proposition that the State's failure to disclose the contents of the relevant police docket rendered the proceedings fundamentally unfair. It is alleged that the undisclosed material was directly relevant to count 1. Its absence, so goes the argument, deprived the applicant of the ability properly to prepare for trial, to challenge the State's witnesses effectively, and to test the reliability of the evidence upon which the conviction ultimately rested. The applicant, relying principally on the fair trial guarantee in s 35(3) of the Constitution, contends that the proceedings were vitiated by a procedural irregularity sufficiently serious to warrant intervention by this court before the criminal proceedings conclude. In support of that proposition, reliance is placed, amongst other authorities, upon *Minister of Safety and Security v Van Duivenboden*.¹

The opposition

[8] As indicated above, the third respondent opposes the application on both procedural and substantive grounds. It submits, first, that the applicant has failed to invoke the review jurisdiction of this court in accordance with s 22 of the Superior Courts Act 10 of 2013. It posits that although alleging procedural unfairness, the founding affidavit does not identify any of the statutory grounds upon which the proceedings of a magistrates' court may be reviewed. Secondly, the third respondent submits that the proceedings in the Regional Court remain incomplete. This court is therefore urged to be consistent in giving effect to long-established authority and to decline to intervene in criminal proceedings before their conclusion, save in truly exceptional circumstances. Thirdly, it is contended that the applicant's complaint concerns, at its core, the correctness of rulings made by the Regional Magistrate during the course of the trial and the conclusions ultimately reached on the evidence. These matters constitute grounds of appeal rather than review.

The submissions in support of and in opposition to the relief sought

[9] Counsel for the applicant submitted that the review is directed not at the correctness of the conviction but at the fairness of the procedure which preceded it. It was argued that the refusal or failure to disclose the contents of the relevant police docket materially impaired the applicant's ability to prepare her defence and to exercise effectively the right to challenge the evidence led against her, and that

¹*Minister of Safety and Security v Van Duivenboden* 2002 (6) SA 431 (SCA) at 432F–G.

resulting prejudice was of such a nature that intervention by this court before sentence was justified. During argument, counsel properly accepted that the founding affidavit does not expressly identify any of the review grounds enumerated in s 22(1) of the Superior Courts Act but submitted that, read as a whole, the founding papers sufficiently allege an irregularity in the proceedings capable of engaging this court's review jurisdiction.

[10] Counsel for the third respondent submitted that the application is misconceived. The applicant seeks to interrupt criminal proceedings that have not yet terminated without establishing the exceptional circumstances required for such intervention. The complaint advanced concerns the correctness of interlocutory rulings and the evaluation of the evidence rather than any irregularity in the conduct of the proceedings themselves, matters which, if sustainable, fall to be considered on appeal after sentence has been imposed. It was further submitted that, if the applicant considered disclosure of the docket essential to the conduct of her defence, appropriate remedies were available during the trial, including an application to compel disclosure or other interlocutory relief. Having elected to proceed with the trial while legally represented and having participated fully in proceedings extending over several years, the applicant cannot, following conviction but before sentence, rely upon the same complaint as the basis for interrupting the criminal process by way of review.

The issues

[11] The issues requiring determination are the following. Whether the application properly invokes this court's review jurisdiction under s 22 of the Superior Courts Act. Whether the applicant has established circumstances warranting intervention by this court in criminal proceedings that have not yet terminated. Whether the complaint concerning the non-disclosure of the police docket constitutes a gross irregularity in the proceedings within the meaning of s 22(1)(c) of the Superior Courts Act. And lastly, whether, properly characterised, it is directed at alleged errors of law or fact remediable on appeal. Should the application fail, the question is what the appropriate order as to costs should be.

The legal framework

[12] The review jurisdiction of this court over proceedings in the magistrates' courts is derived from s 22 of the Superior Courts Act, which provides that the proceedings of a magistrates' court may be brought under review on one or more of the following grounds:

- '(a) Absence of jurisdiction on the part of the court;
- (b) interest in the cause, bias, malice, or corruption on the part of the presiding judicial officer;
- (c) gross irregularity in the proceedings; or
- (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.'

[13] Section 22 is not merely procedural. It constitutes the statutory source of this court's review jurisdiction. Rule 53 of the Uniform Rules of Court no longer supplies the substantive grounds upon which proceedings may be reviewed. Its function is procedural only, to regulate the production of the record and the conduct of review proceedings. An applicant who seeks to invoke this court's review jurisdiction must therefore identify in the founding papers the statutory ground or grounds upon which reliance is placed. That requirement is neither technical nor formalistic.

[14] Motion proceedings are decided upon the affidavits, which constitute both the pleadings and the evidence. It is accordingly incumbent upon an applicant to formulate with sufficient clarity the legal basis upon which relief is sought. A respondent is entitled to know the case to be met, and the court must be able to determine from the founding papers whether its review jurisdiction has properly been engaged. It is not the function of a court to reconstruct or supplement an applicant's case by inferring statutory grounds not pleaded. In *Fischer v Ramahlele*² this principle was articulated as follows:

'13 Turning then to the nature of civil litigation in our adversarial system it is for the parties, either in the pleadings or affidavits, which serve the function of both pleadings and evidence, to set out and define the nature of their dispute and it is for the court to adjudicate upon those issues. That is so even where the dispute involves an issue pertaining to the basic human rights guaranteed by our Constitution, for 'it is impermissible for a party to rely on a constitutional complaint that was not pleaded'. There are cases where the parties may expand those issues by the way in which they conduct the proceedings. There may also be instances where the court may *mero motu* raise a question of law that emerges fully from the evidence and is necessary for the decision of the case. That is subject to the proviso that no prejudice will be caused to any party by its being decided. Beyond that it is for the parties to identify the dispute and for the court to determine that dispute and that dispute alone.

14 It is not for the court to raise new issues not traversed in the pleadings or affidavits, however interesting or important they may seem to it, and to insist that the parties deal with them. The parties may have their own reasons for not raising those issues. A court may sometimes suggest a line of argument or an approach to a case that has not previously occurred to the parties. However, it is then for the parties to determine whether they wish to adopt the new point. They may choose not to do so because of its implications for the further conduct of the proceedings, such as an adjournment or the need to amend pleadings or call additional evidence. They may feel that their case is sufficiently strong as it stands to require no supplementation. They may simply wish the issues already identified to be determined because they are relevant to future matters and the relationship between the parties. That is for them to decide and not the court. If they wish to stand by the issues they have formulated, the court may not raise new ones or compel them to deal with matters other than those they have formulated in the pleadings or affidavits.'

[15] In view of the significance and impact of the sequence and content of affidavits great care is expected of counsel in the drafting and presentation of same before the courts. In *Isedor Skog N.O. & Others v Koos Agullus & Others*³ (797/2021) [2023] ZASCA 15 (20 February 2023), this duty of care was underscored as follows:

² *Fischer v Ramahlele* (203/2014) [2014] ZASCA 88 (4 June 2014).

³ *Isedor Skog N.O. & Others v Koos Agullus & Others*³ [2023] ZASCA 15 (20 February 2023).

‘18 It is trite that in motion proceedings, the affidavits filed in the application constitute evidence. In such proceedings, the norm is that affidavits are limited to three sets. For this reason, utmost care must be taken to fully set out the case of a party on whose behalf an affidavit is filed. These being motion proceedings, the application fell to be decided in accordance with the principle laid down in *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* (the *Plascon Evans* principle). In terms of that principle, an applicant who seeks final relief in motion proceedings must, in the event of a dispute of fact, accept the version set up by his or her opponent unless the latter’s allegations are, in the opinion of the court, not such as to raise a real, genuine or bona fide dispute of fact or are so far-fetched or clearly untenable that the court is justified in rejecting them merely on the papers.’

[16] The aforesaid accords with the approach recently confirmed by the Constitutional Court that where a court’s jurisdiction to entertain a review is put in issue, that jurisdiction must be established on the founding papers. It is not for the court to hold that facts alleged by an applicant might sustain some other, unpleaded, claim cognisable in some other forum or on some other ground. In *Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme*⁴ the Constitutional Court specifically stated as follows:

‘62 A “ground” or “relevant ground” is a legal basis used to validate a claim. Any ground must be supported by relevant factual material. Litigants who seek to review a decision have to identify both the facts upon which they base their cause of action, and the legal basis of their cause of action...

63 If a party does not establish in its founding affidavit that the court has review jurisdiction to adjudicate the subject matter of the controversy, it is not entitled to a “review” record... If a party fails to lay a factual basis for the review ground, it will have failed to engage the court’s review jurisdiction...

64 In *Gcaba*, this court accepted the definition of jurisdiction as the “power or competence of a court to hear and determine an issue between parties”. It pointed out that jurisdiction is determined by the pleadings, not by the substantive merits of the case. This court held:

‘In the event of the court’s jurisdiction being challenged at the outset (*in limine*), the applicant’s pleadings are the determining factor. They contain the legal basis of the claim under which the applicant has chosen to invoke the court’s competence. While the pleadings – including in motion proceedings, not only the formal terminology of the notice of motion, but also the contents of the supporting affidavits – must be interpreted to establish what the legal basis of the applicant’s claim is, it is not for the court to say that the facts asserted by the applicant would also sustain another claim, cognisable only in another court.’

[17] It has long been established that superior courts exercise considerable restraint before intervening in criminal proceedings that have not yet run their course. In

⁴*Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme* [2026] ZACC 5 at paras 62–64, applying *Gcaba v Minister of Safety and Security* 2010 (1) SA 238 (CC) at para 75.

*Wahlhaus and Others v Additional Magistrate, Johannesburg and Another*⁵, the Appellate Division stated:

'While a superior court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the uninterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained. In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.'

[18] That principle has repeatedly been reaffirmed and continues to govern applications of the present nature.⁶ The existence of prejudice occasioned by an interlocutory ruling, or even the prospect that the ruling may ultimately prove incorrect, does not, without more, justify intervention before the proceedings have terminated. Alleged errors committed during the course of a criminal trial are ordinarily corrected through the appellate process after conviction and sentence. Departure from that principle is warranted only where exceptional circumstances demonstrate that grave injustice will otherwise result or that justice cannot adequately be attained by any other means. Equally well established is the distinction between an appeal and a review. A review is directed at the regularity and fairness of the proceedings by which a decision was reached, while an appeal concerns the correctness of the decision itself. As was explained in *Goldfields Investment Ltd and Another v City Council of Johannesburg and Another*,⁷ a gross irregularity concerns the manner in which the proceedings were conducted and whether the litigant received a fair hearing. A mere error of law or fact, however material, ordinarily constitutes a matter for appeal rather than review. Only where the irregularity is of such a nature that it prevents a fair adjudication of the issues may review jurisdiction properly be engaged.

[19] The principles governing disclosure in criminal proceedings are settled. In *Shabalala and Others v Attorney-General of the Transvaal and Another*⁸ the Constitutional Court recognised that an accused person is ordinarily entitled, to vindicate the right to a fair trial, to disclosure of relevant information contained in the police docket, subject to recognised limitations. Disputes concerning disclosure are ordinarily determined within the criminal proceedings themselves. Appropriate remedies include applications to the trial court seeking to compel disclosure or to regulate the use of privileged material before the trial proceeds further. Finally, where legislation has been enacted to regulate the exercise or protection of constitutional rights, litigants are ordinarily required to rely upon that legislation rather than invoke constitutional provisions directly.⁹ The Superior Courts Act defines the grounds upon which the proceedings of a magistrates' court may be reviewed. An applicant who seeks to challenge such proceedings must accordingly locate the complaint within the

⁵*Wahlhaus and Others v Additional Magistrate, Johannesburg and Another* 1959 (3) SA 113 (A) at 120A–C.

⁶*Ismail and Others v Additional Magistrate, Wynberg and Another* 1963 (1) SA 1 (A) at 5H.

⁷*Goldfields Investment Ltd and Another v City Council of Johannesburg and Another* 1938 TPD 551 at 560.

⁸*Shabalala and Others v Attorney-General of the Transvaal and Another* 1996 (1) SA 725 (CC) para 56.

⁹*My Vote Counts NPC v Speaker of the National Assembly and Others* 2016 (1) SA 132 (CC) para 70.

statutory framework established by s 22 of the Superior Courts Act. Absent a constitutional challenge to the legislation itself, reliance upon the fair trial guarantee in s 35(3) of the Constitution cannot displace the statutory scheme governing judicial review.¹⁰

Discussion

The failure to properly invoke the review jurisdiction of this court

[20] The first and fundamental difficulty confronting the applicant concerns how the review has been pleaded. The founding affidavit alleges that the applicant's constitutional right to a fair trial was infringed by the State's failure to disclose the contents of the police docket relevant to count 1. It does not, however, identify the statutory ground upon which the review jurisdiction of this court is invoked. During argument, counsel for the applicant properly accepted that the founding papers do not expressly rely upon any of the grounds in s 22(1) of the Superior Courts Act. The submission was, nevertheless, that the founding affidavit, read as a whole, sufficiently alleges a procedural irregularity capable of sustaining the review.

[21] That submission is not sustainable. It is not sufficient merely to allege that proceedings were conducted irregularly. Section 22 identifies the jurisdictional grounds upon which the proceedings of a magistrates' court may be reviewed. Those grounds define the scope of this court's supervisory jurisdiction. An applicant must therefore identify, with reasonable clarity, the statutory basis upon which reliance is placed. Motion proceedings are determined upon the affidavits, which define the issues for determination and delimit the ambit of the dispute. A court is not entitled to formulate a litigant's case afresh or to infer statutory grounds not pleaded. If this court were to do so, it would undermine the principles governing motion proceedings and prejudice the respondent, who is entitled to know the case to be answered. Properly analysed, the applicant relies directly upon the constitutional right to a fair trial in s 35(3) without first locating the complaint within the statutory framework established by s 22. An approach that is inconsistent with the principle of constitutional subsidiarity. On that basis alone, the application encounters a substantial obstacle. It is nonetheless appropriate to consider whether the application could succeed if the applicant's complaint were treated as alleging a gross irregularity within the meaning of s 22(1)(c).

Intervention in incomplete criminal proceedings

[22] The second obstacle confronting the applicant is that the criminal proceedings have not yet terminated. Although convicted, the applicant has not been sentenced. The restraint with which superior courts approach applications of this nature serves important institutional purposes. Criminal trials are intended to proceed to their lawful conclusion without unnecessary interruption. Frequent interlocutory intervention would fragment criminal proceedings, undermine their continuity, and encourage piecemeal litigation. For that reason, *Wahlhaus* establishes a high threshold for intervention, and the applicant has not demonstrated circumstances falling within that narrow exception.

¹⁰*Famous Idea Trading 4 (Pty) Ltd t/a Dely Road Courier Pharmacy v Government Employees Medical Scheme* [2026] ZACC 5 at paras 28–31, applying the principle of constitutional subsidiarity restated in *Minister of Health v New Clicks South Africa (Pty) Ltd* 2006 (2) SA 311 (CC) paras 95–96.

[23] The complaint concerning disclosure was raised at the commencement of the trial during the plea proceedings. The Regional Magistrate ruled upon the objection and directed that the trial proceed. The objection was heard and determined during the proceedings, whatever the correctness of the ruling. Thereafter, the applicant participated fully in a trial extending over several years while continuously represented by legal practitioners. The State called numerous witnesses, all of whom were cross-examined. The applicant presented her own defence, including an alibi. At no stage did she seek interlocutory relief compelling disclosure, seek to review the magistrate's ruling, or apply to stay the proceedings pending disclosure, even though those remedies were available. Only after conviction, immediately before sentence, did the same complaint become the basis for the present review. That sequence of events does not establish the exceptional circumstances contemplated in *Wahlhaus*. On the contrary, it demonstrates that the applicant elected to pursue the ordinary course of criminal proceedings notwithstanding the previously raised objection. Nor does the suggestion of financial difficulty in pursuing an appeal justify interlocutory intervention. The expense associated with criminal litigation is not the species of prejudice contemplated in *Wahlhaus*, and were financial hardship alone sufficient, the exception would rapidly become the rule.

The complaint concerns an alleged error of law rather than a gross irregularity.

[24] Even if the procedural hurdles confronting the application could be overcome, the applicant's complaint does not, properly characterised, disclose a gross irregularity in the proceedings. The distinction between review and appeal is well settled. A review concerns the integrity of the process by which a decision was reached. An appeal concerns the correctness of the decision itself. The applicant's complaint ultimately rests on the propositions that the Regional Magistrate wrongly permitted the trial to proceed notwithstanding the alleged non-disclosure and failed to address that issue in the judgment adequately. Those complaints are directed, in substance, at the correctness of the magistrate's rulings and conclusions. The applicant's submissions extended beyond the procedural issue to criticism of the evidential basis upon which the conviction was entered, that only one witness had counted the monies in question, that other witnesses were unreliable, and that the evidence did not justify the conviction on count 1. Those submissions reveal the true character of the application. Dissatisfaction with the legal and factual conclusions reached by the Regional Magistrate falls squarely within the province of an appellate court.

[25] An incorrect evidential ruling or an erroneous conclusion of law does not, without more, constitute a gross irregularity. The enquiry on review is whether the conduct of the proceedings was so fundamentally flawed that the applicant was denied a fair adjudication of the issues. The present record does not support that conclusion. The applicant was legally represented throughout the trial. She raised the objection upon which she now relies, which was determined by the magistrate. She thereafter cross-examined the State witnesses extensively, presented her own version, and secured acquittals on two of the three counts. Whether the Regional Magistrate reached the correct conclusion concerning disclosure, the admissibility of the evidence, or the applicant's guilt are matters which, if necessary, fall to be determined by an appellate court after the criminal proceedings have been completed. They do not furnish a basis for the exercise of this court's review jurisdiction at the present stage.

Remaining preliminary objections

[26] In view of the conclusions already reached, it is unnecessary to determine the remaining preliminary objections in any detail. It is sufficient to observe that the applicant's reliance upon representations made to the National Director of Public Prosecutions does not materially advance the present application. The decision to continue with the prosecution constitutes a separate administrative decision. Whatever remedies may exist in relation to that decision are not before this court and cannot supply the jurisdictional foundation absent from the present review.

Conclusion

[27] The application cannot succeed for three independent reasons. First, the applicant has failed properly to invoke this court's review jurisdiction by identifying any of the statutory grounds contemplated in s 22(1) of the Superior Courts Act. An omission that is not a mere pleading defect but goes to the jurisdictional foundation upon which the review is brought. Secondly, the proceedings in the Regional Court remain incomplete. The applicant has not established exceptional circumstances justifying this court's intervention before sentence has been imposed. The matter falls squarely within the ordinary rule articulated in *Wahlhaus*, namely that alleged errors occurring during criminal proceedings should ordinarily be corrected through the appellate process after the proceedings have terminated. Thirdly, the complaint advanced, properly characterised, is directed at the correctness of the rulings made by the Regional Magistrate and the conclusions ultimately reached on the evidence. These are matters falling within the province of an appellate court rather than a court exercising review jurisdiction.

[28] Nothing in this judgment should be construed as expressing any view on the merits of the applicant's conviction or on any appeal which may follow after sentence has been imposed. Those issues will, if necessary, be determined in the ordinary course by the appropriate appellate court on a complete record. It follows that the application falls to be dismissed.

Costs

[29] The third respondent sought an order that costs follow the result. The applicant submitted that the litigation was directed at vindicating constitutional fair trial rights and relied on the principles articulated in *Biowatch Trust v Registrar, Genetic Resources and Others*.¹¹ Although the application cannot succeed, it arose directly from pending criminal proceedings. It was brought in an attempt to vindicate what the applicant believed were her constitutional rights to a fair trial. It cannot fairly be characterised as frivolous, vexatious or an abuse of process. In criminal proceedings, costs orders remain exceptional, and had the matter reached this court by way of appeal after sentence, no order as to costs would ordinarily have been made. In all the circumstances, the interests of justice are best served by directing that each party bear its own costs.

¹¹*Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) paras 21–22.

Order

[30] The following order is made:

1. The application to review and set aside the criminal proceedings in the Regional Court, Mogwase, is dismissed.
2. The matter is remitted to the Regional Court, Mogwase, for the continuation and finalisation of the sentencing proceedings.
3. Each party to bear its own costs.



A H PETERSEN
ACTING DEPUTY JUDGE PRESIDENT OF THE
HIGH COURT, NORTH WEST DIVISION, MAHIKENG

I agree.



A REDDY
JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKENG

APPEARANCES

For the Applicant	:	Adv K P Letswalo
Instructed by	:	G A Mooka Attorneys, Mahikeng
For the Third Respondent	:	Adv K Nondwango
Instructed by	:	The State Attorney, Mahikeng