

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

Review No: 117/2014

In the review between:

THE STATE

and

LABLIA JONATHAN MOLOI

CORAM: KRUGER et C.J. MUSI, JJ

JUDGMENT: KRUGER, J

DELIVERED ON: 12 JUNE 2014

REVIEW JUDGMENT

- [1] This is a special review in terms of section 204 of Act 51 of 1077. The accused appeared before the magistrate at Harrismith on 10 June 2014 on two charges of housebreaking with intent to steal and theft. The accused was legally represented and pleaded not guilty to both counts. At the end of the proceedings on 10 June, after the evidence of three witnesses had been led, when postponing the case, the presiding magistrate noticed that he had done a formal bail application in this matter on 17 April 2014. During that application certain information, pertaining *inter alia* to whether the accused had previous convictions, was placed on

record. In line with the decisions in **S v Bruinders** 2012 (1) SACR 256 (WCC) and **S v Nkuna** 2013 (2) SACR 541 (GNP) the magistrate believes that under the circumstances he should request this court to set aside the proceedings before him and order that the trial start *de novo* before another magistrate.

- [2] The magistrate is correct. There appears to be some prejudice to the state because three witnesses will have to testify again. There is also some prejudice to the accused because the proceedings on 10 June 2014 have to be set aside. It is however important that justice be seen to be done, and that there should be no perception that the presiding officer could be influenced by previous knowledge relating to the accused.

ORDER

1. The proceedings on 10 June 2014 are set aside.
2. It is directed that the trial re-commence *de novo* before another presiding officer.

A. KRUGER, J

I agree.

C.J. MUSI, J