

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

Case number: R33/2022

Reportable: YES/NO

Of Interest to other Judges: YES/NO

Circulate to Magistrates: YES/NO

In the matter between:

**THE STATE**

and

**L[....] M[....]**

**CORAM:** LOUBSER, J et BOONZAAIER, AJ

**REVIEW RECEIVED ON:** 23 SEPTEMBER 2022

**JUDGEMENT BY:** LOUBSER, J

**DELIVERED ON:** 6 OCTOBER 2022

[1] This matter came before me in the form of a review in terms of the provisions of Section 304A of the Criminal Procedure Act 51 of 1977. This section provides that when the magistrate is after conviction, but before sentence of an accused, of the view that the proceedings were not in accordance with the law, he must submit his views together with the record of proceedings to the High Court for a review thereof.

[2] The matter was submitted to the High Court by the additional magistrate of Phuthaditjhaba. The accused appeared before him on a charge of contravening of Section 49(1)(a) of the Immigration Act 13 of 2002. The accused pleaded guilty to this charge, and he was subsequently found guilty as charged. At the sentencing stage, however, it transpired that the accused was still a minor. The magistrate then did not proceed to sentence the accused, but decided to act in terms of the abovementioned Section 304A. The accused was released into the care of his guardian and the matter was postponed pending the outcome of the review.

[3] At the stage of pleading guilty, the magistrate was under the impression that the accused was a major since the police docket suggested as such. At the sentencing stage, however, the original of the ID document of the accused was produced in court. It transpired from this document that the accused was born on 28 August 2006 in Mozambique. The plea proceedings took place on 29 July 2022, which means that the accused was 15 years and 11 months old when he was found guilty as charged. The magistrate now suggests that the plea proceedings and the conviction be reviewed and set aside, because the proceedings against the accused should have been held in the Child Justice Court in terms of the Child Justice Act 75 of 2008, and not in the Magistrate's Court.

[4] In terms of the Child Justice Act, a child is a person under the age of 18 years.<sup>1</sup> If such a child is 10 years or older, then the Act makes provision for certain procedures to be followed, including a preliminary inquiry after assessment by a probation officer, and a referral to a Child Justice Court for plea and trial.<sup>2</sup> The accused in this matter falls in this category. It follows that his appearance and

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<sup>1</sup> Section 1

<sup>2</sup> Section 5(2), (3) and (4)

conviction in the Magistrate's Court was not in accordance with the law, and stands to be set aside on review.

[5] The following order is therefore made:

1. The plea proceedings and the conviction of the accused in the Phuthaditjhaba Magistrate's Court under case number A243/2022 is hereby reviewed and set aside.
2. Any further proceedings against the accused must be held in terms of the Child Justice Act 75 of 2008.

**P. J. LOUBSER, J**

I concur:

**A. S. BOONZAAIER, AJ**