REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA,
GAUTENG LOCAL DIVISION, JOHANNESBURG

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

5 AUG 2019

CASE NO: SS126/2018

In the matter between:

THE STATE

And

MOTHLANYI ACE SERAME ACCUSED

JUDGMENT

GRANT AJ

[1] The accused is charged with the crimes of murder read with section 51(1) of Act 105 of 1997 in that on 13 July 2018, and at or near house 9530, Phase 2, Braamfisherville, Roodepoort, in the district of Johannesburg West, the accused did unlawfully and intentionally kill Keikantseng Regina Motswana (hereinafter referred to as "the deceased"), and adult female person.

[2] The State alleged that the accused and the deceased was in a love relationship and that during the evening on Friday, 13 July 2018, neighbours heard the deceased scream. As the neighbours went to investigate the screams, they found the accused viciously assaulting the deceased by stabbing her with broken glass pieces. The accused who had locked the door of their room, informed the neighbours that he was going to kill the deceased. The accused at one stage also took a hairdryer and hit the deceased with the hairdryer.

[3] The state further alleges that whilst some neighbours went to call the police, the Accused took a piece of the broken glass and caused injuries to his own neck. The accused then took photos of the deceased with his cell phone and sent it to her family and friends.

[4] The neighbours managed to break open the burglar bars and found the deceased lying in a pool of blood. The Accused was also lying near the deceased. The police arrived and transported the Accused to a hospital. The deceased died at

the crime scene of a penetrating incised wound of the chest and blunt force trauma to the head and face.

[5] On 29 May 2019 the defence sought to enter a guilty plea in this case under section 112 of the Criminal Procedure Act 51 of 1977 (the CPA). It handed in a section 112(2) statement, which was read into the record.

[6] The facts relate to a brutal attack by a man on a woman, in which the man had inflicted fatal wounds upon her with broken glass – while both were locked in a room.

[7] I enquired from the defence counsel whether he had consulted with the accused about his capacity at the time – to which the defence counsel responded that he had not.

[8] I then indicated that I would like to ask the accused what had happened on the day. Defence Counsel then offered for the accused to take to the witness stand. I agreed that in the circumstances I deemed it appropriate.

[9] The accused walked over to the witness box – which took about a minute and was duly sworn in by the interpreter. This became the subject of a recusal application – discussed below.

[10] It is significant to note that neither the state nor the defence objected to the accused being placed under oath – despite the extended period of time available to do so. Indeed, the defence had offered for the accused to take the stand.

[11] I commenced by asking the accused what happened on the day. He explained that it had been an ordinary day and that he had gone with the deceased to work at about 11h00 on the day.

[12] The style of questioning which I adopted was very open ended – in which I prompted by asking the accused to explain what happened, and what happened next, or more about something he said.

[13] The accused went on to say that he did not know why they had started fighting on the day and that, perhaps, it could have had something to do with the "drinking".

[14] I asked him to tell me more about the "drinking". He proceeded to explain that:

14.1 He had already been out that morning, had purchased a bottle of whiskey, and returned with it to where he and the victim resided together. He explained that they had drunk about half of it by the time they left (around 11h00) for her work.

14.2 He explained that once they arrived at her place of work – a salon – they sat in a room at the back and continued to drink. This room appears to have been a self-standing shed and is the room in which the conduct in question occurred.

14.3 He continued that they had finished the bottle of whiskey by about lunchtime, and that they then switched to drinking beers. They would, he explained, send a child to purchase the beer for them. The accused could give no further account of the amount of beer or otherwise how much alcohol he consumed.

14.4 He indicated that sometime around dusk a friend came to collect him, and he explained that he was unable to go – this he attributed to having not been properly authorised by his wife/girlfriend. It appears possible though that his state of sobriety may have played a role in him not having gone with his friend as scheduled.

[15] He estimated that upon his return to the room it was approximately 19h00. He recalls an argument which had something to do with a mobile phone. He reported though, that he can recall nothing after that, and can only recall awakening in the hospital.

[16] I indicated to the defence and state that I could not accept a plea of guilty in the circumstances in that it appeared to me that there were serious questions to be addressed relating to the accused's capacity, his voluntariness, and otherwise - according to the case of *S v Chretien* 1981 (1) SA 1097 (A).

[17] I reject the plea of guilty tendered in terms of section 112(2).

RECUSAL APPLICATION

[18] The matter was postponed to 30 May 2019 for the state and defence to make enquiries regarding the possibility of the accused being submitted for some form of expedited observation. On the appointed date the state brought an application for my recusal – on the grounds, it explained, of an "irregularity".

[19] Part of the allegations made by the state were that I had struck evidence from the record – to its detriment. The record was replayed, and it became clear that this was, in fact, not true. I had instead rejected the accused's plea explanation.

[20] In addition, it was submitted that I had committed an irremediable irregularity by questioning the accused under oath – since this made it "evidence", and, so the argument went, once it was "evidence" both the state and the defence were prejudiced.

[21] I asked the state to find authority on the point – prohibiting a judicial officer from questioning the accused, under section 112, under oath. The court adjourned the matter until 18 June 2019 for argument and invited the defence to file its own heads of argument.

[22] The State submitted heads of argument on about 13 June 2019, and the defence opted not to – indicating, in Court, that it stood by the arguments raised in the heads of argument of the State.

RECUSAL

[23] Having considered the state's heads of argument and heard its arguments, it is clear that the state persists in submitting that the Court had struck evidence from the record – despite having all reviewed the record and having agreed that this was not the case.

[24] In addition, the state submitted that the Court had insisted that the accused take the stand as if it was at the instance of the Court and contrary to the wishes of the defence and the state. The truth – that the defence counsel had offered that the accused take the stand – is not reflected.

[25] Thus, at least, the application was premised on two factual errors. In addition, it is based on the legal error that a judicial officer can recuse him/herself by virtue of having committed an "irregularity".

[26] As indicated in the case of *President of the Republic of South Africa & others v South African Rugby Football Union & others* 1999 (4) SA 147 (CC) (the "SARFU" case), a judicial officer can only entertain an application for recusal based on the allegation of bias. This extract appears in the Commentary on the Criminal Procedure Act:

> "The Constitutional Court summarised these guidelines in President of the Republic of South Africa & others v South African Rugby Football Union & others 1999 (4) SA 147 (CC) at [28] as follows:
>
> 'The question is whether a reasonable, objective and informed person would **on the correct facts** reasonably apprehend that the judge has or will not bring an impartial mind to bear on the adjudication of the case, that is **a mind open to persuasion** by evidence and the submissions of counsel. …" (emphasis added)

[27] As indicated, the state sought my recusal on the basis of irregularity. This is unknown in our law. An application for recusal may be brought based on allegations of bias.

[28] That bias must be the basis for the application is obvious from the authority which the state correctly relies upon. The state however expressly alleges no bias.

[29] Counsel for the state did submit however, in argument, that although the Court was not biased in any sense traditionally understood, or as would be detected by the relevant tests for bias, it persisted that the presiding officer ought nevertheless to recuse himself because he was 'biased by irregularity". The Court sought guidance on this from the State's Counsel but was disappointed that it appears to be a novel proposition.

[30] Nevertheless, the State's submissions gave rise to an important question with which I have had to engage, and which may be of assistance to others – even if as a guide as to what not to do.

PLEA UNDER OATH

[31] The enduring question is whether there is anything which precludes a court from requiring an accused to answer its questions under oath. The answer – as far as I have been able to discern – is that there is neither anything prohibiting it, nor anything requiring it.

[32] It may be helpful to consider the provisions in question – from the CPA:

'112 Plea of guilty

(1) Where an accused at a summary trial in any court pleads guilty to the offence charged, or to an offence of which he may be convicted on the charge and the prosecutor accepts that plea-

(a) the presiding judge, regional magistrate or magistrate may, if he or she is of the opinion that the offence does not merit punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, convict the accused in respect of the offence to which he or she has pleaded guilty on his or her plea of guilty only and-

(i) impose any competent sentence, other than imprisonment or any other form of detention without the option of a fine or a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*; or

(ii) deal with the accused otherwise in accordance with law;

(b) the presiding judge, regional magistrate or magistrate shall, if he or she is of the opinion that the offence merits punishment of imprisonment or any other form of detention without the option of a fine or of a fine exceeding the amount determined by the Minister from time to time by notice in the *Gazette*, or if requested thereto by the prosecutor, question the accused

with reference to the alleged facts of the case in order to ascertain whether he or she admits the allegations in the charge to which he or she has pleaded guilty, and may, if satisfied that the accused is guilty of the offence to which he or she has pleaded guilty, convict the accused on his or her plea of guilty of that offence and impose any competent sentence.

(2) If an accused or his legal adviser hands a written statement by the accused into court, in which the accused sets out the facts which he admits and on which he has pleaded guilty, the court may, in lieu of questioning the accused under subsection (1)*(b)*, convict the accused on the strength of such statement and sentence him as provided in the said subsection if the court is satisfied that the accused is guilty of the offence to which he has pleaded guilty: Provided that the court may in its discretion put any question to the accused in order to clarify any matter raised in the statement.

(3) Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.

113 Correction of plea of guilty

(1) If the court at any stage of the proceedings under section 112 (1) *(a)* or *(b)* or 112 (2) and before sentence is passed is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution: Provided that any allegation, other than an allegation referred to above, admitted by the accused up to the stage at which the court records a plea of not guilty, shall stand as proof in any court of such allegation.

(2) If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.'

[33] It is clear that whatever an accused says during section 112 proceedings, which is not rejected by the court, becomes proof before any court – such averments presumably amounting to the equivalent of an admission.[1]

[34] The Court in *S v Mkize* 1978 (1) SA 264 (N) was right to caution that it is not a Court's function, in receiving answers to section 112 questions, to evaluate the veracity of the answers relative to reality and what actually happened on the day in question.

[35] However, there is a distinction between checking the veracity of what an accused says relative to reality versus what he says relative to his/her section 112 statement. It is submitted that a court is obliged to ensure that the accused means to say that, in truth, he really is guilty.

[36] Beyond that, the Court in *Hendricks*[2] drew a clear distinction between evidence – in any sense of the word - based on its purpose – as distinguished by the stage at which it is adduced. There will be "evidence" adduced during pre-trial procedures, which is not "evidence" for trial purposes. The Court observed:

> 'Whether one describes that material as 'evidence', 'bewysmateriaal', or 'evidential', or 'evidentiary', or 'probative material', the question will

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[1] Even though the accused is not asked to confirm that they may stand as admissions under section 220. This follows from the provisions of section 113. See *S v Hendricks* 1995 (2) SACR 177 (A): "Appellant was not asked thereafter whether or not he was prepared to allow anything said by him during the process to stand as an admission made in terms of s 220 of the Act, but the effect of the proviso to s 113(1) of the Act was that factual allegations adverse to himself made during the enquiry for which s 112 provides, 'stand as proof in any court' of those allegations, provided of course that they are not allegations which the court is satisfied are incorrectly admitted allegations." (page 178i-179B)

[2] *S v Hendricks* 1995 (2) SACR 177 (A).

> remain: is it evidence within the meaning of s 81(1)? It is trite that the meaning to be given to particular words is influenced by the context in which they are used and that the same word may not always have the same meaning in a statute. If the purpose which a particular provision is designed to achieve is manifest, a word appearing in it which is capable of a variety of meanings will be assigned the meaning most apt to attain the manifest purpose of the provision.'[3]

[37] It is true that the Court, using the example of a guilty plea, explained that what an accused may say in answer to questions by the court does not miraculously become evidence. The Court stated that:

> 'If the accused has pleaded guilty, and the replies given under questioning in terms of s 112(1)(b) satisfy the court that he or she is guilty, and a conviction follows, those replies are not converted by some mysterious alchemy into 'evidence'. They remain what they were: simply unsworn responses to questions put by the court in a situation where the accused has not sought, by his or her plea, to put anything in issue, but the statute nevertheless requires the court to satisfy itself of the correctness of the plea of guilty by appropriate questioning of the accused.'[4]

[3] *S v Hendricks* 1995 3 All SA 300 (A) 307.
[4] *S v Hendricks* 1995 3 All SA 300 (A) 311.

[38] However, the Court was not concerned with the effect of taking the oath – but with whether information drawn or adduced in any form at one stage, necessarily stands, as anything, in a latter phase:

> 'The nub of the argument advanced by counsel for appellant was that while a plea of guilty, or not guilty, simpliciter would not amount to the leading of evidence within the meaning of s 81(1), anything further said in explanation or elaboration of the plea by an accused, or by his legal representative and confirmed by him, would amount to that. It is the validity of that proposition which is the issue.'[5]

[39] The argument that the moment a judicial officer permits or requests an accused to take the oath before answering questions as to whether she or he really means to plead guilty somehow counts as "evidence" so that the prosecution is prevented under section 81(1) or 113(2),[6] from amending the charges, particularly while relying on *Hendricks*,[7] is nothing short of mischievous.

[40] In this case, there appears to be some significance in the choice of where the state ended its quote – because immediately thereafter, the argument it sought to make is revealed as utterly flawed. The court (in *Hendricks*) proceeded to say the following – quoted at length here for its significance:

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[5] *S v Hendricks 1995 3* All SA 300 (A) 306.
[6] State's Heads, paragraphs 27-34.
[7] Quoted at length in the State's heads – see paragraphs 26 running over nearly 4 pages.

'Where the accused pleads not guilty, it may be that a position is ultimately reached during the plea phase where what the accused has said in explanation of plea, or some of it, is recorded as an admission which relieves the prosecution of the burden of proving in the ensuing trial the allegation so admitted, but that is not because the admission is properly classifiable as 'evidence led in respect of any particular charge', nor because it is in fact an admission specifically made in terms of s 220 of the Act and therefore regarded as 'evidence'. *S v Mjoli and Another* 1981 (3) SA 1233 (A) at 1243C-D and 1247 - *in fine*. It is because the Legislature has artificially bestowed a status upon it which is *sui generis*, by providing in s 115(2)*(b)* that the admission made 'shall be *deemed to be* an admission under s 220'. But for the deeming provision, it could not properly have been regarded as such. Deeming provisions are common in legislation and they are usually an indication that resort is being had to a fiction. *Chotabhai v Union Government (Minister of Justice) and Registrar of Asiatics* 1911 AD 13 at 33, 59.

As was pointed out by counsel for the State, there are many provisions in the Act in which the word 'evidence' is used, for example, ss 81(1), 87(1), 88, 115A, 118, 150, 157 (1), 174, 196(2) and (3), 209, 210, 219, 256 to 270, and 272. In some of these provisions the word is used in conjunction with other words which are identical to those used in that part of s 81(1) with which we are concerned, or bear some resemblance to them without being identical.

...

The absurd consequences which would follow if one were to interpret these expressions as including anything of evidential value or which relieves the

State of the onus of proving a particular allegation it has made against the accused, even although it came into existence during the pleading phase of the proceedings, are readily apparent.'[8]

[41] One final point appears to be worth observing. As we know, s 112(2)(3) expressly provides that a court may hear "evidence" for the purposes of determining an appropriate sentence, as follows:

'Nothing in this section shall prevent the prosecutor from presenting evidence on any aspect of the charge, or the court from hearing evidence, including evidence or a statement by or on behalf of the accused, with regard to sentence, or from questioning the accused on any aspect of the case for the purposes of determining an appropriate sentence.'

[42] We know also that a Court may reject a guilty plea and that, upon doing so, all allegations stand as proved, save for those rejected by the court – under section 113.

[43] What becomes crucial is to note the timeframe within which a Court may do this. The point is that a court may, on the section itself, have heard "evidence" – even if it was relevant to sentence – and the Court may nevertheless reject the guilty plea. Section 113(1) provides:

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[8] *S v Hendricks 1995 3* All SA 300 (A) 312.

'If the court at any stage of the proceedings under section 112 (1) (a) or (b) or 112 (2) ***and before sentence is passed*** is in doubt whether the accused is in law guilty of the offence to which he or she has pleaded guilty or if it is alleged or appears to the court that the accused does not admit an allegation in the charge or that the accused has incorrectly admitted any such allegation or that the accused has a valid defence to the charge or if the court is of the opinion for any other reason that the accused's plea of guilty should not stand, the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution …'

[44] The critical wording is: " … and before sentence is passed … ". The effect is that "the court shall record a plea of not guilty and require the prosecutor to proceed with the prosecution" at any stage before passing sentence. This may, of course, include a stage when the court is privy to "evidence" received for the purposes of imposing sentence.

[45] What is clear from this is that no stepwise approach is required, and no matter that it has heard what would constitute evidence – presumable even from the accused in the witness stand – it may reject the guilty plea. Thereupon, the state shall proceed with its charge, or amend it under section 113(2).[9]

[9] If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.

RECORDING WITHOUT CONSENT

[46] It is also noted that Counsel for the State referred in argument, to a recording of the proceedings. This is problematic for two reasons.

[47] It seems to have been treated as giving unique insight into the proceedings and permitted for a false version of events to have been assumed and operated on. However, when the Court transcript was consulted, it was noted that the facts which Counsel for the state had operated on, were false. The recoding had only served to mislead State Counsel.

[48] Also, not insignificantly, it is prohibited – under the practice manual – to record proceedings without the consent of the presiding officer.

[49] Rule 10.5 of the Practice Manual – Gauteng Local Division: Johannesburg – (of October 2018) provides, in rule 10.5:

> 'Requests for permission to film or record judicial proceedings are received from time to time. In order to standardise the procedure, the guidelines set forth hereunder are provided.
>
> 1. It is hereby emphasised that no person may film or electronically record judicial proceedings without the prior permission of the presiding Judge. The granting and the terms of any such permission is within the

discretion of the presiding Judge. The permission may be withdrawn and the terms thereof altered at any time by the presiding Judge.

2. Any party who wishes to film or electronically record judicial proceedings must request permission from the presiding Judge (through his or her secretary) at the earliest and at least 24 hours beforehand. The secretary will then establish from the presiding Judge whether permission is given and, if so, on what terms.

[50] Not insignificantly, conduct in contravention of this rule may attract contempt charges (under rule 10.5.7.):

'Failure to comply with this practice directive and with the terms of any permission to film or electronically record judicial proceedings may lead to contempt of court charges.'

RECUSAL CONCLUSION

[51] Given the fatal legal flaw in the application – that a recusal for irregularity is unknown in our law, I reject the application.

[52] However, for the reasons explained below, I am unable to proceed with the necessary trust in both Counsel for the state and the defence – and on that basis, I recuse myself.

UNETHICAL CONDUCT

[53] In the circumstances, I cannot conceive of any basis on which the application pursued by the State and the various submissions made, could possibly have been made with the necessary good faith. Instead, the contrary appears to better explain the conduct of the prosecutor in this matter.

[54] I am unable to understand how Ms Williams, and the senior, to whom she attributes her conduct (to the extent to which her conduct is properly attributed), as Advocates entrusted with the pursuit of justice - did not welcome the avoidance of a wrongful conviction for murder with relief.

[55] Mr Jaggan, for the defence, explained that the accused had given him conflicting instructions - that the accused had given him no indication of what the accused explained under questioning - and he was caught by surprise.

[56] Nevertheless, Mr Jaggan persists in representing the accused despite knowing that he holds conflicting instructions. This appears to reveal a lack of appreciation of the ethical dilemma he is in and the obligations on him.

[57] The question which arises quite patently from this is whether he did not, in fact, receive inconsistent instructions, but failed utterly to properly consult with the

accused before presenting his client as guilty - in reckless disregard for the interests of his client.

[58] In addition, while this Court does not easily take exception to the manner in which counsel conduct themselves in Court, I must acknowledge that I am perplexed by the manner in which Mr Jaggan conducted himself in court, which included sitting while engaging with the bench, rocking in his chair, speaking to others while being addressed by the bench and hiding behind the lectern snickering at something which amused him - in what was, in all other respects, proceedings that could not have been more serious at every stage.

[59] These concerns - as they apply to the prosecution and the defence, have made it impossible for me to continue to preside over the matter. The trust I am required and indeed must be able to have in everything said by counsel is irreparably damaged and on that basis I have to recuse myself.

[60] It is disappointing that this sort of conduct is not rare, but I would be remiss if I failed to refer this matter to the appropriate simply because the far too many legal representatives who appear before our courts are ethically bankrupt. I believe I am bound to refer this matter to the appropriate authorities.

[61] In respect of Ms Williams and the conduct of the senior, to whom she attributes her conduct - to the extent that it is properly attributable, this matter must

be referred to the National Directorate of Public Prosecutions, and the Legal Practice Council.

CONCLUSION

[62] In respect of the conduct of Mr Jaggan, the matter must be referred to the Legal Practice Council.

[63] I have declined to recuse myself at the instance of the State, but have done so on the basis that I am unable to proceed with the required trust in counsel for both the state and the defence.

[64] Regarding the questioning of an accused - there appears to be nothing to prevent a judicial officer from asking an accused to answer his or her questions, under section 112, under oath.

[65] It seems to be the case that:

65.1 in accordance with the provisions of section 113(1) of the CPA, subject to such allegations as are rejected by the judicial officer, all allegations made on record, either as read into the record, or given in answer to the presiding officer in answer to any question put to his or her legal representative or directly to the accused, either from the bar, accused box, or from the witness box, and whether under oath or not,

whether it would amount to a statement or evidence, and whether it was addressed to the issue of guilt or sentence, shall stand against the accused – as provided by section 113(1).

65.2 Thereupon, the state shall proceed with its charge, or amend it under section 113(2).

[66] This, however, all relates to what the law appears to prohibit or permit. There is a further question which must be considered: what ought to be done. The answer to this might seem self-evident once one considers the interests at stake - and the extent of those interests. The answers to any questions which a presiding officer may ask determine whether an accused is convicted or not. The questions are meant to be penetrating and the answers are required to be revealing - at least of whether the accused understands the claim against him or her and that the accused *means* to agree that he or she did what he or she is alleged to have done.

[67] It is perhaps no accident that a practice appears to have arisen that presiding officers eschew the opportunity to question an accused, but rather refer counsel back, and stand the matter down, until counsel can reduce to writing whatever it is that a presiding officer considers satisfactory for a valid guilty plea.

[68] But this leaves the option to engage an accused in an oral question and answer session redundant. It certainly would seem safer to adopt a practice that renders a section redundant, than to rely on it and to become party to a grave error.

[69] The options seem stark. They are to adopt the stuttering and stumbling process of standing the matter down for a written guilty plea to be formulated and revised into a fashion which will satisfy the presiding officer, or to question the accused. But if one wants to question an accused, orally, can one rely on what the accused might say when he or she has not even been asked what he or she really means.

IT IS THEREFORE ORDERED THAT:

1. The Court rejects all allegations of guilt which would be required of the state if an accused raised the defence of intoxication, in particular, the requirements of capacity and voluntariness, or otherwise as contemplated in *S v Chretien* 1981 AD.
2. The Court orders that an enquiry be conducted – as contemplated in section 78(2) of the CPA, into the extent of intoxication (by alcohol, or other substance, and the combination of these) into the:

    2.1. Voluntariness;

    2.2. Capacity of the accused – as described in section 78 (1)(a) and 78(1)(b); and

    2.3. Intention to unlawfully kill the deceased – or anyone, including his foresight and reconciliation to the risk of doing so; - of the accused, at the

time of the conduct in question, including at any time before that which could give rise to antecedent liability.

3. In accordance with section 79(1)(b), the panel shall be comprised as follows:

   3.1. by the head of the designated health establishment, or by another psychiatrist delegated by the head concerned;

   3.2. by a psychiatrist appointed by the court;

   3.3. by a clinical psychologist.

4. The defence should note that the section contemplates the appointment of a third psychiatrist to the panel under section 79(1)(b)(iii), as follows:
   "by a psychiatrist appointed by the court, upon application and on good cause shown by the accused for such appointment" ...

5. The accused shall be committed for a period of no longer than 30 days for this purpose.

6. In accordance with the provisions of section 113 of the CPA, all allegations made on record, either as read into the record, or given in answer to the presiding officer in answer to any question put to his legal representative or directly to the accused, either from the bar, accused box, or from the witness box, and whether under oath or not, whether it would amount to a statement

or evidence, and whether it was addressed to the issue of guilt or sentence shall stand against the accused – as provided by section 113(1).

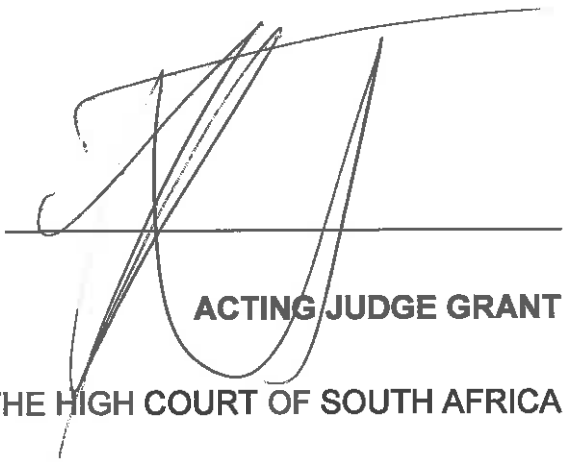
7. As provided in section 113(2), the state shall be entitled to amend or supplement the original charge:

> If the court records a plea of not guilty under subsection (1) before any evidence has been led, the prosecution shall proceed on the original charge laid against the accused, unless the prosecutor explicitly indicates otherwise.

8. The recusal for irregularity is unknown in our law, I reject the application.

9. Based on the conduct of the counsels, I recuse myself as I am unable to trust both counsels.

10. The Legal Practice Council and the National Directorate of Public Prosecutions will be provided with a copy of the Judgement.



ACTING JUDGE GRANT

THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

DATE OF HEARING: **18 JUNE 2019**

DATE OF JUDGMENT: **1 AUGUST 2019**

APPEARANCES:

FOR STATE: ADV WILLIAMS

INSTRUCTED BY: NATIONAL PROSECUTING AUTHORITY

FOR ACCUSED: MR JAGGAN