

CA NO: 57/07

**IN THE HIGH COURT OF SOUTH AFRICA**  
**(BOPHUTHATSWANA PROVINCIAL DIVISION)**

In the matter between:

**THE STATE**

**and**

**MOTLOKOA WILLIAM ALI**

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**SPECIAL REVIEW JUDGMENT**

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**SWART AJ:**

[1] This is a special review at the request of the Magistrate for the district of Ga-Rankuwa on the following grounds:-

- “1. This being a special review in terms of the decision of Ismail and Others v Additional Magistrate, Wynberg and another 1963 (1) SA 1(A). It is submitted that the reviewing judge may exercise its powers in rare cases where grave injustice might otherwise result or where justice might not by other means be attained.
2. The basis of the review is as follows. This court came to knowledge of a previous conviction of accused during restoration of bail proceedings. This conviction is of a similar nature to the charges currently being tried. The reasonable perception of a negative bias toward the accused may be perceived.
3. I had recused myself and through Special Review it is requested that the evidence thus far be set aside and the trial be commenced ***de novo*** before another magistrate.
4. The record is forwarded herewith. The record has not been typed due to time constraints. The matter has taken some time to be forwarded as this court had an extensive period of sickness.”

[2] The Magistrate recused himself during the course of the trial

due to the following:-

[2.1] The accused on two occasions failed to appear in court and his bail was finally forfeited on 31 July 2006.

[2.2] The accused was re-arrested in August 2006 and he remained in custody for the remainder of the trial, which ran over a considerable period due to various remands.

[2.3] On 08 February 2007 the accused obtained legal representation, whereafter the case was remanded to 22 March 2007.

[2.4] On 22 March 2007 an application was launched on behalf of the accused to have his bail re-instated. During the application it was disclosed that the accused had been convicted and sentenced in another court to a period of imprisonment, for theft.

[2.5] The period of imprisonment ended on 19 December 2006. This was put up as reason why he failed to appear on 10 July 2006 and 31 July 2006 resulting in his bail being forfeited.

[2.6] Based on the reasons put forward for his failure to

appear as such the Magistrate refused the application for re-instatement of accused's bail.

- [2.7] The accused's legal representative thereafter launched an application for the recusal of the Magistrate based on his knowledge of the conviction for theft and that it may be perceived that he could be prejudiced.
- [3] As soon as the Magistrate recused himself he became ***function officio***. It follows, therefore, that if there had been a demand for it, he could not, after such recusal, enter a verdict.
- [4] The proceedings have become a nullity in the circumstances. In the event of the death or incapacitation of a Magistrate, of a permanent nature, the matter must be heard ***de novo*** before another Magistrate.
- [5] In the present case the exact same situation arises.
- [6] The proceedings before the Magistrate is therefore set aside and it is ordered that the proceedings be heard ***de novo*** before another Magistrate.

**A J SWART**

ACTING JUDGE OF THE HIGH COURT

I agree.

**A A LANDMAN**

JUDGE OF THE HIGH COURT

23 AUGUST 2007