



NORTH WEST HIGH COURT

HIGH COURT REF: 1/12

In the matter between:

THE STATE

and

PATRICK MAGONONO AND 6 OTHERS

SPECIAL REVIEW JUDGMENT

KGOELE J.

[1] The matter was lain before me on a special review under cover of a minute couched as follows:-

“I was the presiding officer in a bail application which was concluded on the 6th July 2010.

According to my judgment bail was granted to accused 6 and 7 only, accused 1-5 were refused bail.

Accused 1-5 now wish to apply for Bail on new facts.

The following facts are of importance to the Honourable Reviewing Judge.

- i) The mechanical record of the bail proceedings have disappeared*
- ii) The prosecutor's notes on the bail proceedings have disappeared*
- iii) The Attorney Mr Rangwako who initially conducted the bail application is no longer acting on behalf of any of the accused*
- iv) I was advised by the attorney Mr Raikane who acts on behalf of accused 2 to 5 that Mr Rangwako cannot assist in the reconstruction of the facts*
- v) I managed to reconstruct part of the record, in the presence of accused 1 to 5, the legal representatives of the accused, the prosecutor and the investigating officer, and the interpreter. My notes on my judgment on the bail application has unfortunately also disappeared*
- vi) The attorney for the accused are not satisfied with the reconstructed record, more especially the comments of the court regarding the courts recollection of the reasons as to why accused 1 to 5 were refused bail. The argument of the legal representatives is that the record is incomplete without my recorded reasons for refusal of bail in respect of accused 1 to 5.*

I accordingly enclose a copy of the reconstructed record and a copy of the District Court charge sheet together with comments by the legal representatives of accused 1 to 5 and that of the prosecutor.

Kindly grant me direction as to whether the bail application may proceed on new facts or should the bail application be heard by another magistrate de novo.

I have been urged by the legal representative to seek the Honourable reviewing judge's urgent attention as the trial is due to commence in the BAFOKENG Regional Court on 23,24 and 25 July 2012.

[2] After perusing the contents of the file, together with the letter from the accused defense counsel, I am satisfied that a proper reconstructed record of the bail proceedings that was heard cannot be obtained.

[3] The following order is thus made:-

3.1 The bail application of accused 1-5 be heard *de novo* before another magistrate different from the one that presided in this matter.

A.M. KGOELE
JUDGE OF THE HIGH COURT

I agree

R.D. HENDRICKS
JUDGE OF THE HIGH COURT

DATED: 29/05/20