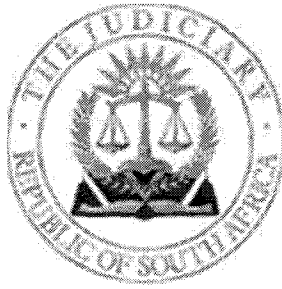


REPUBLIC OF SOUTH AFRICA



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

HIGH COURT REF NO: 33/2015

CASE NO: D1792/13

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

26 JANUARY 2016

  
FHD VAN OOSTEN

In the matter between

**THE STATE**

and

**MATHYS JOHANNES VAN DER SANDT**

**ACCUSED**

---

**J U D G M E N T**  
**(SPECIAL REVIEW)**

---

**VAN OOSTEN J:**

[1] This matter comes before me by way of special review at the request of the acting chief magistrate, Kempton Park, consequent upon a report submitted by the presiding officer in a pending trial in which the accused is charged on three counts, being reckless or negligent driving, malicious injury to property and crimen iniuria. The issue on which a ruling by this court, on special review, is required concerns the right of appearance of an attorney, Mr Kyle, who appeared for the accused at the

could be summited for review, due to difficulties in obtaining a transcript of the proceedings, and has regrettably resulted in a substantial and inordinate delay of some 20 months since evidence was last heard by the trial court.

[2] The trial commenced on 12 May 2014 before the presiding officer, Ms Da Silva. The accused, as I have mentioned, was represented by Mr Kyle. The accused pleaded not guilty to all charges and the state called the complainant in the matter to testify. He was cross-examined by Mr Kyle and no re-examination was conducted. The matter was then adjourned to 18 June 2014 for further trial.

[3] Subsequent to the adjournment it came to the presiding officer's attention, by way of a letter from the Law Society of the Northern Provinces, dated 5 May 2014, that Mr Kyle had been suspended from practising as an attorney on and from 22 April 2014. At the resumed hearing of the trial the presiding officer informed the parties accordingly and Mr Kyle sought permission to and withdrew as attorney of record on behalf of the accused.

[4] A ruling is accordingly requested whether the proceedings thus far, for the reason that Mr Kyle was not entitled to represent the accused, vitiated the proceedings to such an extent that the proceedings ought to be set aside and commence *de novo* before another magistrate.

[5] The Deputy Director of Public Prosecutions, at the request of the reviewing judge to whom this matter was initially submitted, has submitted a report and recommendation prepared with the assistance of a senior state advocate for which I express my indebtedness. I am in agreement with the recommendation which will be reflected in the order at the end of this judgment.

[6] An accused is entitled to legal representation by his or her legal representative who is not prohibited by any law from appearing at such proceedings (s 73(2) of the Criminal Procedure Act 51 of 1977). The suspension of Mr Kyle (see s 22 of the Attorneys Act 53 of 1979), disentitled him in terms of s 33(4)(a) of the Legal Practice Act 28 of 2014, to render 'any services as a legal practitioner directly or indirectly' and *a fortiore* from appearing on behalf of the accused in criminal proceedings. His participation in the proceedings, having lost his right of appearance prior to the commencement of the trial, accordingly, constituted an

irregularity resulting in a failure of justice *per se* (*S v Dlamini* 2008 (2) SACR 202 (T) para [12]–[13]).

[7] It follows that the proceedings fall to be set aside and that the trial must commence *de novo*.

[8] Finally, I consider it necessary to add that the finalisation of the matter, in view of the numerous delays that have occurred, ought to be afforded expedient priority.

[9] In the result the following order is made:

1. The proceedings in the matter of *S v Mathys Johannes van der Sandt* (case no D1792/13) are declared null and void and are set aside.
2. The trial of the matter is to commence *de novo* before another presiding officer as soon as may be reasonably possible.



**FHD VAN OOSTEN**  
**JUDGE OF THE HIGH COURT**

I agree.



**L WINDELL**  
**JUDGE OF THE HIGH COURT**