

11/2/8/07

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IN THE HIGH COURT OF SOUTH AFRICA NOT REPORTABLE

GAUTENG NORTH PROVINCIAL DIVISION 31/3/09

HIGH COURT REFERENCE NUMBER: 366/09

In the matter between:

THE STATE

Versus

SIZWE MBEBE  
FANA DLAMINI  
DANNY XABA

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. YES

(2) OF INTEREST TO OTHER JUDGES: YES/NO. YES

(3) REVISED.

31/3/09 DATE

SIGNATURE

First Accused  
Second Accused  
Third Accused

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#### REVIEW JUDGMENT

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1. The facts of this case represent a sorry tale of administrative bungling and unnecessary delays of a trial in the magistrate's court for the Nigel district, held at Nigel and transferred to Devon.
2. The accused were, apparently, arrested as early as the 18<sup>th</sup> December 2007 near Devon.
3. They were charged with the theft of copper cable to the value of R 15 000. 00.
4. After a series of postponements, during which the accused first indicated that they would conduct their own defence, and later changed their mind, the trial started on the 10<sup>th</sup> June 2008, according to the submission by the senior magistrate who has sent the matter on special review in terms of section 304(4) of Act 51 of 1977.

5. Further postponements followed after the accused pleaded not guilty to the charge.
6. From June 2008, the matter was postponed on at least eleven occasions, with resultant inconvenience and waste of time and resources for all concerned. There were problems in obtaining legal representation, in ensuring that the accused were at court, in ensuring that the docket was at court and finding a place on overcrowded court rolls.
7. It is clear that the many postponements of what appears to be a simple and straightforward trial in which the principal witness is an accomplice who is already convicted, is unacceptable.
8. Worse was to come, however, when the accused appeared on the 24<sup>th</sup> February 2009 before another magistrate than the one before whom the accused appeared originally.
9. For reasons that can only be explained on the basis of negligence, the accused were asked to plead again to the charge that was already part-heard before another court. The plea proceedings that followed are a nullity and need to be set aside.
10. The proceedings under case number C 1215/08 are reviewed and set aside.

Signed at Pretoria on this ~~27~~<sup>28</sup> day of March 2009.



E Bertelsmann

Judge of the High Court

I agree.

Judge of the High Court D. A. Basson

A handwritten signature in black ink, appearing to be 'D. A. Basson', written over a horizontal line.