

A625/2012

JM///

IN THE HIGH COURT OF SOUTH AFRICA
(NORTH GAUTENG HIGH COURT, PRETORIA)

4/7/2012

Magistrate: Bethal
Review Case no.: 303/2012
Magistrate's Serial no: 29/2012
High Court Ref no.: 789

DELETE WHICHEVER IS NOT APPLICABLE	
1. REPORTABLE. YES/NO	YES/NO
2. OF INTEREST TO OTHER JUDGES. YES/NO	YES/NO
3. REVISED	
27-8-2012	W
DATE	SIGNATURE

THE STATE

VS

MLAMBI BONGANI INNOCENT VILAKAZI

REVIEW JUDGMENT

MSIMEKI, J

INTRODUCTION

[1] Mr C.F. Nieuwoudt the Magistrate in Bethal, has in this special review, requested this court to set aside the conviction in this matter to enable the court to start the proceedings *de novo*.

BRIEF FACTS

[2] Mlambi Bongani Innocent Vilakazi, the accused, stood trial on a charge of housebreaking with the intention to steal and theft. Legally represented he pleaded guilty to the charge. His Attorney prepared a plea in terms of **Section 112 (2) of Act**

51 of 1977 which was handed into court. The court, accordingly, convicted the Accused as charged. Before sentence, the accused informed his Attorney that he, at the time, was (seventeen) 17 years old and not (twenty-two) 22 as the charge sheet disclosed. The Attorney duly communicated this to the court which decided that the age of the accused had to be established. The matter was then postponed. It was established that the accused was indeed, (seventeen) 17 years old. The court immediately realised that the procedure prescribed in the **Child Justice Act no 75 of 2008** had to be followed and that that had not been done, that according to him, and that that had resulted in a failure of justice. The problem prompted the magistrate to approach this court with the request referred to above which, in my view, is proper.

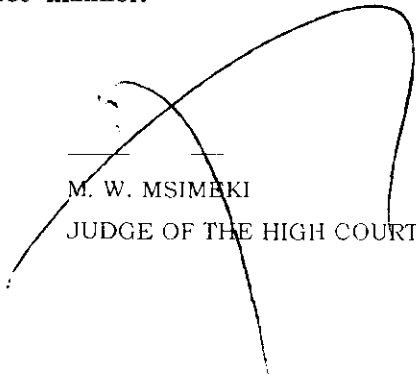
- [3] **The Child Justice Act 75 of 2008** has been enacted with a view to dealing with aspects which relate to children depending on their ages. Procedures have been provided for for dealing with children who are alleged to have committed offences. **Section 5 (2) of the Act**, for instance, provides:

*“Every child who is (ten) 10 years or older, who is alleged to have committed an offence and who is required to appear at a preliminary inquiry in respect of that offence must, before his or her first appearance at the preliminary inquiry, be assessed by a probation officer, unless assessment is dispensed with in **terms of Section 41 (3) or 47 (5)**.”* (My emphasis).

This section clearly demonstrates that certain procedures are to be followed before the matter is heard. This, obviously, was not done and the Honourable magistrate was right when he stopped the proceedings in order to seek assistance. The conviction, therefore, has to be set aside so that same can start *de novo* and in the correct manner.

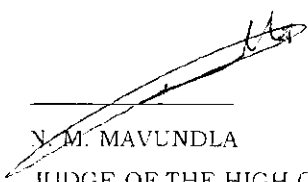
[4] I, in the result, make the following order:

1. the conviction against the accused is set aside.
2. the matter is referred back to the magistrate's court, Bethal for the proceedings to start *de novo* and in the correct manner.



M. W. MSIMBEKI
JUDGE OF THE HIGH COURT

I agree.
And it is so ordered.



N. M. MAVUNDLA
JUDGE OF THE HIGH COURT