



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

A 144/16

High Court Ref no: 619/15

Magistrate's Serial no: 16/2015

Case Number: B1157/2014

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED.
26/2/16	
DATE	SIGNATURE

*[Signature]* (for Molefe J.)

In the matter between:

8/3/2016

THE STATE

AND

AMUKELANG MPUMELANG

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JUDGMENT

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MOLEFE J

[1] This is an automatic review in terms of section 302 (1) of the *Criminal Procedure Act 51 of 1977* ("CPA"). The accused appeared before the magistrate's court for the district of Oberholzer on charges of housebreaking with intent to commit a crime unknown to the State, in the alternative trespassing.

[2] The accused was legally represented during the trial. The magistrate found that trespassing or the elements thereof were proven against the accused and that the accused was involved in the commission of the offence.

[3] A psychiatric report in terms of the CPA was handed to the court prior to the trial. The accused was diagnosed of schizophrenia or cannabis-induced psychotic disorder and declared not fit to stand trial.

[4] The magistrate found that based on the psychiatric report, the accused was not criminally responsible for the crime charged. An order was therefore made in terms of section 77 (6) (a) (ii) (aa) of the CPA and directed that the accused be admitted in an institution as an involuntary mental care user in terms of section 3 of the *Mental Health Care Act, no 17 of 2002*.

[5] Section 77(6) (a) of the CPA provides that:

*"If the court which has jurisdiction in terms of S 75 to try the case, finds that the accused is not capable of understanding the proceedings so as to make a proper defence, the court may, if it is of the opinion that it is in the interest of the accused, taking into account the nature of the accused's incapacity contemplated in subsection (1), and unless it can be proved on a balance of probabilities that, on the limited evidence available the accused committed the act in question, order that such information or evidence be placed before the court as it deems fit so as to determine whether the accused has committed the act in question and the court shall direct that the accused –*

*i) In the case of a charge of murder . . . . .*

*ii) where the court finds that the accused has committed an offence other than one contemplated in subparagraph (i) or that he or she has not committed any offence –*

*(aa) be admitted to and detained in an institution stated in the order as if he or she were an involuntary mental health care user contemplated in section 37 of the Mental Health Care Act, 2002”.*

[6] The matter was referred for special review by the Acting magistrate by virtue of the decision in **State v Isaac Maluka Case number A197/2013**. This case dealt with the provisions of section 78 and not section 77 of the CPA. The provisions of section 78 relates to the question of criminal responsibility whilst the provisions of section 77 relates to the criterion for fitness to stand trial.

[7] In *casu*, the automatic review in terms of section 302 of the CPA is not applicable. In the circumstances the matter should not have been sent for automatic review.



**D S MOLEFE**

**JUDGE OF THE HIGH COURT**



**H J DE VOS**

**JUDGE OF THE HIGH COURT**