

**IN THE HIGH COURT OF SOUTH AFRICA**

A212/2017

**(GAUTENG DIVISION, PRETORIA)****DELETE WHICHEVER IS NOT APPLICABLE****(1) REPORTABLE: ~~YES~~ / NO.****(2) OF INTEREST TO OTHER JUDGES: ~~YES~~ / NO.****(3) REVISED.**25/4/2017.  
**DATE**  
**SIGNATURE**

Date: 25/4/2017

High Court Reference No: 88/17

Special Review Case No: A372/15

Magistrate

**LESEDI (held at HEIDELBERG)****THE STATE V LERATO NHLAPO**and  

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High Court Reference No: 90/17

Special Review Case No: A305/15

Magistrate

**LESEDI (held at HEIDELBERG)**

**THE STATE V OCKERT JOHANNES VAN HEERDEN**

and

High Court Reference No: 91/17

Special Review Case No: A413/15

MAGISTRATE

**LESEDI (held at HEIDELBERG)**

**THE STATE V PAPI JACOB MOFOKENG**

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REVIEW JUDGMENT

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**POTTERILL J**

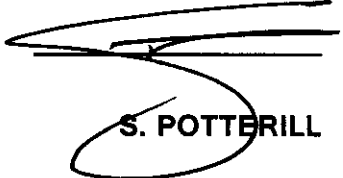
- [1] In terms of section 304(4) of the Criminal Procedure Act 51 of 1977 ("CPA") three matters are before us on special review.
- [2] In all these matters the same presiding officer held a summary enquiry in terms of section 170(2) of the CPA, pursuant to accused, released on bail, warned to appear and failed to do so.
- [3] In case number A305/15 State v Ockert Johannes van Heerden the court convicted the accused of contravening section 170(1) of the CPA and sentenced the accused to a fine of R100 or 30 (thirty) days imprisonment.
- [4] In case number A413/15 State v Papi Jacob Mofokeng the court found the accused guilty of contravening section 170(1) of the CPA and sentenced the accused to a fine of R100 or 30 (thirty) days imprisonment.
- [5] In case number A372/15 State v Lerato Nhlapo the accused was also found guilty of contravening section 170(1) of the CPA and was cautioned and discharged.
- [6] All three the matters were sent on special review because the Magistrate incorrectly conducted summary enquiries into the accused's failure to appear on a specified

date. These enquiries were however incorrectly held in terms of section 170(2) of the CPA and the provisions of section 67A of the CPA should have been applied.

[7] I agree with this submission. As found in *S v Theko* 2010 (2) SACR 339 (GNP) at paragraph [11] section 67A of the CPA criminalised the failure of an accused on bail to appear or remain in attendance on a date determined by the court. Section 67A accordingly does not empower a court to enquire in a summary manner whether that section has been contravened. Section 170 is only applicable when an accused who was not in custody, and were not released on bail, failed to appear in a court or to remain in attendance. The circumstances of these three matters accordingly fall under section 67A and not section 170.

[8] The sentences imposed were not in accordance with justice.


[9] The convictions in all three of these matters, as well as the sentences are set aside.



S. POTTERILL

JUDGE OF THE HIGH COURT

I agree



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**S.S. MPHAHLELE**

**JUDGE OF THE HIGH COURT**