



**IN THE HIGH COURT OF SOUTH AFRICA
MPUMALANGA DIVISION, MBOMBELA MAIN SEAT
JUDGMENT**

Not Reportable

Case no: R05/2026

THE STATE

and

DAVID DAURO NGOVENI

ACCUSED

Coram: RATSHIBVUMO DJP *et* MALANGENI AJ

Received: 09 September 2026.

Delivered: 19 October 2026.

Summary: Special Review from the Magistrates' Court. Section 302(4) of the Criminal Procedure Act, No. 51 of 1977 applies, not section 22 of the Superior Courts Act, No. 10 of 2013. A person mistakenly responded and stepped into the dock when the accused's name was called. That does not make him the accused in the case. The subsequent trial, conviction and sentence are therefore a nullity. Matter remitted to be tried *de novo*.

ORDER

1. The convictions and sentences of the accused are reviewed and set aside.
 2. The matter is remitted back to the *court a quo* to proceed *de novo*.
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REVIEW JUDGMENT

Ratshibvumo DJP & Malangeni AJ:

Introduction

[1] When this matter was sent to this Court on special review, the Senior Magistrate for Tonga District purported to act under section 22(1) of the Superior Courts Act, no. 10 of 2013 (the SCA). Reasons for the review are clear from the letter he addressed to the Registrar of this Court:

On 24 July 2026, the accused, Mr George Ngobeni, appeared before Komatipoort Magistrate's Court under case no. K212/2026 and was remanded to 13 August 2026 for trial. He remained in custody. On the same date, another accused, Mr David Dauro Ngoveni, appeared before the same court under case no. K213/2026. He was also remanded to the same date as Mr George Ngobeni and was kept in Custody. Both accused face a charge of contravening the Immigration Act 13 of 2002 for being illegal in the country.

On 18 August 2026, the public prosecutor called case no. K213/2026. The accused was charged, pleaded guilty, and was convicted and sentenced... When case no. K212/2026 was called, the same person who appeared under case no. K213/2026,

and who had already been convicted and sentenced, appeared again. The Magistrate then realised that Mr George Ngobeneni appeared under the wrong case number. His correct case number was K212/2026, not K213/2026.

The Magistrate is of the view that the mix-up was caused when case no. K213/2026 was called, the court orderlies used only the accused's surname, and subsequently, when case no. K212/2026 was called, the court orderlies used the accused's full names. The two accused share the same surname when pronounced, but it is written differently. Realising that she had already convicted the same accused under case no. K213/2026, she did not proceed with the trial. She sent the matter to the High Court for special review, seeking further guidance and direction.

[2] Before delving into the factual matrix of the review, we must comment on the legal provision that gives the court review jurisdiction. As indicated above, the Senior Magistrate sent this matter on review under section 22 of the SCA. It is unclear from the letter above whether this was at the proposal of the magistrate who presided over the case or was his own initiative. Section 22 of the SCA, however, provides:

“22. Grounds for review of proceedings of Magistrates’ Court

- (1) The grounds upon which the proceedings of any Magistrates’ Court may be brought under review before a court of a Division are-
 - (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or competent evidence.
- (2) This section does not affect the provisions of any other law relating to the review of proceedings in Magistrates’ Courts.”

[3] The above section needs to be read alongside the provisions of section 304(4) of the Criminal Procedure Act (the CPA), which provides:

“(4) If in any criminal case in which a magistrate’s court has imposed a sentence which is not subject to review in the ordinary course in terms of section 302 or in which a regional court has imposed any sentence, it is brought to the notice of the provincial or local division having jurisdiction or any judge thereof that the proceedings in which the sentence was imposed were not in accordance with justice, such court or judge shall have the same powers in respect of such proceedings as if the record thereof had been laid before such court or judge in terms of section 303 or this section.

[4] In the Commentary to the SCA by Erasmus, under section 22(1), the learned author noted as follows:

This subsection deals with the *grounds* upon which the proceedings of a magistrate’s court may be brought under review. Rule 53 lays down the *procedure* to be adopted when it is desired to review the decision or proceedings either of a magistrate’s court or of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions.¹

[5] Rule 53 sets out the procedure for a party to review a Magistrate's decision under section 22 of the SCA. The review under section 22 of the SCA should therefore be by way of notice to the Magistrate and all interested persons. This would be the wrong approach when the party seeking review is the Magistrate concerned.

¹ Volume 1 third edition, Part D.

[6] Section 304(4) has traditionally been used as the basis for special review, and there is no reason to deviate now.² In *Tshabalala v S*,³ the full court of this Division noted that a review under Rule 53 can only take place at the behest of the accused. This Court now addresses the review under section 304(4) of the CPA.

Analysis

[7] Our law requires that the charge sheet must primarily record proper particulars of the accused. Section 76(2) of the CPA states:

“76. Charge-sheet and proof of record of criminal case:

(2) The charge-sheet shall in addition to the charge against the accused include the name and, where known and where applicable, the address and description of the accused with regard to sex, nationality and age.”

[8] This means that the charge sheet is the primary source for ascertaining the accused’s presumptive details. These are the objective facts and the biographical details that are, in the language of the CPA, that which is “known” concerning the accused. Confusion as to what we must regard as “known” about the accused contravenes this Section. This uncertainty defeats the purpose of Section 76(2) of the CPA and its role in the network of systems and procedures.

² See for example Du Toit Commentary under section 304(4) where the following is noted: “Section 304(4) will generally be used by a magistrate or his superior (*S v Rautenbach* 1991 (2)SACR 700 (T) 701*h*; *S v Gumede & others* 2020 (1) SACR 644 (KZP) at [1]; *S v Thys* 2025 (1)SACR 243 (WCC) at [4]; *S v Mutsinze & others* 2026 (1) SACR 205 (KZD) at [1]) who doubts the correctness of a conviction or sentence but is *functus officio* in regard to its correction (*S v Botha* 1978 (4) SA 543 (T); *S v Hoema* 1978 (2) SA 703 (T); *S v Khubeka* 1999 (1) SACR 65(W); *S v P* (unreported, FB case no 322/2013, 5 June 2014) at [2]–[4]; *S v Alfred* 2014 JDR0117 (GNP); *S v Mohlala* 2014 JDR 0116 (GNP); *S v Mashego* 2021 (2) SACR 520 (MM) at [1]). A magistrate who approaches a superior court with a view of having proceedings reviewed in terms of s 304(4) should specifically submit that the proceedings were not in accordance with justice (*S v De Wee & others* 2006 (1) SACR 210 (NC) 212*d–e*). However, it need not be the trial magistrate who discovers the miscarriage of justice and submits the matter to a reviewing judge for correction (*S v Anderson* 1962 (2) SA 286 (O)288B; *S v Olyn* 1984 (2) SA 75 (NC)).”

³ [2026] 4 All SA 271 (MM) (11 August 2026) at para 8.

[9] From the above covering letter, it is clear that the person identified under case no K213/2026 does not match the person named in the charge sheet and statement presented by the legal representative in terms of section 212 of the CPA, as it has a different name and signature from the person reflected in the charge sheet.

[10] We agree with the magistrate that the error committed constitutes an irregularity and that the conviction in respect of proceedings in case no. K213/2026 is not in the interests of justice, given that a wrong person was convicted. There is nothing to review under case no. K212/2026, as no trial took place under that case number.

The Order.

[11] In the premises, the following order is issued:

1. The conviction and sentence in case no. K213/2026 are reviewed and set aside.
2. The matter is remitted back to the *court a quo* to proceed *de novo*.



TV RATSHIBVUMO

DEPUTY JUDGE PRESIDENT

MPUMALANGA DIVISION OF THE HIGH COURT

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M MALANGENI
ACTING JUDGE OF THE HIGH COURT
MPUMALANGA DIVISION OF THE HIGH COURT