

**IN THE HIGH COURT OF NAMIBIA**

In the matter between:

**THE STATE**

versus

**MULANDULENI NAMWANDI**

**(HIGH COURT REVIEW CASE NO.: 531/06)**

**CORAM: VAN NIEKERK, J et MTAMBANENGWE, AJ**

Delivered: 2006-05-19

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**REVIEW JUDGMENT:**

**MTAMBANENGWE, AJ.:** This is a special review matter brought to the courts attention by the Divisional Magistrate who stated:

*"Having perused this case record I came to the conclusion that there is a need to have it rectified in a form of special review, before it can proceed.*

*In this case the accused pleaded guilty before Ms S N Walters. He was questioned i.t.o. Sec 112(1)(b) Act 51/1977 and convicted. The Magistrate went on with mitigation. I suspect that while busy with mitigation it was brought to the attention of the Magistrate that the matter first needed a decision of PG, before proceeding.*

*The matter was then referred to the PG for her decision. The PG decided that accused be arraigned in the Magistrate's Court on the same charge.*

*In my capacity as the Divisional Magistrate, I now send/refer this matter on special review i.t.o Sec 304(4) of act 51/1977. I request the Honourable Reviewing Judge to either set aside the proceedings of Ms SN Walters so that the trial start afresh or order/direct that Ms S N Walters proceed to finalize the case; whichever is appropriate."*

The proceedings are set aside as recommended. In accordance with the principle that anything done not in accordance with the law is to be regarded a nullity the matter is remitted to the trial magistrate to start afresh.

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**MTAMBANENGWE, AJ**

I agree

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**VAN NIEKERK, J**