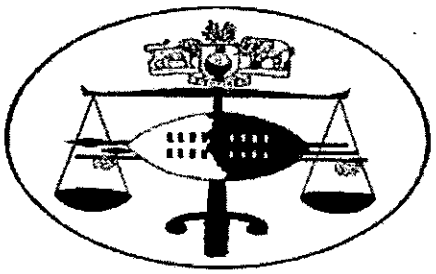

IN THE HIGH COURT OF ESWATINI

JUDGMENT

Case No. 285/2024

In the matter between:

ISAAC DUBE	**Applicant**
And	
THE KING	**1st Respondent**
THE PRINCIPAL MAGISTRATE FIKILE NHLABATSI	**2nd Respondent**
THE ATTORNEY GENERAL	**3rd Respondent**

Neutral citation: *Isaac Dube v The King & 2 Others (285/2024) [2024] SZHC 221 (24 September 2024)*

CORAM : **T. DLAMINI J**

Heard : 08 August 2024

Delivered : 24 September 2024

[1] *Criminal Procedure – Trial commencement – Rights of accused person considered*

[2] *Magistrate's Court Act – Magistrate Court's jurisdiction over cause of action*

Summary: *The applicant was called by the police and informed to come to the Mbabane police station on the 09 July 2024 – He reported to the police station as per the directive of the police – He was informed that a charge had been preferred against him – Following his interview by the police, he was permitted to return home but was informed to appear before the magistrate's court on the next day of 10 July 2024 – He duly appeared in court on 10 July 2024 before a Principal Magistrate who informed him of his right to legal representation – The applicant elected to conduct his own defence – The charge was there and then put to him and he pleaded not guilty – The crown's first witness who is the complainant, was called into the witness stand and she testified – When it was time for the applicant to cross-examine her, he requested to be given another day in order to prepare himself – The prosecutor informed the court that the application is not opposed but requested a sooner date, and applied for a protection order – The Principal Magistrate mero motu remanded the applicant into custody till the following day for continuation of trial – Indeed, the trial continued on the following day of 11 July 2024, and on 12 July 2024, as well – Three more witnesses testified – When it was time to cross-examine the fourth witness who is the investigating officer, the applicant informed the court that he wishes to instruct an attorney – The trial was then postponed to 15 July 2024 – The applicant applied for bail but it was denied – On the next trial date of 15 July 2024, the instructed attorney informed the court that he wishes to have some of the witnesses recalled – The trial was then postponed to 27 August, 2024 – The present proceedings were instituted on 17 July 2024 and enrolled on 18 July 2024.*

Held: *That the Principal Magistrate acted irregularly by not affording the accused an opportunity to seek to be admitted to bail, and also by failing to ascertain if the accused was ready for trial.*

Held further: *That the matter was wrongfully removed from the Manzini District and enrolled in a magistrate's court of the Hhohho District in violation of s.71 (1) of the Magistrate's Court Act, 66/1938.*

Held further: *That the Principal Magistrate's impartiality is compromised and tainted by her conduct of hosting the complainant, and her brother who is a witness, in her Chambers two days before the matter was enrolled and presided over by her – Accordingly, the trial is ordered to commence de novo before another magistrate, in a magistrate's court for the Manzini District, and that the accused be released from custody forthwith.*

JUDGMENT

T. Dlamini J

[1] Before court is a two-pronged application. First, it is an appeal against a refusal by the 2nd Respondent to admit the Applicant to bail. Secondly, it is an application for review and setting aside of the 2nd Respondent's decision of 10 July 2024 remanding the Applicant into custody.

[2] The applicant appeared before the magistrate' court of Mbabane and was unrepresented on his first and subsequent second and third appearance dates. According to his founding affidavit, he was telephonically called by the police based at Mbabane under the Domestic and Child Protection Unit on 09 July 2024 and was informed to report to the police station. He duly complied and upon arrival he was informed that a charge had been preferred against him. Following an interview, he was permitted to return to his home but was warned to come to court on the following morning of 10 July 2024. Indeed he came to court and appeared before the 2nd Respondent. He was informed of his right to legal representation and he elected to conduct his own defence, according to the record. The charge was read to him and he pleaded not guilty. The complainant was there and then called into the witness stand and testified. When it was time for cross-examination, the applicant could not cross-examine this witness as he was not prepared, hence he requested another day in order to prepare himself.

[3] His application for another day was not objected to by the crown. According to the record of proceedings of the court *a quo*, the prosecutor requested that they be given a sooner date, and he applied for a protection order. To his surprise and dismay, according to the founding affidavit, the applicant was *mero motu*

remanded into custody pending continuation of trial and cross-examination of the witness on the next day.

[4] The complainant was cross-examined on 11 July 2024. The second and third witnesses also testified and were cross-examined. The fourth witness is the investigating officer. He briefly testified in-chief, and due to lateness of the hour, the trial was postponed to 12 July 2024. The accused was remanded back to custody. The trial proceeded on 12 July 2024 but the investigating officer was not cross-examined as the applicant informed the court that he wishes to instruct an attorney. The trial was then adjourned to 15 July 2024.

[5] It was during this adjournment that the accused instructed Mr. S. Dlamini of NMK Shongwe Attorneys. The instructed attorney informed the court on 15 July 2024 that he intends to have some of the witnesses recalled. The trial was then reset for 27 August 2024 and the accused was remanded in custody. It was during this period that the applicant's attorney filed this application under a certificate of urgency. While the process of filing the necessary court processes was ongoing, the parties' attorneys approached the Presiding Judge in Chambers on 25 July 2024. Leave of court was sought to file a supplementary notice of motion and a supplementary founding affidavit, as well. The sought leave was granted by consent. The applicant amended the notice of motion to include a prayer that seeks a review and setting aside of the 2nd Respondent's decision of remanding the applicant into custody made on 10 July 2024.

[6] A supplementary affidavit was filed and it alleges that the 2nd Respondent committed irregularities by failing to ascertain from the applicant if he was ready for trial commencement, an important procedural step that is alleged to

have been omitted. Other allegations are that the 2nd Respondent ordered the incarceration of the applicant without an application having been made by the prosecutor; that the impartiality of the 2nd Respondent is highly questionable; and that the 2nd Respondent lacks jurisdiction to deal with this matter as it arose from the Manzini District while the 2nd Respondent is a Principal Magistrate for the Hhohho District.

[7] The record of proceedings reflects that the applicant appeared before the 2nd Respondent on 10 July 2024. He was informed by the 2nd Respondent of his right to legal representation and he elected to conduct his own defence. The charge was there and then put to him and he pleaded not guilty. The prosecutor applied to call the first witness (PW1). The complainant, one Princess Khulekile Mhlanga, was called into the witness stand and she gave her evidence in-chief. When it was time for the applicant to cross-examine PW1, the court record reflects what is quoted below:

> *Court – having explained to the accused of his rights to cross-examine the witness he stated that he understands and request for another day in order to prepare himself.*
>
> *Prosecutor – I do not object to the application for postponement. I request for a sooner date. I apply for a protection order.*
>
> *Court – Cross examination set for the 11/7/24. Following the evidence of the witness, the court is of the considered view that the accused be remanded in custody till tomorrow for continuation.*

[8] Mr. Dlamini submitted on behalf of the applicant that the 2nd Respondent committed an irregularity by remanding the applicant into custody without an application having been made by the prosecutor, more particularly because the applicant had not been arrested by the police but came to court straight from his homestead after having been warned by the police to come to court. It was

also submitted that it was the applicant's first appearance in court and he ought to have been advised of his right to seek bail and not to be shut out and taken straight to custody without being granted an opportunity to apply to be admitted to bail.

[9] Mr. Phakathi submitted on behalf of the respondents that the 2nd Respondent remanded the applicant into custody after having listened to the evidence and deemed it to be in the interest of justice that he be kept in custody pending finalization of the trial. He also submitted that the issue of bail is within the discretionary powers of the trial court.

[10] In the case of ***Dumsani Magagula & Another v The King, Appeal Case No.21/2004 (unreported)***, the Supreme Court held, at p.6-7, that a woman by the name of Thembi Dlamini who was remanded into custody by a Principal Magistrate (PW1) on her first court appearance "***was entitled to bail*** *but had, without any justification, been denied not only the right to apply for it but, by the actions of PW1, had been actively prevented from obtaining access to it*" (emphasis added).

[11] The facts of the case are that the appellants, a Principal Magistrate at Manzini, and a prosecutor in the Manzini Magistrate's Court, were convicted by the High Court of attempting to defeat the ends of justice. They were each sentenced to a fine of E2500 or 12 month's imprisonment, half suspended. They appealed against their convictions and sentence. The charges against them emanated from releasing from custody the aforementioned Thembi Dlamini (hereinafter referred to as Thembi), who had been remanded into custody on her first court appearance by a Principal Magistrate in Mbabane.

[12] Thembi was on 08 February 2001 arrested for failing to attend court in response to a summons concerning an enquiry in regard to her keeping the peace. She was arrested and spent the night of 08 February 2001 in custody. On 09 February, 2001, she appeared before a Principal Magistrate in Mbabane on a charge of contempt of court. The Principal Magistrate remanded her in custody until the following Monday of 12 February 2001. The evidence before court, per judgment and analysis of the Supreme Court, is that "*contrary to all tenets of justice*" Thembi was "*given no opportunity to apply to the Magistrate committing her, to admit her to bail.*" (at p.6 of the judgment). The Supreme Court went on to state, at page 9 of the judgment, what I quote below:

> *PW1, by contrast, failed to observe his duties as a magistrate.* ***The right to bail is deeply entrenched in most countries of the civilized world. It is also entrenched in this country. Judicial officers have a duty accordingly to see to it that such right is honoured. A magistrate's court is consequently not only competent, but is indeed obliged,*** *to hear and decide bail applications and* ***to afford accused persons the opportunity to be released on bail,*** *where access to bail is justified, as it was in casu. That obligation applies not only during normal court hours but also outside normal court hours and even on non-court days (see e.g. the headnote in TWAYIE AND ANOTHER V MINISTER OF JUSTICE 1986 (2) SA 101 (O)).* (emphasis added)

[13] In terms of the judgment, it is "*the duty of judicial officers to ensure that the right to bail is upheld and that persons entitled to bail are not unnecessarily held in custody*" (p.11-12).

[14] The evidence on the record is crystal clear that the applicant was denied the opportunity and right to apply to be admitted to bail. He was *mero motu* remanded into custody despite the fact that he appeared in court on the basis of a verbal warning by the police who did not arrest him. He was not advised that he is entitled to apply for bail notwithstanding that he is a layperson and had no

legal representation. This was in absolute breach of ***s.16 (7)*** of ***The Constitution of the Kingdom of Eswatini, Act 001/2005***, which provides that if a person is arrested or detained upon reasonable suspicion of having committed, or being about to commit, a criminal offence, that person shall be released either unconditionally or upon reasonable conditions necessary to ensure that he/she appears at a later date for trial.

[15] The submission by Mr. Phakathi that the 2nd Respondent remanded the applicant into custody after having listened to the evidence that had been tendered and found it to be in the interest of justice that the applicant be kept in custody pending finalization of the trial is legally untenable, in my considered view. I say so because it is only the complainant who had given evidence in-chief, and thereafter, the applicant was *mero motu* remanded into custody. In relation to the charge preferred against the applicant, the complainant gave hearsay evidence. Hearsay evidence is inadmissible. *See s.223 of the Criminal Procedure and Evidence Act 67/1938 (as amended)*. The complainant testified, as shown by the record, that she was informed by Masitsela Dvuba, a brother to the applicant, that the applicant wants to kill her. She had no personal knowledge of the alleged threats as they were not made in her presence. Quoted below are extracts of the evidence from the record of the court *a quo* proceedings:

> *... On the 7th July 2024, it was a Sunday in the morning at about 0800 hours, when I received a call from my husband's brother Masitsela Dvuba. He told me that he has just received a call from my husband who mentioned his discomfort about a matter in which he accused him of taking sides and supporting the Malinga family. We had a family meeting with my husband's family on the 6th July 2024.*
>
> *He told me that he then got angry and told him.*

Masitsela then told me that he told my husband all that they were planning. I asked him what it was that they discussed with my husband. Masitsela told me that my husband came to him at Dvudvusini area in February 2024 following items that went missing at my marital home based at Ngwenya. Masitsela said, my husband came to him so that he could recover the missing items. Masitsela is a traditional healer. Isaac told Masitsela that the items that went missing, he suspects that I may have taken them.

He told me that Isaac my husband told Masitsela that he was tired of me and that he was tired of kuvikana nami and that he wanted to kill me, but did not know what was meant by kuvikana nami. He told me that my husband further mentioned that he would have loved to kill me by his bear hands but he will be the main suspect. He told me that my husband mentioned that he was also thinking of seeking the services of an assailant (assassin). Masitsela mentioned that Isaac my husband asked him for muti that he will use to kill me.

This frightened me. I then asked Masitsela as we were talking on the phone in the morning of the 7th to say what his response was. Masitsela mentioned that he told my husband that he refused to do so because he has no reason to do as requested. He also mentioned that he suggested to my husband to separate or divorce me. He said my husband said that he will not be able to do that because he will not be able to abandon the items we have. We have a business together with my husband. We have a shopping complex, a block of flats for rental, and the homestead at Ngwenya area.

It was not the first time that my husband threatened me. In the year 2020 we had a misunderstanding with my husband. We were staying together at Ngwenya. On the reason that we would have misunderstandings, he rented a flat at Nkoyoyo. On this instance I did not want to open the door for him because he displayed anger. He entered the house and I ran away to the bathroom to hide but he broke the door. He opened and I went out of the bathroom to hold him. He gave me his cellphone and ordered that I call all my relatives because he wanted to finish with me.

[16] The charge preferred against the applicant is that of contravening ***s.77 (1) (e) of The Sexual Offences and Domestic Violence Act 15 of 2018*** in that upon or about February 2024, and at or near Dvudvusini area in the Hhohho Region, he wrongfully and unlawfully intimidated and threatened to kill one Princess Malinga Dube (being wife to the accused), thus contravened the said Act. Legally, the charge calls upon the applicant to answer a case of allegedly

threatening to kill the complainant who is his wife, a threat he allegedly made in February 2024 whilst at Dvudvusini area in the Hhohho Region.

[17] I must first mention that Dvudvusini area is not in the Hhohho Region but is under the Manzini Region. This misinformation concerning the Region or District in which Dvudvusini is situated will be reverted to later in this judgment.

[18] Based on the evidence quoted from the record and as reflected in paragraph [15] above, no solid case had been made by the complainant against the applicant. One is left with the question of what evidence was considered and relied upon by the 2nd Respondent when she stated that "*Following the evidence of the witness, the court is of the considered view that the accused be remanded in custody till tomorrow for continuation*", because only inadmissible hearsay evidence had been tendered. It appears to me that irrelevant issues were considered and those relevant were ignored.

[19] Another issue raised is that the 2nd Respondent committed an irregularity by failing to ascertain from the applicant if he was ready for commencement of the trial. Mr. Phakathi submitted, on the other hand, that if the applicant was not ready for commencement of trial, he should have informed the court and apply for a postponement, just as he did when it was time to cross-examine the complainant.

[20] The applicant is a layperson and was unrepresented when he appeared in court. This is a person who was called by the police and told to come to the Mbabane police station on 09 July 2024. He honoured the call and was interviewed by

the police. He thereafter was permitted to return home but verbally warned by the police to appear in court on the next day as a charge had been preferred against him. Indeed, the applicant woke up from home and proceeded to the Magistrate's Court where he was only informed of his right to legal representation. Based only on the fact that he elected to conduct his own defence, the charge was read to him and the first witness was called in to testify. This conduct constitutes a clear ambush of the applicant and is in violation of *s.21 (2) (d) of the Constitution of the Kingdom of Eswatini, Act 001/2005*, which enjoins Judicial Officers to afford an accused person adequate time and facilities for preparation of his defence. I am in agreement with Mr. Dlamini's submission that the 2nd Respondent committed an irregularity by failing to ascertain from the applicant if he was ready for commencement of the trial on his first court appearance date.

[21] A third issue raised is that of lack of impartiality by the 2nd Respondent. Mr. Dlamini submitted that before the 2nd Respondent was appointed a Magistrate, she worked with the complainant in the same office. The office relationship they had still exist even to date. He therefore submitted that the conduct of the 2nd Respondent during the applicant's trial exhibited impartiality towards the applicant. He also submitted that the complainant is a Registrar and occupies a supervisory position over the 2nd Respondent, hence she ought to have recused herself from presiding over the applicant's trial.

[22] It is public knowledge information that during the time of the late Chief Justice Michael Ramodibedi, the 2nd Respondent was the Registrar of the High Court whilst the complainant was an Assistant Registrar. There is therefore this work relationship between them. I wish to mention, however, that this work

relationship alone, is not evidence for lack of impartiality on the part of the 2nd Respondent. Conduct that demonstrates a lack of impartiality needs to be shown.

[23] Mr. Dlamini also submitted that the 2nd Respondent once presided over a peace-binding matter between the applicant and the complainant. She therefore, submitted Mr. Dlamini, is not better placed to preside over the current criminal trial of the applicant as her neutrality is clouded by the facts of the peace-binding matter she earlier presided over.

[24] I am not persuaded by Mr. Dlamini's submission as the 2nd Respondent may still remain neutral and impartial notwithstanding the peace-binding matter she earlier presided over. I find this to be similar and in equal footing with applications for bail pending appeal. The application is made to the same Judge whose order is a subject of the appeal. In deciding the application, the Judge is to also consider and find the existence of prospects of success on the appeal. That is, he must find that the order he issued has good prospects of being reversed by the appellate court.

[25] It was held and stated in ***S v Williams 1981 (1) SA 1170*** that the consideration upon which the trial court is seen as a better forum for dealing with a bail application pending appeal is that "*there is a far better chance of an informed decision from the magistrate who has heard the case than from a Judge who has little knowledge of the facts*". I am therefore of the considered view that presiding over the peace-binding application placed the 2nd Respondent in a better informed position to deal with issues that concern differences between

the applicant and the complainant. Lack of impartiality cannot, therefore, be born out of the peace-binding application that the 2nd Respondent presided over.

[26] The applicant deposed in his supplementary affidavit that the complainant and the 2nd Respondent met each other inside the Chambers of the 2nd Respondent on the 08 July 2024. This was two days before his matter was enrolled and presided over by the 2nd Respondent. He further deposed that "*this is a clear indication that the Learned Magistrate's impartiality in this matter is highly questionable*".

[27] The allegation made in the above paragraph was confirmed in a supporting affidavit deposed to by the applicant's attorney, Mr. S. Dlamini. He states that he confirms "*all the issues pertaining to the advice given to the Applicant ..., in particular the procedure adopted by the Court-a-quo from the first day the matter was enrolled in court.* He also confirms that "*this is a matter that falls within the jurisdiction of Manzini, not Hhohho.* He further confirms that he "*personally saw the complainant (PW1)*" on the 8th day of July 2024 and that "*she was in court with her brother (PW3) on the same day and that was two days before the enrolment of the criminal case against the Applicant.*" Lastly, he deposed that he had not been instructed at that time, but these events unfolded before him.

[28] The allegation made in the above two paragraphs in not denied by the respondents. The answering affidavit filed is deposed to by Fakazi Mngomezulu who states that he is a prosecutor and privy to the prosecution of the applicant. Concerning the allegation, he deposed that he does not deny or challenge the allegation made by the applicant. In answer to it, he states that

the "*Contents of this paragraph are not within the knowledge of the 1st Respondent.*"

[29] Despite that the conduct of the 2nd Respondent was being challenged, no answering affidavit was filed by her notwithstanding that in terms of *Rule 53 (5)* of the Rules of this Court, she was at liberty to do so. The amended notice of motion and the supplementary affidavit containing the allegation mentioned in paragraph [26] above was served upon the office of the Attorney General and an acknowledgement of receipt bears the office's stamp dated 30 July 2024. The Attorney General is the legal representative for the 2nd Respondent. Despite the service, the version of the 2nd Respondent was not made known to the court. *Rule 53 (5)* provides as quoted below:

> ***Reviews.***
> *53 (1) ...*
> *(2) ...*
> *(3) ...*
> *(4) ...*
> *(5) Should the presiding officer, chairman, or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he shall –*
>
> *(a) within fourteen days of the receipt by him of the notice of motion or any amendment thereof deliver notice to the applicant that he intends so to oppose and shall in such notice appoint an address within two miles of the office of the registrar at which he will accept notice and service of all process in such proceedings, and*
>
> *(b) within twenty-one days of the expiry of the time referred to in sub-rule (4) hereof, deliver any affidavits he may desire in answer to the allegations by the applicant.*

[30] I thus come to the conclusion that the 2nd Respondent elected not to answer the allegation made against her by the applicant. The allegation was thus not denied, and was not challenged either. The million dollar question in the mind of the ordinary person is what was discussed between the complainant and the

2nd Respondent given that the applicant appeared, thereafter, before the 2nd Respondent two days later to answer a charge preferred against him by the complainant. This is what compromises and taints the impartiality of the 2nd Respondent in handling the trial of the applicant. I therefore am persuaded to find that in light of the office relationship between the 2nd Respondent and the complainant at the time they worked at the High Court; and the conduct of hosting of the complainant and her brother by the 2nd Respondent in her Chambers two days before the matter was enrolled and presided over by her, strongly supports the perception of lack of impartiality on her part. The case of lack of impartiality has thus been made, and I so find.

[31] Lastly, the applicant submitted that the 2nd Respondent has no jurisdiction to hear and preside over the trial of the applicant because the cause of action emanates from the Manzini District while the 2nd Respondent is a Principal Magistrates for the Hhohho District. The law is clear on this issue. A Principal Magistrate has jurisdiction in all the four Districts of the country and can sit in any magistrate's court of the country. The Supreme Court, per Browde JA, sitting with Steyn and Tebbutt JJA, state in the case of ***Dumsani Magagula & Another v The King (supra)*** that "*a Principal Magistrate in one area has jurisdiction to hear matters in other areas.*"

[32] The jurisdiction of magistrates is provided for in ***The General Administration Act, 11/1905*** and the ***Magistrate's Courts Act, 66/1938.***

[33] Section 6 of ***The General Administration Act*** provides what is quoted below:

> ***Area of jurisdiction of magistrate's court.***
> *6. The area within which a magistrate's court shall have and exercise jurisdiction shall be as set out in Government Notice No. 121 of 1963, or as*

hereafter defined by the Minister for Justice or as amended by him from time to time by Notice in the Gazette.

Provided that –

(a) a magistrate's court sitting within any such area at which a magistrate other than the Principal Magistrate of Swaziland presides shall have and exercise jurisdiction throughout such area; and

(b) ***a magistrate's court presided over by the Principal Magistrate of Swaziland shall have and exercise jurisdiction throughout Swaziland irrespective of where such Court is sitting.*** (emphasis added)

[34] From the above provision, it is crystal clear that a Principal Magistrate has jurisdiction throughout the entire country of Eswatini and can preside over matters irrespective of where the magistrate's court is sitting. He/she is not confined to one district.

[35] When it comes to cause of action, the jurisdiction of magistrates is provided for in ***s.71 of the Magistrate's Court Act.*** The section provides what is quoted below:

Local limits of jurisdiction.

71. (1) Subject to the provisions of section 70, any person charged with any offence committed within any district may be tried by the court of that district:

Provided that the Chief Justice or Judge of the High Court, or in their absence the registrar of the High Court, may, for good cause shown, order that any criminal case or cases be transferred for trial from the district in which the offence was committed to any other district.

[36] There is no ambiguity arising from the above quoted provision. Offences are to be tried by the magistrate's court of the district where the offence was committed. The only exception would be a case where the Chief Justice, Judge of the High Court, or the registrar of the High Court in their absence, and ***for good cause shown***, order that the trial be transferred from the district where the offence was committed to any other district (emphasis added).

[37] As I mentioned in paragraph [17] above, Dvudvusini area, where the offence was allegedly committed by the applicant, is not in the Hhohho District but in the Manzini District. It therefore must be tried by a magistrate's court situate in the Manzini District and not Hhohho District as is the case *in casu*. There is no evidence of authorization by the Chief Justice, a Judge of the High Court, or the registrar of the High Court, permitting the removal of the applicant's case from the Manzini District. The matter and trial of the applicant was, therefore, unlawfully removed from the Manzini District and enrolled in a magistrate's court for the Hhohho District in violation of *s. 71 (1) of the Magistrate's Court Act.*

[38] The proceedings that were commenced before the 2nd Respondent while sitting at the Mbabane Magistrate's Court are therefore *null and void ab initio.* If, for any specific reason, she had to preside over the matter, she should have gone to preside over it in a magistrate's court situate in the Manzini District. If there is good cause for removal of the matter from the Manzini District, evidence of authorization for its removal granted by the Chief Justice, or Judge of the High Court, or the Registrar of the High Court, ought to be furnished. *In casu*, there is no such authorization.

[39] For the reasons and findings mentioned in this judgment, I issued the orders below, *ex tempore*; that:

1. *The review is allowed and the decision of the 2nd Respondent of 10 July 2024 remanding the Applicant into custody is set aside, and the Applicant is ordered to be released from custody forthwith.*

2. *Under further and/or alternative relief, the trial of the Applicant is ordered to commence de novo before another Magistrate as the impartiality of the 2nd Respondent is held to be tainted and compromised by her conduct of hosting the complainant and her brother who is a witness, in her Chambers two days before the matter was enrolled, heard and presided over by her.*

3. *A full judgment will follow later.*

[40] These are the reasons for my judgment.

[41] I further order that the trial of the applicant is to commence *de novo* in a magistrate's court for the Manzini District in line with the provisions of *s.71 (1) of the Magistrate's Court Act, 66/1938.*

T. DLAMINI
JUDGE OF THE HIGH COURT

For Applicant: Mr. S. Dlamini
NMK Shongwe Attorneys

For Respondents: Mr. S. Phakathi
Director of Public Prosecutions Chambers