



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, GRAHAMSTOWN)**

**Case No: CA&R06/2021
Date Delivered: 10 / 11 / 21**

In the matter between:

THE STATE

And

KULASANDE FIPAZA

SPECIAL REVIEW JUDGMENT

BESHE J:

[1] The record of proceedings in this matter was initially placed before me during January 2021. This was at the instance of the regional Magistrate, King William's Town. The basis for such referral was that during a trial which culminated in the conviction and sentencing of the accused, he was legally represented by a **Mr Duze** who was not entitled to practise as a legal representative.

[2] The relevant provisions of the *Legal Practice Act*¹ provides thus:

“Section 24:

(1) A person may only practise as a legal practitioner if he or she is admitted and enrolled to practise as such in terms of this Act.

¹ Act 28 of 2014.

Section 25:

(1) Any person who has been admitted and enrolled to practise as a legal practitioner in terms of this Act, is entitled to practise throughout the Republic, unless his or her name has been ordered to be struck off the Roll or he or she is subject to an order suspending him or her from practising.

(2) A legal practitioner, whether practising as an advocate or an attorney, has the right to appear on behalf of any person in any court in the Republic or before any board, tribunal or similar institution, subject to subsection (3) and (4) or any law.”

A related provision can also be found in the Criminal Procedure Act² in the form of *Section 73 (2)*:

“(2) An accused shall be entitled to be represented by his legal adviser at criminal proceedings if such legal adviser is not in terms of any law prohibited from appearing at the proceedings in question.”

[3] In what was apparently a response by the Western Cape office of the Legal Practice Council to an enquiry about **Mr Duze**, the following was recorded:

Dear Sir,

Your Complaint

We acknowledge receipt of your complaint submitted on 5 July 2019.

Please be advised that we are unable to assist with your complaint, as we only have the authority to investigate complaints against our members.

Mr Wandile Duze is not registered as a practising or non-practising attorney on our roll and, therefore, we are unable to assist with the complaint. It may be that Mr Duze is practising as an independent advocate or that Mr Duze is registered as a practitioner in another province. If Mr Duze is not registered as a practitioner in another province or is not practising as an independent advocate, you may report Mr Duze at SAPS.

Yours faithfully

ASIA ALEXANDER: PROFESSIONAL ASSISTANT DISCIPLINARY DEPARTMENT

² Act 51 of 1977.

[4] I was not privy to the nature of the complaint against **Mr Duze**.

[5] In the absence of evidence that **Mr Duze** was not registered as a practising or non-practising attorney in any of the provinces or is not practising as an independent advocate, I could not see my way clear to issuing an order that the proceedings before the Regional Court were not in accordance with justice by virtue of **Mr Duze** not being entitled to practise as a legal representative.

[6] The matter has once again been placed before me for consideration together with a letter from the Eastern Cape Provincial Office of the Legal Practice Council, which is addressed to a **Mr Mhaga** dated 15 July 2021. The relevant parts of the letter read as follows:

“We acknowledge the receipt of your email dated 14 July 2021 in which you seek confirmation as to whether Wandile Duze is registered with the South African Legal Practice Council (“the LPC”) either as a candidate legal practitioner or practising attorney or non-practising attorney or advocate or independent advocate.

In response to your enquiry, we hereby confirm that Wandile Duze is not registered with the LPC as a legal practitioner enrolled either as an attorney or advocate. Wandile Duze is also not registered with the LPC as a candidate legal practitioner. Wandile Duze is also not on the practising roll or non-practising roll of attorneys or advocates that is kept by the LPC.”

[7] It therefore appears that **Mr Duze** was not entitled to practise as a legal representative.

[8] It is trite that as a general rule, the impact of an accused being represented by a person who was not entitled to do so will be to render the trial a nullity. An irregularity would have tainted the proceedings. This calls for the setting aside of the tainted proceedings. This notion is supported by a weight of authority found in several decided cases. A number of these decisions were referred to or applied in **S v Mbuyisa**.³ One of those is a Supreme Court of

³ 2018 (2) SACR 691 GJ.

Appeal decision in **S v Mkize**.⁴ In that matter, four appeals were heard together. The appellants in the four appeals were each represented by a counsel who had not been admitted to act as an advocate. The conviction in respect of each appellant was set aside. It being held by the court that the lack of authority on the part of accused's counsel was fundamental and irregular as to nullify the entire trial proceedings.

[9] I can find no reason why the proceedings against **Mr Fipaza** before the Regional Court, King William's Town should not be set aside on the basis that they were not in accordance with justice. This, due to the fact that he was legally represented by a person who was not entitled to do so.

[10] Accordingly, the following order shall issue:

- 1. The proceedings in S v Fipaza case no KWT 42/18 are set aside in their entirety.**
- 2. The Director of Public Prosecutions, Grahamstown, is to decide whether to institute fresh proceedings against the accused within thirty (30) days of the date of this judgment.**
- 3. If the trial is to start *de novo* it must take place before a different Regional Magistrate.**

N G BESHE
JUDGE OF THE HIGH COURT

⁴ 1988 (2) SA 868 A at 875 G.

BLOEM J

I agree.

**G H BLOEM
JUDGE OF THE HIGH COURT**