

**MAGISTRATES  
COMMISSION**



**LANDDROSTE-  
KOMMISSIE**

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The Honourable Mr T M H Mofokeng  
Chairperson of the Select Committee on  
Security and Constitutional Development  
Parliament  
P O Box 15  
CAPE TOWN  
8000

Reference: 2/10/2 (SMC)

Enquiries: A D Schoeman

Date: 18 August 2010

Dear Honourable Mr Mofokeng

**REPORT TO THE SELECT COMMITTEE ON SECURITY AND CONSTITUTIONAL  
DEVELOPMENT ON THE PROVISIONAL SUSPENSION FROM OFFICE OF  
MAGISTRATE D JACOBS, CLOCOLAN, FREE STATE**

Your Committee considered the report on the provisional suspension of Magistrate D Jacobs from Clocolan tabled by the Minister for Justice and Constitutional Development in terms of section 13(3)(b) of the Magistrates Act, No. 90 of 1993. The provisional suspension emanated from an investigation instituted by the Magistrates Commission from which it appeared that Magistrate Jacobs suffers from severe alcohol dependency resulting in unbecoming behaviour and a situation where he is unable to perform his judicial functions effectively and efficiently.

Your Committee resolved on 4 June 2010 to request the Magistrates Commission to review the judgments pronounced by Magistrate D Jacobs at Clocolan during the period of his illness to determine the validity thereof.

A judicial quality assessment was conducted on an *ad hoc* basis on the judicial work rendered by Magistrate Jacobs by a Judicial Quality Assurance Magistrate. A copy of the report is attached for your information.

Yours sincerely

Address letters to: *The Secretary/Rig briewe aan: Die Sekretaris*



**B M NGOEPE**

**CHAIRPERSON: MAGISTRATES COMMISSION AND  
JUDGE PRESIDENT OF THE NORTH AND SOUTH GAUTENG HIGH COURTS**  
[ads2294]

*Address letters to: **The Secretary/Rig briewe aan: Die Sekretaris***



3. The Judicial Quality Assurance Magistrate submitted a report on his findings, conclusions and recommendations. All judicial work performed by Mr Jacobs during the last three years were assessed. It included criminal court work, civil court work, family law court work and *quasi* judicial work performed.

#### **SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS**

4. No irregularities or shortcomings were discovered in the civil and family law court work which could have had an influence on the validity of the judicial work performed.

5. It was found that 99% of all the accused persons in criminal matters which appeared before Mr Jacobs were represented by legal representatives, mainly from Legal Aid South Africa. The following irregularities and shortcomings which influenced the validity of the judgments were, however, identified. *inter alia* in cases in which the accused persons were represented by legal practitioners:

5.1 Incompetent sentences were imposed in six cases where the accused were charged with contravening provisions of the Immigration Act, No. 13 of 2002. The alternative sentences of imprisonment to a fine exceeded the prescribed maximum term of imprisonment.

These cases have already been submitted on special review to the High Court for correction.

5.2 The proceedings after plea until judgment were not recorded mechanically, nor manually in two cases. It was furthermore revealed that the annexures to the

charge sheets are incomplete while the unrepresented accused were, according to the records, not informed of their right to apply for leave to appeal against the convictions and sentences.

Both cases have been submitted on special review to the High Court with a request to set aside the convictions and sentences.

5.3 According to the mechanical recordings and the transcribed record in one case the conclusion is made that Mr Jacobs spoke in a disjointed manner, confused certain legal terms; used strange, incorrect and unfamiliar legal terminology and used senseless language from which the conclusion is drawn that he was inebriated during the trial. The accused was charged with theft and although the evidence did not prove the completed offence of theft, but only an attempt thereto, the accused was erroneously convicted of theft.

The case has been submitted on special review to the High Court with a request to set aside the conviction and sentence.

6. The following less serious shortcomings and deficiencies were identified which, however, did not influence the validity of the judgments:

6.1 In many cases the presiding magistrate failed to sign off the records of proceedings.

6.2 In many criminal cases, after statements in terms of section 112(2) of the Criminal Procedure Act, 1977 were handed into court on a plea of guilty, the presiding officer did not indicate before judgment, according to the records, that the court is satisfied

4.

that the accused admitted all the allegations contained in the charge sheet to which the accused pleaded guilty.

- 6.3 In one criminal case the sentence recorded on the J15 charge sheet was altered while the provisions of section 298 of the Criminal Procedure Act, 1977 were not applied.
- 6.4 According to the records of many criminal cases, the provisions of section 103(2) of the Firearms Control Act, 2000 have not been complied with.
- 6.5 The record of one criminal case does not reflect whether the presiding officer applied the provisions of section 115(2)(b) of the Criminal Procedure Act, 1977 after the accused had made a statement in terms of section 115(1) of the Act whereby certain allegations in the charge sheet were not placed in dispute.
- 6.6 According to the record of one criminal case, a plea of not guilty was entered in terms of section 113 of the Criminal Procedure Act, 1977. The record does not reflect whether the presiding officer informed the accused at the closing of the state's case that the allegations admitted by him during questioning in terms of section 112(1)(b) of the Act stand as proof thereof.
- 6.7 There are no indications on the records of three criminal cases that the prosecutor and the undefended accused were afforded the opportunity to address the court on sentence in terms of section 274(2) of the Criminal Procedure Act, 1977.

6.8 In three criminal cases the accused were convicted of stock theft. The complainants suffered losses. The records do not reflect whether the complainants were in court after conviction and if so, whether their rights in terms of section 300 of the Criminal Procedure Act, 1977 were explained to them.

6.9 According to the records of a few criminal cases, the Police seized articles (dagga) which could not lawfully be possessed by any person. There are no indications on the records that the said articles were forfeited to the state in terms of section 25(1) of the Drugs and Drug Trafficking Act, 1992.

6.10 According to the records of many criminal cases, the exhibits allowed as evidence have not been identified with the criminal case number.

6.11 According to the records of many criminal cases, the accused and the presiding officer signed the records of previous convictions (SAP69) but the applicable portions "admit/deny" in respect of the accused and presiding officer were not deleted on the records of previous convictions (SAP69).

#### **GENERAL**

7. During the preceding three years 23 reviewable sentences were imposed in cases in which the accused were not legally represented. In 22 instances the convictions and sentences imposed were confirmed by the High Court. In one instance the conviction was confirmed but the sentence altered.

6.

8. No appeals in criminal, civil and family court matters were lodged during the preceding three years.



C J BARNARD  
HEAD: JUDICIAL QUALITY ASSURANCE OFFICE





**MAGISTRATE'S OFFICE :  
OFISI YA MAGISTRATA : BLOEMFONTEIN  
LANDDROSKANTOOR :**

**DEPARTMENT OF JUSTICE □ LEFAPHA LA TOKA □ DEPARTEMENT VAN JUSTISIE**

Private Bag X20583  
BLOEMFONTEIN  
9300

TEL: (051) 506-1211  
FAX: (051) 447-6854

Ref No.: - 2/2/2  
Enquiries: - MR J. W. BOTHA  
30 JUNE 2010

The Chief Magistrate  
Private Bag X20583  
BLOEMFONTEIN  
9300

**PROVISIONAL SUSPENSION FROM OFFICE AND REVIEWING OF JUDGMENTS : MR D  
JACOBS, MAGISTRATE, CLOCOLAN – MAGISTRATES COMMISSION REFERENCE  
6/5/5/2 (13/2009) DATED 15 JUNE 2010**

1. The National Council of Provinces at the time of the confirmation of the suspension of Mr. Jacobs, Magistrate, Clocolan from the position of magistrate, made a request to the Magistrates Commission that all the judgments delivered by Mr. Jacobs in the preceding three years be perused in order to determine the validity thereof.
2. The Magistrates Commission requested you on 15 June 2010 to make the Judicial Quality Assurance Magistrate available to peruse the relevant judgments. On 15 June 2010 you conveyed such request to me. The request was complied with during the period 21 to 29 June 2010 at Clocolan Magistrate's Office. All judicial work performed in the last three years by Mr. Jacobs, inclusive of criminal court work, family law court work and civil court work was verified. With a few exceptions, all criminal court work done during the past three years was mechanically recorded and a great number of recordings were listened to. Regarding family court work and civil court work, the relevant files were perused. No irregularities were discovered in the family law court work and civil court work that could have had an influence on the validity of the judicial work performed therein.

3. During the investigation it came to light that 99% of all the accused that appeared before Mr. Jacobs were legally represented. Most of the accused were represented by legal representatives of Legal Aid South Africa. It also, further, came to light that, with a few exceptions, accused who were legally represented in criminal matters pleaded guilty to the charges that they had been charged with and were accordingly found guilty as charged. No irregularities were discovered in these legally represented matters that could have had an influence on the validity of the judgments therein. It did however come to light that in criminal matters 39/2008 (11.02.2008), 381/2008 (26.11.2008), 384/2008 (26.11.2008) and 6/2009 (19.1.2009) the sentences therein imposed by Mr. Jacobs on the legally represented accused were incompetent. In all four matters the accused were convicted of a contravention of section 49(1) (a) of the Immigration Act, 2002 (Act 13 of 2002) – Illegal Immigrant – and respectively fined with R500-00 or 5 months imprisonment, R600-00 or 120 days imprisonment, R600-00 or 120 days imprisonment and R500-00 or 100 days imprisonment. In terms of section 49(1) (a) of the Immigration Act, 13 of 2002 the penalty clause for such an offence is a fine or imprisonment not exceeding three months imprisonment. In the abovementioned instances the imposed term of imprisonments exceed the prescribed maximum term of imprisonment.
4. During the preceding three years, 23 reviewable sentences were imposed by Mr. Jacobs on unrepresented accused. In 22 instances the convictions and sentences imposed were confirmed by the Honourable Judges of review. In one instance the conviction was confirmed but the sentence was altered. No criminal appeals were noted against convictions and/or sentences during the past three years.
5. The proceedings in criminal matters where undefended accused appeared and were on trial, were also perused and with the exception of the undermentioned instances, no irregularities were discovered which could have had an influence on the judgments therein.
6. According to the charge sheets (J15) in criminal matters 144/2009 and 145/2009 (02.06.2009) the accused, both Lesotho citizens, pleaded guilty to a charge of having contravened section 49 (1) (a) of the Immigration Act, 13 of 2002-Illegal Immigrant. Both were convicted in terms of section 112(1) (a) of the Criminal Procedure Act, 51 of 1977 and each fined R500-00 or 100 days imprisonment. The following irregularities/deficiencies were discovered;

- 6.1 The annexures to the charge sheets (J15) are incomplete. The mechanical record of the matters was listened to but from the onset to conviction no proceedings were recorded. The state prosecutor in the matters was asked if he could not perhaps shed some light on the matters but advised that he could not remember those incidents.
- 6.2 In both matters incompetent sentences were imposed. The imposed sentences exceed the prescribed sentence of a maximum of three months imprisonment as prescribed by section 49(1) (a) of the Immigration Act, 13 of 2002.
- 6.3 According to the mechanical recordings both accused were not informed by the court of their right to apply for leave to appeal against the convictions and sentences of the court.

Both matters are to be sent on special review to the High Court in terms of section 304 (4) of the Criminal Procedure Act, 51 of 1977 whereby His Lordship, the Judge of review, is to be requested to set aside both the convictions and sentences therein. Copies of the abovementioned matters are hereby attached as annexures A and B.

7. In criminal matter 238/2008 the accused pleaded not guilty to a charge of theft but was subsequently convicted of the offence that he had been charged with after evidence was tendered in regard thereto. During the trial the accused was not legally represented but was assisted by a legal representative only during sentence proceedings. He was fined R400-00 or 80 days imprisonment.
8. The mechanical recordings of the proceedings were listened to and it is clearly audible that Mr. Jacobs explains to the accused his rights in terms of section 115 of the Criminal Procedure Act, 51 of 1977 in a disjointed manner. The court, with reference to Mr. Jacobs, is clearly confused with the plea as tendered by the accused. Not guilty is confused with guilty. The court proceeds to explain to the accused that he can make a "Several explanatory statement". The court thereafter corrects himself and refers to a "onverskuldigde verklaring" (exculpatory = verontskuldigend) – utterly strange legal terminology used by the court. The court explains to the accused that "the court is not obliged to answer questions". The explanation is concluded with the words "and that is that" and the court immediately thereafter orders the state prosecutor to proceed with the prosecution therein without affording the accused an opportunity to make a

-4-

statement or otherwise. The explanation to the accused of his rights with regard to cross examination is equally disjointed and the court initially refers thereto as the accused's rights to legal representation. In his judgment the court found that the state did not prove the completed offence of theft against the accused, but only an attempt thereto. The accused was, notwithstanding this finding erroneously convicted of the offence as charged, namely theft. Seen in the light of Mr. Jacobs' history of alcohol abuse and the manner in which the accused's rights were explained to him, it is my respectful submission, which I do without prejudice, that the possibility exists that he was inebriated during the trial of this matter. A copy of the case is hereby attached as annexure C. The matter is to be sent on special review to the High Court in terms of section 304 (4) of the Criminal Procedure Act, 51 of 1977 whereby His Lordship, the Judge of review, is to be requested to set aside both the conviction and sentence therein.

9. There are other less serious deficiencies which were discovered in the criminal court work of Mr. Jacobs. These deficiencies do not indicate the presence of any irregularities and do not influence the validity of the judgments. They are, *inter alia*, the following:
  - 9.1 In many criminal cases the presiding officer failed to sign the records of the proceedings.
  - 9.2 In many criminal cases after statements in terms of section 112 (2) of the Criminal Procedure Act, 1977 (Act 51 of 1977) were handed into court on a plea of guilty, the presiding officer did not indicate before judgment, according to the records, that the court is satisfied that the accused admitted all the elements contained in the offence to which the accused pleaded guilty.
  - 9.3 In one criminal case the sentence recorded on the J15 charge sheet was altered while the provisions of section 298 of the Criminal Procedure Act, 1977 (Act 51 of 1977) were not applied.
  - 9.4 According to the records of many criminal cases the provisions of section 103 (2) of the Firearms Control Act, 2000 (Act 60 of 2000) have not been complied with.
  - 9.5 The record of one criminal case does not reflect whether the presiding officer applied the provisions of section 115 (2) (b) of the Criminal Procedure Act, 1977 (Act 51 of 1977) (the Act) after the accused had made a statement in terms of

section 115 (1) of the Act whereby certain allegations in the charge sheet were not placed in dispute.

- 9.6 According to the record of one criminal case, a plea of not guilty was entered in terms of section 113 of the Criminal Procedure Act, 1977 (Act 51 of 1977) (the Act). The record does not reflect whether the presiding officer informed the accused at the closing of the state's case that the allegations admitted by him during questioning in terms of section 112(1) (b) of the Act stand as proof thereof.
- 9.7 There are no indications on the records of three criminal cases that the prosecutor and the undefended accused were afforded the opportunity to address the court on sentence in terms of section 274 (2) of the Criminal Procedure Act, 1977 (Act 51 of 1977).
- 9.8 In three criminal cases the accused were convicted of stock theft. The complainants suffered losses. The records do not reflect whether the complainants were in court after conviction and if so, whether their rights in terms of section 300 of the Criminal Procedure Act, 1977 (Act 51 of 1977) were explained to them.
- 9.9 According to the records of a few criminal cases, the Police seized articles (dagga) which could not lawfully be possessed by any person. There are no indications on the records that the said articles were forfeited to the state in terms of section 25 (1) of the Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992).
- 9.10 According to the records of many criminal cases, the exhibits allowed as evidence have not been identified with the criminal case number.
- 9.11 According to the records of many criminal cases, the accused and the presiding officer signed the records of previous convictions (SAP 69) but the applicable portions "admit/deny" in respect of the accused and presiding officer were not deleted on the records of previous convictions (SAP 69).

  
 J. W. BOTHA  
 SENIOR MAGISTRATE : BLOEMFONTEIN

Spec Review  
22/10

G.P. S. 81/2011

J 15 (81/2011)

# CHARGE SHEET • KLAGSTAAT

\*Make an X in the appropriate block.  
Maak 'n X in die toepaslike blokkie.

Case Saak No. 142/09 Date Datum 2/6/09

Review Case Hersieningsaak No. \_\_\_\_\_ Date Datum \_\_\_\_\_

Police station/Polisiekantoor <u>Clocolan</u>	CAS/CR/MAS/MR No. <u>79/05/2009</u>	Investigation officer/Ondersoekbeampte
District/Division-Distrik/Afdeeling <u>Clocolan</u>	Place of trial/Plek van verhoor <u>Clocolan</u>	Date of first appearance/Datum van eerste verskyning <u>2009/06/02</u>

Particulars of court officials must be furnished on the minutes of proceedings.  
Besonderhede van hofbeamptes moet op die notule van verrigtinge verstrekk word.

### THE STATE versus/DIE STAAT teen

Particulars of accused/Besonderhede van beskuldigde(s):

Name/Naam: Moflatsi Mamyane

Address/Adres: Ha-Tsepo Mahelashoek Lesotho

Male/Manlik  Female/Vroulik  Nationality/Nasionaliteit: Lesotho Age/Ouderdom: 24yr

\*In custody/In hegtenis  On bail/Op borgtog  Warned/Gewaarsku  Date of arrest/Datum van arres: 2009/05/31

4/06

Name/Naam: \_\_\_\_\_

Address/Adres: \_\_\_\_\_

Male/Manlik  Female/Vroulik  Nationality/Nasionaliteit: \_\_\_\_\_ Age/Ouderdom: \_\_\_\_\_

\*In custody/In hegtenis  On bail/Op borgtog  Warned/Gewaarsku  Date of arrest/Datum van arres: \_\_\_\_\_

(hereinafter called the accused) charged with the offence(s) as set out in Annexure(s) 1 to as attached.  
(hierina die beskuldigde genoem) beskuldig van die misdryf(wa) as in Aangangs(e) 1 tot by aanheg. uitgegesit.

DP 2/6/2009; Handlung - (art 12(1)(a))  
(Date / Datum)

DP 2/6/2009; Handlung  
(Date / Datum)

DP 2/6/2009  
Betaal R2500  
of 100 daag/5  
2/6/2009  
Date / Datum

Magistrate / Landdroes

Direction with regard to revision of sentence

Reviewable / Nieteviewable  
Hersienbaar / Nie hersienbaar

CASE NO 144/09

THE STATE VERSUS

Mollytsi Momyane

On.....

ACCUSED IN PERSONA

PRESIDING OFFICER

Mr. D. Jacobs

ON BEHALF OF STATE

M. Phiso Dada

INTERPRETOR

N. Phiso

DEFENCE (or on behalf)

ZP

COURT EXPLAINS FOLLOWING TO ACCUSED:

"You are entitled to legal assistance in this case against you, in other words to the assistance of a law practitioner like an attorney at law. If you cannot afford legal assistance but nevertheless desire legal assistance you may apply for it, free at State expense, i.e. so-called legal aid. You may still elect to defend yourself in own capacity".

Do you understand your rights in this regard?

Answer:

YES

What do you elect to do? \*Appoint my own

counsel/Apply for legal aid/Defend myself

Do you not wish to apply for legal aid? (After invitation by court to do so)

Answer:

Stipulation of steps taken in accordance with accused above stated choice:

Case \*stand off for purpose of immediate application and result of application for legal aid/ remanded till ..... for purpose of application and result of application for legal aid to enable accused to obtain legal assistance (own legal representation/legal aid)/Other reason for remand: .....

Accused told to take necessary steps to obtain legal assistance without delay so that the case can be dealt with further as soon as possible.....

Horizontal lines for additional notes or signatures.

AANHANGSEL TOT KLAGSTAAT

SAAKNOMMER: 144/09

AANKLAGNOMMER: \_\_\_\_\_

Die Staat teen: \_\_\_\_\_  
(Hierna die beskuldigde(s) genoem)

ONWETTIGE IMMIGRANT

Dat die beskuldigde, synde 'n buitelande wat onwettig in die Republiek is, skuldig is aan die oortreding van artikel 49(1), gelees met artikels 1, 10, 25 en 26 van die Immigrasiewet 13 van 2002

DEURDAT op of omtrent \_\_\_\_\_ en te  
of naby \_\_\_\_\_ in die  
Distrik/Streekafdeling van \_\_\_\_\_  
die beskuldigde die Republiek binnegekom en/of in die Republiek  
gebly het in stryd met hierdie Wet, deurdat \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

en daardeur 'n oortreding begaan het.

Strafbepaling:

Boete of gevangenisstraf wat nie 'n tydperk van drie maande oorskry nie.

ONWETTIGE IMMIGRANT



A 144/09

CASE NUMBER/SAAKNOMMER	1) A144/09
DATE / DATUM	2010-06-02



PRESIDING OFFICER VOORSITTENDE BEAMPTTE	MNR <del>J. BOTHA</del> D. Jacobs
THE STATE versus DIE STAAT teen	1. MOTLATSI MONYANE 2. ANRA(?) MONYANE
ON BEHALF OF THE STATE NAMENS DIE STAAT	MR DARA(?)
ON BEHALF OF THE DEFENCE NAMENS DIE VERDEDIGING	BEIDE IN PERSOON
CHARGE KLAGTE	(As per charge sheet) (Soos per klagstaat)
PLEA PLEIT	(As per charge sheet) (Soos per klagstaat)
INTERPRETER TOLK	MNR BRANDSEL(?)

VOLUME  
(Bladsy 1 tot bladsy 5)

CONTRACTOR KONTRAKTEUR	: KRINO TRANSCRIPTION SERVICES BK KRINO TRANSKRIPSIEDIENSTE BK P O Box / Posbus 148, FRANKFORT (9830) Tel. No. : (058) 813-2658 Fax/Faks : (058) 813-2658 Cell/Sel : 072 597 7434
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UITSPRAAK

Menere, u word dan BEIDE SKULDIG BEVIND bloot op u pleite van skuldig op die klagte teen u, onderskeidelik.

---ooOoo---

5 PROSECUTOR: The state, prove no previous convictions your worship.

NO PREVIOUS CONVICTIONS PROVEN AGAINST BOTH ACCUSED

HOF: Menere, noudat u so pas elkeen skuldig bevind is, het  
10 u eikeen die geleentheid om sogenaamde strafversagtende faktore aan die hof voor te lê. Dit is enige persoonlike omstandighede aan u kant. Enige ander aangeleentheid wat u reken strafversagting kan inwerk. U kan getuie aan bied met betrekking tot dit. U kan self ook kom getuig. U kan  
15 getuies roep om namens u te getuig. En/of u kan onbeëdigde vertoë rig van waar u staan ter strafversagting. Verstaan u dit elkeen?

BESKULDIGDE 1: (Deur tolk:) ek verstaan.

BESKULDIGDE 2: (Deur tolk:) ek verstaan.

20 TOLK: Beskuldigde 1 ...(onduidelik; te ver van mikrofoon).

HOF: Goed. En u meneer, mnr Anra Monyane?

BESKULDIGDE 2: ...(onduidelik).

HOF: Goed. Mnr Motlatsi Monyane, u kan maar praat meneer.

BESKULDIGDE 1: Ek vra asseblief tog versagting, want ek is

25 /werkloos...

werkloos. Ek kan nie, want daar(?) is nie so baie woorde(?) om te sê nie.

HOF: Ja meneer?

BESKULDIGDE 1: Ek is getroud. Ek het drie(?) kinders.

5 HOF: Meneer, wat maak u in die Republiek?

BESKULDIGDE 1: ...(geen hoorbare antwoord).

HOF: U verstaan nou as ek praat van die Republiek, dan praat ek van die Republiek van Suid-Afrika. Wat maak u hier meneer?

10 BESKULDIGDE 1: Net(?) ...(onduidelik) werk kom seek.

HOF: Ekskuus.

TOLK: Die werk kom seek.

HOF: Nee, want u sien meneer, dit is miskien die probleem. Hierdie hof neem ook al kennis meneer, dat hoe gaan dit daar  
15 in Lesotho, in die koninkryk, by u koning. Hoe gaan dit daar in daardie koninkryk, kan u vir die hof sê asseblief?

BESKULDIGDE 1: ...(geen hoorbare antwoord).

HOF: Kan u sê?

BESKULDIGDE 1: ...(onduidelik).

20 HOF: Ekskuus?

TOLK: Ek vra net verskoning. Ek het nie woordes(?) nie.

HOF: Meneer, is daar nie werk daarso nie? Kan u nie daarso 'n goeie lewe doen nie?

BESKULDIGDE 1: Ja, daar is nie werk daar nie.

25 HOF:...

HOF: Is daar nie?

BESKULDIGDE 1: Nee, daar is nie werk nie.

HOF: Gaan dit moeilik daar meneer?

BESKULDIGDE 1: Ja.

5 HOF: Goed. Ek aanvaar dit. Die ander mnr **Monyane**, u kan  
maar praat meneer.

BESKULDIGDE 2: Ek doen ...(onduidelik). Ek het net hier  
gekom om die werk te kom soek.

HOF: Dieselfde?

10 BESKULDIGDE 2: ...(onduidelik).

HOF: Is die twee van u, is u broers?

BESKULDIGDE 2: Ja.

HOF: Wil u nog iets sê meneer?

BESKULDIGDE 2: Nee.

15 HOF: Goed. Mr Dara(?), on behalf of the state, is ...(indis-  
tinct; stapler?).

ADDRESS BY PROSECUTOR: As the court pleases, your  
worship. Both accused has been convicted of being illegals in  
this country. It can not be overemphasised that some of the  
20 case that we are having in the magisterial district of Clocolan  
some cases are being closed as undetected(?) because of the  
large influx of illegal immigrants into this magisterial district.  
If it was not because of the vigilant and ...(indistinct) patrols of  
our police they could have even stayed a longer period. The  
25 /state...

state requests that they be given a time of imprisonment with an option of a fine your worship. As the court pleases.

VONNIS

Menere, die hof moet in ag neem, en die hof neem in ag,  
5 u eie persoonlike omstandighede. U kom die Republiek binne  
menere en u sê die rede vir u inkoms is om werk te soek. Die  
hof neem kennis daarvan dat elke dag of bykans elke dag is  
daar onderdane van Lesotho, van die koning, wat in hierdie  
land inkom en hulle mag nie hier wees nie en dit gaan swaar.

10 Maar die feit bly staan menere, u moet, moet met die  
goedkeuring van u eie koning en ook van die goedkeuring van  
die regering van Suid-Afrika, moet u in die Republiek wees.  
Dit is so menere, dat daar moet beheer wees. Met ander  
woorde die regering van Suid-Afrika en die koning van Lesotho  
15 moet weet waar is sy mense. Hulle is nou in die Republiek of  
hulle is in Lesotho, met ander woorde maar elke keer met  
goedkeuring.

Soos wat die koning moet weet waar sy mense is, so  
moet ook die regering van Suid-Afrika. Die Republiek van  
20 Suid-Afrika moet so ook weet dat daar is ander mense van 'n  
ander land binne-in sy land. En as die regering van Suid-  
Afrika dit weet meneer, dan is u, al twee van u, u is baie  
welkom in die Republiek. U is baie welkom in hierdie land  
menere, want hierdie land is 'n baie vriendelike land en hierdie  
25 /land...

land is lief vir ander mense van ander lande.

Dit maak nie saak of u uit Egipte daarbo, heel noord, uit Egipte en of u uit Zambië of Tanzanië of Malawi of Somalië of waar u ook al vandaan kom nie. U is baie welkom in die land  
5 as u wettiglik hier is.

U word, elkeen van u word:

**BEBOET MET R500**

OF

**100 DAE GEVANGENISSTRAF.**

10

---ooOoo---

TOLK: ...(onduidelik) op(?)?

HOF: Eenhonderd dae.

PROSECUTOR: ...(indistinct) your worship.

TOLK(?): ...(onduidelik).

15 HOF: Goed, dankie.

---ooOoo---

HOF VERDAAG

OORSKRYFSTERSERTIFIKAAT

Ek, die ondergetekende, sertifiseer hiermee dat in soverre dit hoorbaar is, die voorafgaande 'n ware en juiste transkripsie van die oorkonde is van die oorspronklike verrigtinge wat deur middel van 'n meganiese opvangtoestel opgeneem is in die saak van:

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that insofar as it is audible, the foregoing is a true and correct transcription of the proceedings recorded by means of a mechanical recorder in the matter of:

DIE STAAT teen / THE STATE versus MOTLATSI MONYANE AND ANOTHER  
SAAKNOMMER / CASE NUMBER 144/09 - CLOCOLAN

\* Special Review 22/10

OORSKRYFSTER/TRANSCRIBER: (ME/MS) C E KRUGER

KRINÓ TRANSKRIPSIEDIENSTE BK

JUL 2.2010

*Handwritten symbol resembling a stylized 'd' or '2'.*

*Spec. Revision  
145/09 - 23/10  
149*

# CHARGE SHEET • KLAGSTAAT

\*Make an X in the appropriate block.  
Maek 'n X in die toepasselike blokkie.

Police station/Polisiekantoor: <b>Clocolan</b>	CAS/CR/MAS/MPR No. <b>80/05/2009</b>	Case Seak No. <b>149/09</b>	Date Datum <b>2/6/09</b>
District/Division-Distrik/Afdeling <b>Clocolan</b>	Place of trial/Plek van verhoor <b>Clocolan</b>	Review Case Hersieningsaak No.	Date Datum
		Investigation officer/Ontersoekebeampte	
		Date of first appearance/Datum van eerste verskyning <b>2009/06/02</b>	

Particulars of court officials must be furnished on the minutes of proceedings.  
Besonderhede van hofbeamptes moet op die notule van verenginge verstrekk word.

### THE STATE versus/DIE STAAT teen

Particulars of accused/Besonderhede van beskuldigde(s):

Name Naam <b>Leelo Julius Momyane.</b>	Address Adres <b>Hq- Tsepo Mahaleshoet Lesotho.</b>		
Male Manlik <input checked="" type="checkbox"/>	Female Vroulik <input type="checkbox"/>	Nationality Nasionaaliteit <b>Lesotho</b>	Age Ouderdom <b>26y</b>
In custody In hegtenis <input checked="" type="checkbox"/>	On bail Op borgtog <input type="checkbox"/>	Warned Gewaarsku <input type="checkbox"/>	Date of arrest Datum van arres <b>2009/05/30</b>

*26/09*

Name Naam	Address Adres		
Male Manlik <input type="checkbox"/>	Female Vroulik <input type="checkbox"/>	Nationality Nasionaaliteit	Age Ouderdom
In custody In hegtenis <input type="checkbox"/>	On bail Op borgtog <input type="checkbox"/>	Warned Gewaarsku <input type="checkbox"/>	Date of arrest Datum van arres

(hereinafter called the accused) charged with the offence(s) as set out in Annexure(s) I to as attached.  
(hierna die beskuldigde genoem) beskuldig van die misdryf(w) soos in Aanhangsel(s) I tot hierby aangeneem, uiteengesit

*Op 2/6/2009: Afsigting - (R10,000)*  
(Date / Datum)

*Op 2/6/2009: Afsigting*  
(Date / Datum)

*Op 2/6/2009*  
Sentencing / Vonnis op

*Buurt R500 of 100 stans of S*

*2/6/2009*  
Date / Datum

*[Signature]*  
Magistrate / Landdroes

Direction: with regard to revision of sentence  
Rigting: met betrekking tot hersiening van vonnis

Revisable / Nie Hersienbaar  
Revisienbaar / Nie Hersienbaar



THE STATE VERSUS Leato Julius Mungana CASE NO \_\_\_\_\_  
 On 20/9/06/62 ACCUSED IN PERSONA \_\_\_\_\_  
 PRESIDING OFFICER : Mr. D. Jants \_\_\_\_\_  
 ON BEHALF OF STATE : " M. Jata \_\_\_\_\_  
 INTERPRETOR : " N. Phiso \_\_\_\_\_  
 DEFENCE (or on behalf) : DP \_\_\_\_\_

COURT EXPLAINS FOLLOWING TO ACCUSED:

"You are entitled to legal assistance in this case against you, in other words to the assistance of a law practitioner like an attorney at law. If you cannot afford legal assistance but nevertheless desire legal assistance you may apply for it, free at State expense, i.e. so-called legal aid. You may still elect to defend yourself in own capacity".

Do you understand your rights in this regard?

Answer: Yes What do you elect to do? \*Appoint my own counsel / Apply for legal aid / Defend myself

Do you not wish to apply for legal aid? (After invitation by court to do so)

Answer: \_\_\_\_\_

Stipulation of steps taken in accordance with accused abovestated choice:

Case stand off for purpose of immediate application and result of application for legal aid / remanded till \_\_\_\_\_ for purpose of application and result of application for legal aid to enable accused to obtain legal assistance (own legal representation/legal aid)/Other reason for remand: \_\_\_\_\_

Accused told to take necessary steps to obtain legal assistance without delay so that the case can be dealt with further as soon as possible. \_\_\_\_\_

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

AANHANGSEL TOT KLAGSTAAT

SAAKNOMMER: \_\_\_\_\_

AANKLAGNOMMER: \_\_\_\_\_

Die Staat teen: \_\_\_\_\_  
(Hierna die beskuldigde(s) genoem)

ONWETTIGE IMMIGRANT

Dat die beskuldigde, synde 'n buitelande wat onwettig in die Republiek is, skuldig is aan die oortreding van artikel 49(1), gelees met artikels 1, 10, 25 en 26 van die Immigrasiewet 13 van 2002

DEURDAT op of omtrent \_\_\_\_\_ en te  
of naby \_\_\_\_\_ in die  
Distrik/Streekafdeling van \_\_\_\_\_  
die beskuldigde die Republiek binnegekom en/of in die Republiek  
gebly het in stryd met hierdie Wet, deurdat \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

en daardeur 'n oortreding begaan het.

Strafbepaling:

Boete of gevangenisstraf wat nie 'n tydperk van drie maande oorskry nie.

ONWETTIGE IMMIGRANT

2) A144/09

CASE NUMBER/SAAKNOMMER	A144/09
DATE / DATUM	2010-08-02



PRESIDING OFFICER VOORSITTENDE BEAMPTTE	<del>MNR J BOTHA</del> <i>D. Jacobs</i>
THE STATE versus DIE STAAT teen	1. MOTLATS! MONYANE 2. ANRA(?) MONYANE
ON BEHALF OF THE STATE NAMENS DIE STAAT	MR DARA(?)
ON BEHALF OF THE DEFENCE NAMENS DIE VERDEDIGING	BEIDE IN PERSOON
CHARGE KLAGTE	(As per charge sheet) (Soos per klagstaat)
PLEA PLEIT	(As per charge sheet) (Soos per klagstaat)
INTERPRETER TOLK	MNR BRANDSEL(?)

**VOLUME**  
(Bladsy 1 tot bladsy 5)

CONTRACTOR KONTRAKTEUR	KRINÓ TRANSCRIPTION SERVICES BK KRINÓ TRANSKRIPSIEDIENSTE BK P O Box / Posbus 148, FRANKFORT (9830) Tel. No. : (058) 813-2658 Fax/Faks : (058) 813-2658 Cell/Sel : 072 597 7434
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UITSPRAAK

Menere, u word dan BEIDE SKULDIG BEVIND bloot op u pleite van skuldig op die klagte teen u, onderskeidelik.

---ooOoo---

5 PROSECUTOR: The state, prove no previous convictions your worship.

NO PREVIOUS CONVICTIONS PROVEN AGAINST BOTH ACCUSED

HOF: Menere, noudat u so pas elkeen skuldig bevind is, het  
10 u elkeen die geleentheid om sogenaamde strafversagtende faktore aan die hof voor te lê. Dit is enige persoonlike omstandighede aan u kant. Enige ander aangeleentheid wat u reken strafversagtend kan inwerk. U kan getuënis aanbied met betrekking tot dit. U kan self ook kom getuig. U kan  
15 getuies roep om namens u te getuig. En/of u kan onbeëdigde verfoë rig van waar u staan ter strafversagting. Verstaan u dit elkeen?

BESKULDIGDE 1: (Deur tolk:) ek verstaan.

BESKULDIGDE 2: (Deur tolk:) ek verstaan.

20 TOLK: Beskuldigde 1 ...(onduidelik; te ver van mikrofoon).

HOF: Goed. En u meneer, mnr Anra Monyane?

BESKULDIGDE 2: ...(onduidelik).

HOF: Goed. Mnr Motlatsi Monyane, u kan maar praat meneer.

BESKULDIGDE 1: Ek vra asseblief tog versagting, want ek is  
25 /werkloos...

werkloos. Ek kan nie, want daar(?) is nie so baie woorde(?) om te sê nie.

HOF: Ja meneer?

BESKULDIGDE 1: Ek is getroud. Ek het drie(?) kinders.

5 HOF: Meneer, wat maak u in die Republiek?

BESKULDIGDE 1: ...(geen hoorbare antwoord).

HOF: U verstaan nou as ek praat van die Republiek, dan praat ek van die Republiek van Suid-Afrika. Wat maak u hier meneer?

10 BESKULDIGDE 1: Net(?) ...(onduidelik) werk kom seek.

HOF: Ekskuus.

TOLK: Die werk kom seek.

HOF: Nee, want u sien meneer, dit is miskien die probleem. Hierdie hof neem ook al kennis meneer, dat hoe gaan dit daar in Lesotho, in die koninkryk, by u koning. Hoe gaan dit daar in daardie koninkryk, kan u vir die hof sê asseblief?

15

BESKULDIGDE 1: ...(geen hoorbare antwoord).

HOF: Kan u sê?

BESKULDIGDE 1: ...(onduidelik).

20 HOF: Ekskuus?

TOLK: Ek vra net verskoning. Ek het nie woordes(?) nie.

HOF: Meneer, is daar nie werk daarso nie? Kan u nie daarso 'n goeie lewe doen nie?

BESKULDIGDE 1: Ja, daar is nie werk daar nie.

25 /HOF:...

HOF: Is daar nie?

BESKULDIGDE 1: Nee, daar is nie werk nie.

HOF: Gaan dit moeilik daar meneer?

BESKULDIGDE 1: Ja.

5 HOF: Goed. Ek aanvaar dit. Die ander mnr Monyane, u kan  
maar praat meneer.

BESKULDIGDE 2: Ek doen ...(onduidelik). Ek het net hier  
gekom om die werk te kom soek.

HOF: Dieselfde?

10 BESKULDIGDE 2: ...(onduidelik).

HOF: Is die twee van u, is u broers?

BESKULDIGDE 2: Ja.

HOF: Wil u nog iets sê meneer?

BESKULDIGDE 2: Nee.

15 HOF: Goed. Mr Dara(?), on behalf of the state, is ...(Indis-  
tinct; stapler?).

ADDRESS BY PROSECUTOR: As the court pleases, your  
worship. Both accused has been convicted of being illegals in  
this country. It can not be overemphasised that some of the  
20 case that we are having in the magisterial district of Clocolan  
some cases are being closed as undetected(?) because of the  
large influx of illegal immigrants into this magisterial district.  
If it was not because of the vigilant and ...(indistinct) patrols of  
our police they could have even stayed a longer period. The  
25 /state...

state requests that they be given a time of imprisonment with an option of a fine your worship. As the court pleases.

VONNIS

Menere, die hof moet in ag neem, en die hof neem in ag,  
5 u eie persoonlike omstandighede. U kom die Republiek binne  
menere en u sê die rede vir u inkom is om werk te soek. Die  
hof neem kennis daarvan dat elke dag of bykans elke dag is  
daar onderdane van Lesotho, van die koning, wat in hierdie  
land inkom en hulle mag nie hier wees nie en dit gaan swaar.

10 Maar die feit bly staan menere, u moet, moet met die  
goedkeuring van u eie koning en ook van die goedkeuring van  
die regering van Suid-Afrika, moet u in die Republiek wees.  
Dit is so menere, dat daar moet beheer wees. Met ander  
woorde die regering van Suid-Afrika en die koning van Lesotho  
15 moet weet waar sy mense. Hulle is nou in die Republiek of  
hulle is in Lesotho, met ander woorde maar elke keer met  
goedkeuring.

Soos wat die koning moet weet waar sy mense is, so  
moet ook die regering van Suid-Afrika. Die Republiek van  
20 Suid-Afrika moet so ook weet dat daar is ander mense van 'n  
ander land binne-in sy land. En as die regering van Suid-  
Afrika dit weet meneer, dan is u, al twee van u, u is baie  
welkom in die Republiek. U is baie welkom in hierdie land  
menere, want hierdie land is 'n baie vriendelike land en hierdie  
25 /land...

land is lief vir ander mense van ander lande.

Dit maak nie saak of u uit Egipte daarbo, heel noord, uit Egipte en of u uit Zambië of Tanzanië of Malawi of Somalië of waar u ook al vandaan kom nie. U is baie welkom in die land  
5 as u wettiglik hier is.

U word, elkeen van u word:

**BEBOET MET R500**

OF

**100 DAE GEVANGENISSTRAF.**

10

---ooOoo---

IOLK: ... (onduidelik) op(?)?

HOF: Eenhonderd dae.

PROSECUTOR: ... (indistinct) your worship.

IOLK(?): ... (onduidelik).

15 HOF: Goed, dankie.

---ooOoo---

HOF VERDAAG



OORSKRYFSTERSERTIFIKAAT

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