



HIGH COURT OF NAMIBIA NORTHERN LOCAL DIVISION, OSHAKATI

APPEAL JUDGMENT

Case No.: CA 10/2015

In the matter between:

CHRISTIAAN NDAAMAKUNYE SHAFUDA

APPELLANT

and

THE STATE

RESPONDENT

Neutral citation: *Shafuda v S* (CA 10/2015) [2017] NAHCNLD 29 (7 April 2017)

Coram: JANUARY, J and CHEDA, J

Heard: 17 OCTOBER 2016

Delivered: 07 April 2017

Flynote: Criminal Procedure – Appeal – The Test – Misdirection – Magistrate admitting facts on which reasonable suspicion of bias is based. Interlocutory appeal allowed.

Summary: The appellant in this matter is appealing against the refusal by a magistrate to recuse himself from criminal proceedings. The appellant is the chief clerk of court and two State witnesses are a magistrate and his wife who was a senior clerk at the magistrate's court Oshakati. The presiding magistrate in this matter is from another district. He admitted facts which caused the appellant to form a suspicion that the magistrate would be biased. The magistrate refused to recuse himself and did not apply the test for recusal. The proceedings are not yet finalized. This court entertained the appeal as an exception to the general rule that appeal courts do not lean in favour of entertaining interlocutory appeals. The appeal succeeds.

ORDER

1. The appeal succeeds.
 2. The refusal by the magistrate to recuse himself is set aside.
 3. The magistrate is ordered to recuse himself from the case.
 4. It is ordered that the case proceeds *de novo* before a different magistrate.
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APPEAL JUDGMENT

JANUARY, J (CHEDA, J CONCURRING)

[1] This appeal is against the refusal by a magistrate to recuse himself from a trial. The presiding magistrate first sent the matter for review. The reviewing judge returned it with a remark that: 'Matter not reviewable. Magistrate must decide whether he ought to recuse himself or not.'

[2] The matter was sent for the Prosecutor-General's decision. The decision is attached to the record and reflects as follows: 'Count 1. Theft (General deficiency) in respect of both accused, Count 2. Defeating or attempting to defeat the course of Justice (in

respect of both accused). Count 3. Contravening Section 2 of Act 7 of 1996. Unlawful possession of a fire-arm without a license (in respect of accused 1 only. Count 4. Contravening Section 33 of Act 7 of 1996. Unlawful possession of Ammunition. (in respect of Accused 1 only).’ Accused 1 (the appellant) pleaded not guilty to charges 1, 2, and 3 and accused 2 not guilty to charges 1 and 2.

[3] The charge on the record reflects the particulars of one charge with a co-accused for theft - general deficiency of N\$86 000 only, the property of the Ministry of Justice. The charge reads as follow:

‘That the accused is/are guilty of theft.

IN THAT, whereas at all relevant times the said accused were employed as the Chief Legal Clerk and Legal Clerk respectively of the Ministry of Justice, based at the Oshakati magistrate court, and were such servants or agents of the said Ministry of Justice and entrusted with the custody and care of money received by each or both of them, came into possession of money shown in column **3** of Schedule A, on account of their employer, the accused did both in common purpose or each of them, during the period shown in column **2** Oshakati Magistrates court in the district of Oshakati unlawfully and intentionally stole some of the said money shown in column **3** of schedule A thereby creating general deficiency of **N\$86 000** the property of the said Ministry of Justice.’

[4] The appellant was a chief clerk and his co-accused a clerk at Oshakati magistrate’s court. Both accused were represented in the court *a quo*. At the beginning of the trial, the lawyers of both accused objected to magistrate Tembwe presiding over the matter and applied for his recusal as he very well knows the other magistrates who were working with him at Oshakati. The witnesses in the matter include a magistrate and his wife in the matter. Magistrate Tembwe eventually recused himself. Magistrate Nangula took over from Magistrate Tembwe.

[5] In this appeal the appellant is represented by Mr Tjiteere while the respondent is represented by Mr Gaweseb. Both counsel filed helpful arguments for which I am grateful.

[6] The ground of appeal is that the learned magistrate erred in law and/or facts by finding that:

1. 'he is not bias; (sic)
2. being a friend with the complainant does not warrant his recusal;
3. there are no reasonable ground (sic) for his recusal;
4. justice will not be done if he does recuse himself; and
5. the reasons are vague and embarrassing.'

[7] The appellant seeks an order in the following terms:

1. 'Setting aside the order made by Magistrate Nangula and grant an order directing the Learned Magistrate to recuse himself from the proceedings of the above matter;
2. Granting such further and/or alternative relieve as this Honourable Court may deem fit.'

[8] This appeal stems from criminal proceedings and in terms of the Criminal Procedure Act, Act 51 of 1977, [hereinafter referred to as the "CPA"] of which Section 309 provides:

'309 Appeal from lower court by person convicted

(1)(a) Any person convicted of any offence by any lower court (including a person discharged after conviction), may appeal against such conviction and against any resultant sentence or order to the provincial division having jurisdiction. (my emphasis)

(b) ...,

(2) ...,

(3) ...,

(4) ...,

(a)...,

(b) ...'

[9] This court firstly needs to consider if this is an appealable matter in accordance with the law. The trial has commenced in the magistrate's court and has not yet been finalized. Three witnesses have testified in the matter and no verdict and sentence were pronounced.

[10] It is clear that the CPA only provides for an appeal after conviction and resultant sentence or order. That, however, is not the end of the matter. Our supreme law is the Namibian Constitution. It guarantees a fair trial to all persons. Article 25 (2) provides that:

'Aggrieved persons who claim that a fundamental right or freedom guaranteed by this Constitution has been infringed or threatened shall be entitled to approach a competent court to enforce or protect such a right or freedom, and may approach the Ombudsman to provide them with such legal assistance or advice as they require, and the Ombudsman shall have the discretion in response thereto to provide such legal or other assistance as he or she may consider expedient.'

[11] The importance of the protection and enforcement of these rights were expressed in the matter of *S v Ganeb 2001 NR 294*¹ at 298 where Matambanengwe J ably stated:

'These entrenched tenets of a fair trial strengthen in a significant way the due process proceedings. The fundamental rights or freedoms guaranteed by the Constitution ensure that rights and freedom are not ignored. The Courts are there to enforce them.'

[12] Further, the High Court Act, Act 16 of 1990 provides:

'The High Court shall have jurisdiction to hear and to determine all matters which may be conferred or imposed upon it by this Act or the Namibian Constitution or any other law.²(emphasis added)

¹ At 298 G-H

² Section 2 of the High Court Act, Act 16 of 1990

In addition, the High Court has inherent jurisdiction to make orders furthering the administration of justice when a statute or rule of court is silent and there is an irregularity or allegation of injustice.³

[13] The Namibian Constitution is silent on appeals and does not refer to a right of appeal for an accused before the conclusion of the trial/matter by a court *a quo*. The CPA only affords a right to appeal for an accused after conviction, resultant sentence or order and is silent with regards to the same. It was held in *S v Stowitzki* 1994 NR 265 (HC) where Hannah J stated that:

‘the court could not lean towards granting an automatic right of appeal where a decision involved the fundamental rights of an individual, as to do so would encroach on the function of the Legislature which in terms of article 80 (3) of the Constitution, was the body required to determine the jurisdiction of the High Court with regards to appeals.’⁴

[14] The appellant in this matter alleges an irregularity and that he reasonably believes that the presiding magistrate will be biased. It is alleged that irreparable injustice will follow if the magistrate is allowed to preside in this matter. I find it necessary to analyse what is contained in the court record in order to understand how the complaint arose.

[15] The appellant’s first appearance was on 14 June 2012. The case was postponed to 17 October 2012 on which date a co-accused was added to the proceedings. Both accused were represented by legal practitioners. The matter was postponed to 12 February 2013. On this date the Prosecutor-General’s decision was available and the matter was postponed to 02 April 2013 for the fixing of a trial date. On 02 April 2013, magistrate Tembwe presided. Both accused were represented. Both legal representatives informed the magistrate that they preferred another magistrate and asked him to recuse himself. The case was postponed to 17 - 20 September 2013 for plea and trial.

³ The Civil Practice of the High Courts of South Africa, Cilliers *et al*, Fifth Edition, 2009, Volume 2 at p1269 to 1270; *Tobias Aupindi & another v Magistrate Helvi Shilemba & others*, Unreported Case A353/2013, Delivered 12 February 2016

⁴ At p266 and p277 E-H-

[16] On 17 September 2013, the lawyer for the appellant, Ms Kishi, was not in attendance. The legal representative for the co-accused proceeded with the application for recusal which resulted in Mr. Tembwe recusing himself from the matter.

[17] The case was eventually presided over by magistrate Nangula. On the first appearance on 18 August 2014 before him, the appellant's co-accused and his legal representative were not in attendance and a warrant of arrest was issued against the co-accused. The matter was postponed to 19 August 2014 and eventually to 21 August 2014 when the trial commenced before magistrate Nangula.

[18] On their next appearance the learned trial magistrate held an enquiry as to the absence of the co-accused and thereafter reprimanded him for the said failure to attend. The warrant of arrest was cancelled. Mr Haingura (sic) Aingura appeared on instructions from Ms Kishi to apply for a postponement of the matter. It seems that the co-accused was also without a legal representative on this day. Mr. Aingura informed the court that the co-accused still wanted to engage legal representation. Her legal representative subsequently withdrew from these proceedings.

[19] The magistrate refused a further postponement and the record reflects as follows:

'The court has heard the application brought up in respect of Accused no.1. Ms Kishi is asking for a postponement. It is quite clear as I have alluded when I was dealing with a Warrant of Arrest in respect of Accused no.2 that this is not my station. I left my station like the State Prosecutor. This is a special arrangement. Although we are paid our salaries per month we are also paid to come to Oshakati. We cannot be well understood. It is not in the interest of the administration of justice just for us to travel for nothing and we did not do anything to the case. The arrangements were made on time, enough time. The letter received from Ms Kishi it was submitted to the court and then it is here attached. The letter received from Mr Amutse the Divisional Magistrate to appoint a Presiding Officer on the 18th September last year therefore the Court cannot grant the application made. The State proceed. If the Defence Counsel for Accused no. 1 is not given document we can adjourn for a few minutes while you are provided (sic) the insight (sic) of the record but we have to start with this case

today for plea and trial tomorrow. Then by tomorrow the end of the day we are going to postpone it then when we also consulted our offices and the Divisional Magistrate so that we can put it again on a full week again very soon.'

[20] The learned magistrate was then informed that accused no. 2 was without legal representation because her lawyer withdrew due to his inability to raise legal fees. The magistrate said the following:

'I do understand what you are saying but the court already saw from your behaviour from Monday that why you were not here that you want to derail and to delay the administration of justice. If the need be this court will cite a case but at the moment I cannot remember at heart the citation. It was a case emanated from the Regional Court in Windhoek. The Presiding Officer gave a decision for the State to proceed because Accused person there was a deliberate delay on the side of one Accused person. The case was finalised. They were convicted and then they appeal to the High Court but one of the Accused was not given opportunity to have an Attorney for his choice. Then the High Court ruled in favour of the Regional Court's decision. That is the same in this case. Therefore you had ample time to apply for Legal Aid. It is a case of 2012... The State will proceed with the case Madam. At the end of the case should it go in favour of the State you have the right to appeal my decision. I will give the full reasons why I do so. The Court adjourns for a few minutes for the defence to have the records.'

[21] Mr Aingura thereafter informed the court that he did not hold instructions to proceed with the trial and was allowed to withdraw from the proceedings. Both the appellant and his co-accused were unrepresented when they pleaded to the charges and when witnesses were called to testify on 21 August 2014. Two witnesses testified until lunch break of the court whilst the appellant and the co-accused were unrepresented. After lunch break at 14h00 the State called a witness who was at the time a senior legal clerk at Oshakati magistrate's court. At the resumption of the proceedings at 14h00, appellant was now legally represented by Mr. Tjiteere. It appears that accused 2 was still unrepresented. The case continued on 22 August 2014.

[22] When the trial resumed on the 22 August 2014, Ms Kishi appeared for the appellant. She then applied for the recusal of the presiding magistrate with a pre-drafted

application by way of notice of motion with a supporting affidavit of the appellant attached.

[23] The affidavit reads as follows:

1. 'During the **year 2013** The Learned Magistrate, **Mr. Peter Nangula** was staying in the house of the witnesses when he was conducting disciplinary hearing of one of the Magistrates who was employed at the Magistrate Court, Oshakati.
2. On the 18th August 2014 when I was at the Magistrate Court I saw the Magistrate in Ms. Namweya's office. He stayed there for approximately twenty minutes. I was sitting on the benches awaiting Court at the Regional Court benches
3. Based on the above I am of the view that I will not enjoy a fair trial since the Magistrate had prior contact with the witness, Ms. Namweya this in my view negates the purpose (sic) objectivity of the Magistrate. The Magistrate is supposed to be impartial and should not discuss the case with the witnesses before the hearing.
4. As much as I have no proof what the discussion was about I am not comfortable to be tried by the Magistrate who has friendship ties with the witness and complainant.
5. This (sic) to avoid that the Learned magistrate forms a preconceived view. The fact that the Magistrate is a friend to the complainant and has been seen in the company of third witness who is the wife to the Complainant and the Complainant himself is a witness to be led by the State in the same matter; this will compromise on the independence of the Learned Magistrate.
6. I further reasonably believe that there is a reasonable possibility that the merits of this case have been discussed and the outcome prepared.

7. I am advised by my Legal Practitioner of record on the position of law regarding the administration of justice. I now know that it is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done. Nothing is to be done which creates a suspicion that there has been an improper interference with the course of justice. See *Edms) Bpk v Oberholzer* 1974 (4)SA 808 (T).
8. I hereby raise an objection to be tried by the Learned Magistrate Mr. Peter Nangula as the presiding officer therefore I request his recusal as the Magistrate in this matter.'

[24] The record reflects that the magistrate in his ruling on the application for recusal stated *inter alia* the following; (I have divided the quotation into paragraphs for ease of reading)

'Ms Kishi on the application by your client I followed very tentatively (sic) and carefully. When you were reading it I was following it together with you. Therefore before you proceed with the background I ask you to give me the original.

In this case the Court will not either ask the case to be postponed further for the Magistrate to give a ruling straight forward. Without fear or favour Accused no. 1 unless you can prove it otherwise sitting at the bench where he was sitting on the 18th he could not see a person entering the office of Ms Namweya the criminal process office. He cannot unless and otherwise there is an additional eye to see me in there.

Also the fact must also be put out clearly that he or she (sic) the person who brought up the Application for recusal he or she might (sic) overheard the conversations whether that conversations (sic) was in regard to the case and what was discussed between me and Ms Namweya.

I went in the office, in the office to look for water because in my office the cooler of water is always in the office of the clerks. There were two colleagues of her in the office together. To say that the connections I have with Mr Namweya and Ms

Namweya this is a fact which cannot be denied and it has nothing to do with this case.

Mr Namweya and Ms Namweya before the (sic) independence of this country we fought together in exile. We have been together for many years. I studied together with Mr Namweya for many years. It cannot be denied that Mr Namweya is not my colleague. He is my colleague indeed. His wife is also my colleague in arms (sic) when we fought for this country. I cannot deny that I have friendships with Namweya's (sic) family but my relationship (sic) Namweya's family it has (sic) nothing to do with this case.

In my profession (sic) for 25 years now I never, ever discussed a case even if with my wife the case I had before the Court and then therefore it must be proved otherwise. Yesterday he was close to the office, to the courtroom here when Ms Namweya entered my office with Magistrate Ekandjo just for the sake of the table so that she can come and sign a certain document.

She said Ms Namweya I cannot be here I did not yet testify (sic). Then I said you were called to sign it has nothing to do with the case and then they left immediately after she signed.

Also to say that I came here to hear the Disciplinary hearing although he did not give you all the facts your client was in Ondangwa. He was supposed to give you from where he got that information.

I indeed overnight (sic) those days at their house but in those days this case never appeared before me. In addition to that as Ms and Mr Namweya they are witnesses in this case in our profession for (sic) 25 years now we never, ever discussed cases whereby staff members are involved never at all.

I can also give you a case although it was not the decision of the High Court in the case which was handled by my Colleague Mr. Lazarus Amunzi when he was stationed in Walvis Bay a certain lady name Rusa I cannot now recall her surname she stole maintenance money and then she was transferred while investigation being done. The case was appearing (sic) she was transferred to work in Windhoek, Luderitz Street while the case is (sic) appearing.

When that time the case appeared Mr Lazarus Amunzi who was a (sic) based magistrate in Walvis Bay handled the case while this person was under his supervision. Then also on this applications here brought her before me. I am not Peter Petrus...

... This case or the judgement of that case is when a Presiding Officer has an insight of the case. I was never told by anyone what entails in this case. I came only to know about it on Monday this week the 18th August 2014. It is therefore as thus the Court read the Application and the Magistrate will proceed. At the end of the case or maybe if the Defence so wish they can Appeal my ruling. ...'

[25] The requirements for the test for the appearance or apprehension of judicial bias is stated as follows by Teek JP (as he then was):

'The test for recusal on the ground of perceived bias is 'apprehension of bias' and the question is whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the Judge had not or would not bring an impartial mind to bear on the adjudication of the case. The reasonableness of the apprehension had to be assessed in the light of the oath of office taken by the Judges to administer justice without fear, favour or prejudice, and their ability to carry out that oath by reason of their training and experience. It had to be assumed that they could disabuse themselves of any irrelevant personal beliefs or predispositions. They had to take into account the fact that they had a duty to sit in any case in which they were not obliged to recuse themselves. At the same time, it should never be forgotten that an impartial Judge is a fundamental prerequisite for a fair trial and a judicial officer should not hesitate to recuse himself/herself if there were reasonable grounds on the part of a litigant or the public for apprehending that the judicial officer, for whatever reason, is not or would not be impartial. The apprehension of the reasonable person had to be assessed in the light of the established true facts that emerged during the hearings of the case(s). Compare *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* 1999 (4) SA 147 (CC); *H and South African Commercial Catering and Allied Workers' Union and Others v Irvin & Johnson Ltd (Seafoods Division Fish Processing)* 2000 (3) SA 705 (CC).

The requirements for the test for the appearance or apprehension of judicial bias can be summarised as follows:

- (1) there must be a suspicion that the judicial officer might, not would, be biased;
- (2) the suspicion must be that of a reasonable person in the position of the accused or litigant or member of the public;
- (3) the suspicion must be based on reasonable and reliable grounds; and
- (4) One which a reasonable person would, and not might have.

See *S v Roberts* 1999 (4) SA 915 (SCA).⁵

[26] The basic requirements to succeed for a recusal application based on the reasonable suspicion or perception of bias are:

- a) Proof by the applicant at least on a balance of probabilities of the facts relied on for the reasonable suspicion of bias;
- b) A reasonable suspicion of bias in the mind of the applicant, objectively justifiable, which must be held by the hypothetical reasonable, informed person and based on reasonable grounds;
- c) There is also a presumption of integrity and competence in favour of judges.
- d) The requirement of the proof of facts relied on for the alleged reasonable suspicion, not satisfied when allegations based on pure hearsay or double hearsay.⁶

[27] The learned magistrate did not refer to the test to be applied in applications for recusal and from his reasons it is not evident that he considered same. He admitted some of the facts that the appellant mentioned which instilled the reasonable suspicion of bias. The magistrate admitted that Mr Namweya and Mrs Namweya are his friends. He also admitted that he stayed at the house of the aforesaid magistrate. Further he admitted that on the 18th August 2014 he was in the office of Mrs Namweya. The

⁵ *Sikunda v Government of the Republic of Namibia and Another* (1) NR 67 (HC) at 83 E to 84 A

⁶ *S v Stowitzki and Another* (CC 118-93) [1996] NAHC 57 (19 August 1996)

magistrate subjectively was of the view that he will not be biased and tried to justify his actions. He denies that the matter was ever discussed with the witnesses. The magistrate, in my view misdirected himself. He should have applied the test of a reasonable person in the position of the appellant.

[28] I am mindful of the fact that this appeal is not against the decision to proceed without legal representation and whether or not it was a misdirection or irregularity. That might be an issue for another court or review depending on the outcome of this appeal. Apart from the testimony of the occupation of the accused persons and witnesses, I did not consider the evidence of witnesses and cross-examination by both the appellant and co-accused to come to my conclusion.

[29] In my view the continuation of the proceedings in the absence of their legal representatives is one of the grounds in this case upon which determination of reasonable apprehension of appellant, that the trial magistrate has not or will not bring an impartial mind to bear on the adjudication of the case. The right to legal representation is one of the fundamental rights of an accused. The absence of the appellant's lawyer cannot be attributed to his (appellant's) fault.

[30] The approach of these Courts in relation to interlocutory appeals have crystalized over years. In *S v Strowitzki*⁷ Hannah J formulated the principle as follows at p269 H to p270 G:

'It is clear that the Courts lean heavily against allowing interlocutory appeals in criminal cases. As long ago as 1917 the reason for this was given by *Gregorowski J in McComb v ARM Johannesburg and the Attorney-General* 1917 TPD 717 at 718 as follows:'

"The idea of a trial is that it should be as much as possible continuous, and that it should not be stopped. If this kind of procedure were to be allowed it would mean that a trial may become protracted, and may extend over a number of months. The magistrate would sit on one day and hear part of the evidence of a witness; then the hearing would have to be postponed till the opinion of the Supreme

⁷ 1994 NR 265 (HC) at 269H to 270 F

Court could be taken, perhaps a month or two later. Thereafter the trial would again be continued, after some months, and immediately it is resumed objection may again be raised in connection with some evidence, with an application again to the Supreme Court, and again back to the magistrate. I think that would produce an intolerable condition of things. I do not say the Court may never interfere in the course of a trial before a magistrate. There may be misconduct on the part of the magistrate, or something of that kind. But when a case comes before a magistrate I think he must use his discretion and give his decision.”

“This approach has been reiterated time and again over the years. For example, in *Wahlhaus and Others v Additional Magistrate, Johannesburg and Another* 1959 (3) SA 113 (A) Ogilvie Thompson JA said at 119E:”

‘The practical effect of entertaining appellants’ petition would be to bring the magistrate’s decision under appeal at the present, unconcluded, stage of the criminal proceedings against them in the magistrate’s court. No statutory provision exists directly sanctioning such a course. . . Nor even if the preliminary point decided against the accused by a magistrate be fundamental to the accused’s guilt, will a Superior Court ordinarily interfere - whether by way of appeal or by way of review - before a conviction has taken place in the inferior court.’

“Then at 120B the learned Judge of appeal went on to approve the following statement in *Gardiner and Lansdown* 6th ed vol I at 750:”

‘While a superior Court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise upon the uninterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained. . . . In general, however, it will hesitate to intervene, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.’

“There are, as I have said, many cases where this principle has been approved and it is now well established. However, it must be emphasised that the Courts

have established this principle with regard to appeals which emanate from the magistrates' courts. The reason for this is that no leave is required to appeal from a magistrate's court in criminal proceedings. It is therefore open to an appellate Court to consider whether to refuse to entertain an appeal on the ground that it offends against the general rule that appeals are not entertained piecemeal or to consider whether it falls within the exception to the general rule."

[31] The general rule is that interlocutory appeals are not easily entertained. Trials must continue uninterrupted and not unnecessarily be protracted. This however does not mean that a Superior Court may not interfere in the course of a trial before a magistrate. However it is now an established principle that a Superior Court in light of its inherent jurisdiction in review and appeal will nonetheless exercise its power on uninterminated course of proceedings in a court below although it will do so in rare cases and where grave injustice might result.

[32] I therefore agree with this principle and approach adopted in the cases referred to above. In my view this case falls within the exception to the general rule that Superior Courts are reluctant and do not lean in favour of entertaining interlocutory appeals piecemeal.

[33] It is my view that the appellant was correct in holding the view that justice will not be served if the presiding magistrate continuous to hear his case bearing in mind that at one stage he ordered the matter to proceed without the appellant's legal representative.

[34] In light of the above, I find that appellant has made a good case for himself.

[35] In the result:

1. The appeal succeeds.
2. The refusal of the magistrate to recuse himself is set aside.
3. The magistrate is ordered to recuse himself from the case.
4. It is ordered that the case proceeds *de novo* before a different magistrate.

HC JANUARY, J

M CHEDA, J

APPEARANCES:

For the Appellant:

Mr Tjiteere

Of Dr Weder, Kauta & Hoveka Inc.

For the Respondent:

Adv. Gaweseb

Of Office of the Prosecutor-General