

Media Statement



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TO : ALL MEDIA

DATE : 29 JUNE 2010

RE : NPA TO START AFRESH RAPE CASE AFTER HIGH COURT HAS OVERTURNED CONVICTION

The Director of Public Prosecutions in North Gauteng, Adv Sibongile Mzinyathi, has decided to start *de novo* (afresh) the trial against Kenneth Makau in the Sebokeng Regional Court. This was after the accused took the case on review to the North Gauteng High Court on the grounds that the Magistrate had been biased against him during the trial. The accused had been convicted of raping a teenager and was sentenced to sixteen (16) years' imprisonment and a further four (4) years for robbery.

While the judges who considered the review could not find the claims of bias to be true, they found that the magistrate's conduct was unbecoming of a judicial officer. The judges found the judgement on the merits to be well motivated but not in accordance with justice because of the magistrate's comments. This resulted in the convictions and sentences being set aside. The common law, including section 324 of the Criminal Procedure Act, No 51 of 1977, makes provision for a situation where the conviction and sentence are set aside on the grounds that there has been a technical irregularity or a defect in the procedure.

The unbecoming conduct by the presiding officer was regarded as the defect in this case, which, according to the judgement of the High Court, tainted a well reasoned judgement and led to the release of an otherwise

guilty person. Since the technical irregularity that was found to exist precluded a valid consideration of the merits, the prosecution is allowed to prosecute the accused again. Such *de novo* proceedings may be instituted as if the accused had not previously been tried. Mr Makau has been served with a summons to appear in the Sebokeng Regional Court on 26 July 2010.

Issued by:

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