



**Magistrates' Courts Judiciary**

Republic of South Africa

Private Bag X8002 ALBERTON-NORTH 1456-Tel (010) 232 2000-Fax (010) 232 2184

Magistrates' Court House- 39 Palm Ridge Road, PALM RIDGE

IN THE DISTRICT CRIMINAL COURT, MAGISTRATES COURT FOR THE DISTRICT OF EKURHULENI  
CENTRAL  
HELD AT PALM RIDGE

CASE NUMBER: DC2/4048/2023

In the matter between:

THE STATE

Versus

NKOSINATHI MZOZO

The Accused

**JUDGEMENT**

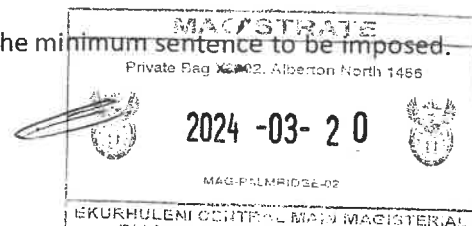
**INTRODUCTION**

- [1] The Accused was convicted of contravention of Section 18(2) read with Section 41 of the Architectural Profession Act, 44 of 2000 in that on or about or during the period of 23 May 2023 the accused at or near Brackendowns in the district of Ekurhuleni Central unlawfully and intentionally practised as an architect as contemplated in Section 18(1) of the said Act, having not been registered to do so.
- [2] The State and Defence attorney argued mitigating and aggravating factors. The State sought a FINE OF R3 000.00 (Three Thousand Rand) be imposed.
- [3] The Defence sought that the court deviate from the minimum sentence to be imposed.

**LEGAL POSITION**

[4] Section 41(3) of Act 44 of 2000 reads as follows:

*"41. (3) A person convicted of an offence in terms of Section 18(2), may be liable to a fine equal to double the remuneration received by him or her for work done in contravention of Section 18(2) or to a fine equal to the fine calculated according to the ratio determined for three years imprisonment in terms of the Adjustment of Fines Act, 1991."*



[5] The accused is to satisfy the court that substantial and compelling circumstances exist that warrant a deviation from the prescribed minimum sentence.

[6] When considering an appropriate sentence, the personal circumstances of the accused, the nature and gravity of the offence and the interest of society are to be considered.<sup>1</sup>

#### **MITIGATING AND AGGRAVATING FACTORS**

[7] The Accused personal circumstances.

[7.1] The accused is married. He has two children. The ages of the children are unknown.

[7.2] The defence alleges that the accused was under financial strain at the time of the commission of the offence. He was unemployed, hit by COVID 19, unable to pay the bond on his house nor the municipal account.

[7.3] No previous convictions nor pending cases have been proven against the accused. No warrants have been proven against his name

[7.4] The accused pleaded guilty. The court did not accept the accused plea in terms of Section 112(2) of Act 51 of 1977 and entered a plea in terms of Section 113 of Act 51 of 1977. However the court notes that the intention of the accused was not to waste the court's time. This to my mind reflects a sign of remorse.

[8] The nature of the Offence

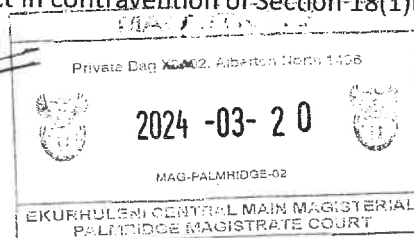
The accused accepted instructions and remuneration from the complainant. He failed to inform the complainant that he was not registered as such. However the amount charged for the services to be rendered was the amount of R5 000.00. This to my mind is the minimal charge by accused simply to get his financial affairs in order. He did not act with malice.

[9] Aggravating Circumstances

The State argued that the accused is charged with a serious offence. Being a professional, the accused was well aware of the legal requirements and failed to comply with same. I agree with the State's submissions herein.

The accused is not a lay person but rather an expert in the field of architectural work. He is well aware of the what is required of him to practise as a professional architect and failed to comply with same.

The defence arguments that the accused took on a single instruction is of no moment to this court. Had the accused not been reported, there stands a likelihood that he may have contributed to practise as a professional architect in contravention of Section 18(1)(a)(i) of Act 44 of 2000.



<sup>1</sup> S v Zinn 1969 (2) SA 537 (A) at 540G