

**NOTICE 373 OF 2008**



**CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CASE CCT 56/06**

**MANDLAKHE KHEHLA SHINGA**

**Applicant**

**versus**

**THE STATE**

**Respondent**

**and**

**THE SOCIETY OF ADVOCATES  
(PIETERMARITZBURG BAR)**

**Amicus Curiae**

**Case CCT 80/06**

**ANIEL O'CONNELL**

**First Applicant**

**ABDUL GAFFOOR GANIEF**

**Second Applicant**

**RONALD OLINCE**

**Third Applicant**

**GRAHAM GREENTREE**

**Fourth Applicant**

**RICARDO ADAMS**

**Fifth Applicant**

**RASHIED STAGGIE**

**Sixth Applicant**

**versus**

**THE STATE**

**Respondent**

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**ORDER OF COURT DATED 08 MARCH 2007**

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**YACOOB J:**

*Order*

[1] The following order is made:

1. Section 309(3A) of the Criminal Procedure Act 51 of 1977 is declared to be inconsistent with the Constitution and therefore invalid.
2. The proviso to subsection 309C(4)(c) including subsections 4(c)(i), (ii), (iii) and (iv) of the Criminal Procedure Act 51 of 1977 is declared to be inconsistent with the Constitution and invalid and is severed from section 309C(4)(c).
3. The words “a judge” and the proviso to subsection 309C(5)(a) of the Criminal Procedure Act 51 of 1977 are declared to be inconsistent with the Constitution and invalid and are severed from section 309C(5)(a).
4. The omission of the word “two judges” in subsection 309C(5)(a) of the Criminal Procedure Act 51 of 1977 is declared to be inconsistent with the Constitution and invalid.
5. The words “two judges” are to be read into subsection 309C(5)(a) of the Criminal Procedure Act 51 of 1977 in substitution of the words “a judge” that have been declared invalid and severed from that section in terms of paragraph 3 of this order. Subsection 309C(5)(a) now reads:  
  
“A petition contemplated in this section must be considered by two judges designated by the Judge President.”

6. Paragraphs 1-5 of this order do not apply to any criminal appeal from a Magistrates' Court to a High Court in which the judgment of the High Court has already been delivered as at the date of the judgment in this case or in which the judgment of the High Court is delivered on or before 22 March 2007.
7. The registrar of this Court is directed to draw this judgment to the attention of all Judges President of each High Court.
8. The registrar is also directed to send a copy of this judgment to the Legal Aid Board.

*S v Mandlakhe Khehla Shinga*

9. The application for confirmation in the case of *S v Mandlakhe Khehla Shinga*, Case No AR 969/04 (NPD), is upheld in part and dismissed in part as set out in paragraphs 1-6 of this order.
10. The order made by the High Court is set aside.
11. The appeal is referred back to the KwaZulu-Natal High Court to be finalised in accordance with this judgment.

*S v O'Connell and Others*

12. Paragraph (a) of the order in *S v O'Connell and Others* (CPD) Case No P15/05; P71/2005; P34/06; P 65/06 made on 6 November 2006, is upheld in part and dismissed in part as set out in paragraphs 2-6 of this order.