ZULU v THE PEOPLE (1968) ZR 92 (HC)
HIGH COURT
DOYLE AG CJ
13th SEPTEMBER 1968

Flynote and Headnote
[1]   **Courts - Magistrate - Power to reverse own decision.**
Once a magistrate has come to a final decision, he is *functus officio,* and any attempt by him to change that decision is *ultra vires*.
[2]   **Civil procedure - Review by court of own decision - Magistrate's power to reverse his own final decision.**
See [1] above.
Case cited:
(1)   *R v Essex Justices* [1962] 3 All ER 924.

Appellant in person.
Chigaga, State Advocate, for the respondent

Judgment
Doyle Ag CJ: Appellant was charged on six counts of theft by a public servant. When called upon to plead, he pleaded guilty to counts 2, 3, and 6, and not guilty to counts 1, 4, and 5. The public prosecutor then asked leave to withdraw under section 81 (a) of the Criminal Procedure Code. The learned magistrate granted the application and discharged appellant on counts 1, 4, and 5. Subsequently appellant changed his mind and asked for his plea to be taken again. No fresh charges were laid, but the learned magistrate purported to rescind his order and took the pleas again. The appellant pleaded guilty and was then sentenced to total of four years and nine months' I.H.L.
[1] [2] As is plain from, amongst other authorities, *R v Essex Justices* [1], once a magistrate has come to a final decision, be it conviction, acquittal or discharge, he is *functus officio*. The course the learned magistrate adopted in this case no doubt was convenient, but it was unfortunately *ultra vires*. As Lord Parker, L.C.J., in the case referred to, said at page 926: "They are, in my judgment, *functus officio* the moment they have announced their decision, however inconvenient the result may be."
I must perforce quash the convictions and sentences in counts 1, 2, and 5 as a nullity. The People are at liberty to start afresh on these counts if they so wish.
I consider that the sentences on the other three counts are not excessive. I dismiss the appeal on these counts.
Appeal dismissed.