

SOUTH AFRICA / JUDGMENT

Mapisa-Nqakula v S (CC33/2024)
[2025] ZAGPPHC 371 (4 April 2025)
[2025] ZAGPPHC 371

COURT
North Gauteng High Court, Pretoria

BEFORE
Mosopa

CASE / FILE NUMBER
CC33/2024

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IN
THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION,
PRETORIA
CASE NO: CC33/2024
(1)

REPORTABLE: YES/NO
(2)
OF INTEREST
TO OTHER JUDGES: YES/NO
(3)

REVISED: YES/NO
In
the matter between: -
NOSIVIWE
MAPISA-NQAKULA
APPLICANT
And
THE
STATE
RESPONDENT
In

re: THE
STATE
NOSIVIWE
MAPISA-NQAKULA
ACCUSED

JUDGMENT**MOSOPA, J**

- [1] This is an application for the full disclosure of the police docket, which includes “A”, “B” and “C” sections thereof. In addition to the disclosure of “A” section, the applicant seeks disclosure of audio recordings done at the time of search and seizure process at the applicant’s place. The applicant further seeks disclosure of the entire military docket under Dequar Military Police, CAS number 07/11/2017, which also includes “A”, “B” and “C” sections of such docket, pocketbook entries, notes of investigators of the above dockets, all witness statements and real evidence forming part of the investigation of the applicant.
- [2] The Dequar military docket relates to the criminal prosecution of Ms. Nombasa Ntsondwa-Ndlovu (“Nombasa”) in the Pretoria Specialised Commercial Crimes Court (“SCCC”), who the respondent intends to utilise as a section 204 witnesses in casu. Her fraud case has since been removed from the court’s roll following the defence bringing a successful section 342A of Act 51 of 1977, application against the prosecution.

BACKGROUND

- [3] The applicant is arraigned in this court with a total of 13 counts, which includes amongst others corruption in contravention of the Prevention and Combating of Corrupt Activities Act 12 of 2004, money laundering in contravention of the Prevention of Organised Crime Act 121 of 1998. The applicant is legally represented in these proceedings.
- [4] This matter served for the first time in this court on the 16 October 2024, when the applicant informed court that she intends to bring the application for the full disclosure of the abovementioned dockets. The matter was then adjourned to the 05 December 2024 for that purpose. On the 05 December 2024, the respondent was not ready to proceed as they were served very “late” with the applicant’s heads of arguments, and they needed an opportunity to familiarise themselves with the authorities referred to by the applicant and the matter was then adjourned to the 20 January 2025. Up until that stage, the respondent was represented by Advocate Manyathi together with Advocate Ramsamy.
- [5] On the 20 January 2025, the respondent was then represented by Advocate Louw together with Advocate Ramsamy and the following was placed on record:
- 5.1. that the respondent has discovered the entire “A” section of the police docket including documents that applicant was complaining that they have not discovered,
- 5.2. that the National Prosecuting Authority is undertaking to disclose the remainder of the documents,
- 5.3. that the parties will seat in a round-table to discuss which documents ought to be disclosed and which ought not to be disclosed, and

5.4. that if parties are not capable of agreeing on the nature of disclosure, that the matter be argued on the 28 March 2025.

[6] On the 28 March 2025, the applicant confirmed that the “A” and “B” sections of the police docket were received, except for the audio recordings of the search and seizure process, but it was later clarified that, it was disclosed to the applicant by way of a USB flash drive. The only issue which is left for determination is the disclosure of the entire “C” section of the police docket and the entire military docket of the Dequar Military Police. After hearing arguments on behalf of the parties, judgment was reserved.

[7] It appears that the respondent in the round-table discussions, requested the applicant to directly make their application for their request of the Dequar military docket to the SCCC. In their response, in the letter dated 17 March 2025 the Regional Head of the SCCU Pretoria, Advocate Mokgathe, said the following:

7.1. that at this stage they are unable to agree to your (applicant’s) request because the accused in our case, Nombasa Ntsondwa-Ndlovu has submitted representations to the National Director of Public Prosecutions and the latter’s decision is still being awaited, and

7.2. Once the decision has been taken by the National Director of Public Prosecutions, we will be able to advise you regarding our attitude to your request.

RELEVANT AUTHORITIES

[8] Section 35(3) of the Constitution provides,

“[35] (3) Every accused person has a right to a fair trial, which includes the right,

- a) to be informed of the charge with sufficient detail to answer to it,
- b) to have adequate time and facilities to prepare a defence, and
- i) to adduce and challenge evidence.”

[9] Section 32 of the Constitution provides,

“[32] (1) Everyone has the right of access to,

- a) any information held by the state, and
- b) any information that is held by another person and that is required for the exercise or protection of any rights.”

[10] Parliament enacted National legislation namely, the Promotion of Access to Information Act 2 of 2000 (“PAIA”) to give effect to a right declared under section 32(1) and the following provision is made;

“[40] The information officer of public body must refuse a request for access to a record of the body if the record is privileged from production in legal proceedings unless the person entitled to the privilege has waived the privilege.”

[11] In considering sections 32(1) and 35(3) of the Constitution, the following sections of the Constitution must be read in conjunction with them,

“[36] (1) The right in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including

- a) the nature of the right,
- b) the importance of the purpose of the limitation,
- c) the nature and extent of the limitation,
- d) the relation between the limitation and its purpose, and
- e) less restrictive means to achieve the purpose.”

[12] Section 39 provides,

“[39] (1) When interpreting the Bill of Rights, a court, tribunal or forum;

- a) must promote the values that underlie an open and democratic society based on human dignity, equality and freedom,
- b) must consider international law, and
- c) may consider foreign law.”

[13] The Criminal Procedure Act 51 of 1977 also makes provisions meant to assist an accused in preparation of his or her case and the following provisions are made:

“[87] (1) An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars or further particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered...”

Also, section 144(3)(a) which provides,

“[144] (3)(a) Where an attorney-general under section 75, 121(3)(b) or 122(2)(i) arraigns an accused for a summary trial in a superior court, the indictment shall be accompanied by a summary of the substantial

facts

of the case that, in the opinion of the attorney-general, are necessary to inform the accused of the allegations against him and that will not be prejudicial to the administration of justice or the security of the State, as well as a list of the names and address of the witness the attorney-general intends calling at the summary trial on behalf of the State.”

Reference to attorney-general and superior court in the subsection must be construed to mean the prosecution and the High Court respectively.

[14] In *National Director of Public Prosecutions v King* 2010 (2) SACR 146 (SCA) at 151 para 5; the Supreme Court of Appeal stated that:

“[5] There is no such thing as perfect justice - a system where an accused person should be shown every scintilla of information that might be useful to his defence - and discovery in criminal cases must always be a compromise. Fairness is not a one-way street conferring an unlimited right on an accused to demand the most favourable possible treatment but also requires fairness to the public as represented by the state. This does not mean that the accused's right should be subordinated to the public's interest in the protection and suppression of crime; however, the purpose of the fair trial provision is not to make it impracticable to conduct a prosecution. The fair trial right does not mean a predilection for technical niceties and ingenious legal stratagems, or to encourage preliminary litigation - a pervasive feature of white-collar crime cases in this country. To the contrary: courts should within the confines of fairness actively discourage preliminary litigation. Courts should further be aware that persons facing serious charges - and especially minimum sentences - have little inclination to co-operate in a process that may lead to their conviction and 'any new procedure can offer opportunities capable of exploitation to obstruct and delay'. One can add the tendency of such accused, instead of confronting the charge, of attacking the prosecution.”

[15] The Constitutional Court in *Shabalala and Others v Attorney – General of the Transvaal and Another* (CCT23/94) [1995] ZACC 12, dealing with the same topic, stated that:

“[37] Ordinarily, an accused person should be entitled to have access at least to the statements of prosecution witnesses but the prosecution may, in a particular case, be able to justify the denial of such access on the grounds that it is not justified for the purposes of a fair trial. What a fair trial might require in a particular case depends on the circumstances. The simplicity of the case, either on the law or on the facts or both; the degree of particularity furnished in the indictment or the summary of substantial facts in terms of section 144 of the Criminal Procedure Act; the particulars furnished pursuant to section 87 of the Criminal Procedure Act; the details of the charge read with such particulars in the Regional and District Courts, might be such as to justify the denial of such access. The accused may, however, be entitled to have access to the relevant parts of the police docket even in cases where the particularity furnished might be sufficient to enable the accused to understand the charge against him or her but, in the special

circumstances of a particular case, it might not enable the defence to prepare its own case sufficiently, or to properly exercise its right “to adduce and challenge evidence”; or to identify witnesses able to contradict the assertions made by the State witnesses; or to obtain evidence which might sufficiently impact upon the credibility and motives of the State witnesses during cross-examination; or to properly instruct expert witnesses to adduce evidence which might similarly detract from the probability and the veracity of the version to be deposed to by the State witnesses; or to focus properly on significant matters omitted by the State witnesses in their depositions; or to properly deal with the significance of matters deposed to by such witnesses in one statement and not in another or deposed to in a statement and not repeated in evidence; or to hesitations, contradictions and uncertainties manifest in a police statement but overtaken by confidence and dogmatism in viva voce testimony.”

[16] The Canadian Supreme Court in *R v Stinchombe* (1991) 3 SCR 326, when dealing with the court’s obligation to make disclosure to defence, stated that:

“The Crown has a legal duty to disclose all relevant information to the defence. The fruits of the investigation which are in its possession are not the property of the Crown for use in securing a conviction but the property of the public to be used to ensure that justice is done. The obligation to disclose is subject to a discretion with respect to the withholding of information and to the timing and manner of disclosure. Crown counsel has a duty to respect the rules of privilege and to protect the identity of informers. A discretion must also be exercised with respect to the relevance of information. The Crown’s discretion is reviewable by the trial judge, who should be guided by the general principle that information should not be withheld if there is a reasonable possibility that this will impair the right of the accused to make full answer and defence. The absolute withholding of information which is relevant to the defence can only be justified on the basis of the existence of a legal privilege which excludes the information from disclosure. This privilege is reviewable, however, on the ground that it is not a reasonable limit on the right to make full answer and defence in a particular case.”

[17] Also in *R v Eddy* 2014 ABQB 164 (CanLII) still dealing with disclosure more especially on the aspect of relevance, the following was stated:

“[42] Relevance is a critical threshold considering during document disclosure in the criminal trial context. Any document which is not relevant to the charges against Ms. Eddy should not be disclosed. Though many defendants may perhaps seek disclosure of every document in a case, relevant or not, the disclosure of irrelevant information can itself constitute an abuse of process.”

[18] United Kingdom House of Lords decision, in *Regina v H* [2004] UKHL 3, the following was stated:

“[18] Circumstances may arise in which material held by the prosecution and tending to undermine the prosecution or assist the defence cannot be disclosed to the defence, fully or even at all, without the risk of serious prejudice to an important public interest. The public interest most regularly engaged is that in the effective investigation and prosecution of serious crime, which may involve resort to informers and under-cover agents, or the use of scientific or operational techniques (such as surveillance) which cannot be disclosed without exposing individuals to the risk of personal injury or jeopardising the

success of future operations. In such circumstances some derogation from the golden rule of full disclosure may be justified but such derogation must always be the minimum derogation necessary to protect the public interest in question and must never imperil the overall fairness of the trial.”

DISCUSSION

[19] Section “C” of the police docket is the investigation diary which contains record of the investigation process. Section “C” inter alia contains a chronological record of the work done on the case, it serves as an index to all statements and documents contained in the case docket. It further contains instructions to the Investigating officer.

[20] The onus is on the respondent to prove why disclosure should be refused. In *Shabalala* (supra) at para 52, the following was stated:

“[52] In such circumstances it might be proper to protect the disclosure of witnesses’ statements, and the State might succeed in

establishing that such a restriction is reasonable, justifiable in an open and democratic society based on freedom and equality and that it is necessary and does not negate the essential content of a right to a fair trial. Even in such cases, however, it does not follow that the disclosure of the statements concerned must always be withheld if there is a risk that the accused would not enjoy a fair trial. The fair trial requirement is fundamental. The court in each case would have to exercise a proper discretion balancing the accused’s need for a fair trial against the legitimate interests of the State in enhancing and protecting the ends of justice.”

[21] What the above denotes is that the right to disclosure is not absolute. (see *NDPP v King* (supra))

[22] The basis on which the respondent resist to disclose the entire Dequar military docket which comprises sections “A”, “B” and “C”, is the fact that the accused Nombasa in that matter has made representations to the National Director of Public Prosecutions and the matter has not yet been finalised. In argument, it was further contended by the respondent that, the military docket cannot be disclosed at this stage as there are further ongoing investigations.

[23] What I failed to understand is why was the docket disclosed to the accused in that matter and why the respondent cannot disclose to the applicant what has already been disclosed to the accused in that matter. Neither of the parties enlightened me as to what was disclosed in the military docket to Nombasa but my understanding of the respondent’s position is that they are not refusing to disclose that docket, even though Mr. Louw tried to contend that it is with another unit in the prosecution, not their unit and that the applicant will be informed of the state’s attitude after the process they are currently undergoing is finalised.

- [24] That is understandable looking at the nature of the offense that Nombasa is facing in that matter and that the respondent at this stage wants to guard against interference in the investigation. It is trite that a police docket is normally disclosed when investigations are finalised in the matter, unless a further investigation is necessitated even if the trial has commenced.
- [25] The matter in the SCCC wherein Nombasa is the accused was struck from the roll on the 16 January 2024, and it is now a period of approximately 1 year and 2 months since such decision. What is holding back the finalisation of the representation is unknown at this stage.
- [26] In my considered view, the disclosure of that docket is relevant for the applicant to prepare for her case in full answer and defence, considering the fact that the respondent intends on using Nombasa as a section 204 witness. No privilege at this stage is claimed by the respondent against disclosure. However, it will be illogical to order the state at this stage to disclose that Military docket to the applicant, given what is stated above. Equally it will be illogical by not putting the respondent on terms to report on the progress made in the matter, without disclosing in full the nature of the investigation the state needs to embark on, looking at the fact that the matter was struck off the roll since 16 January 2024. Therefore, at this stage no order can be made to either disclose or not disclose, the military docket.
- [27] The applicant also seeks the disclosure of diary entries, notes of the police and/or Investigators. The respondent is resisting such disclosure based on privilege, confidentiality and the fact that they are of no relevance to the applicant's fair trial rights. Further, that they do not constitute exculpatory evidence in favour of the applicant and are also not incriminating against the applicant. It is as a result that they are not relevant for the applicant in her trial matter.
- [28] In argument, this aspect was not dealt with at length by the parties and I am not convinced that the applicant made a proper case for such disclosure. The applicant falls short of explaining how relevant such disclosure is to her case, and the effect it will have to her fair trial rights.
- [29] The applicant in her founding affidavit when tabling factual basis for the disclosure of "C" section of the police docket, averred that;
- 29.1. there is a difference between what was reported in the media about the state's brief and the affidavits disclosed by the state. Meaning that there might be a possibility of witnesses changing their statements. It is for that purpose that "C" section of the docket can clarify that aspect,
- 29.2. the answer to the circumstances under which Nombasa is made a section 204 witness can be found in the section "C" of the docket,

29.3. statements were made long before the docket was opened, some six months prior and as such disclosure of section “C” is relevant to assist the applicant why was such done,

29.4. statements are filed in the “A” section out of sequence and the answer, and its relevance can be in the “C” section,

29.5. statements which are of no relevance to the applicant’s case are disclosed in the “A” section and the “C” section is best suited to explain why such statements are in the police docket,

29.6. the content of some statements disclosed is made up entirely of hearsay evidence, is of a single witness with no corroborating evidence, and whether Nombasa made her statement freely and voluntarily, and

29.7. there is no disclosure of interviews conducted in terms of section 28 of the National Prosecuting Authority Act.

[30] The respondent in its answering affidavit, averred that;

30.1. The “C” section of the docket is the investigation diary and does not contain evidence. It contains privileged and confidential information pertaining to the investigation. In the context of the averments made throughout the applicants founding affidavit, nowhere is a case made that disclosure of the “C” section is relevant to the applicant’s fair trial rights.

30.2. the entire application is premised on pinpointing what the applicant regards as weaknesses and shortcomings in the state’s case. That is not the jurisprudential basis for an application of this nature. The state need only disclose evidence that is material and relevant, and the applicant is not entitled to information that is purely speculative or conjectural, and

30.3. the “B” and “C” section of the docket have no relevance to the applicant’s fair trial rights. They do not constitute exculpatory information in favour of the applicant and are also not incriminating against her.

[31] Also, what is important is the undertaking made by Mr Louw on behalf of the respondent on the 20 January 2025, that,

“...The stance taken today is in the very best interest of justice and to expediate the matter, as best and as fast we can. I confirm what my learned colleague has said, the plan is to meet within the next three weeks in a round-table discussion as to what can be disclosed and what cannot be disclosed. Even on the “B” and “C” sections, although the state errs (sic) on the side of disclosure, in conclusion there may be a couple of documents that is not discoverable, but we will decide that and on the return date the court will have a good idea as to what is at issue and what, if anything...”

[32] Despite this undertaking, when the matter was heard, Mr Louw was against disclosure of the “C” section of the docket. However, on a proper consideration, it is clear that the respondent did not undertake to disclose the entire “C” section of the docket to the applicant as the respondent was of the view that there maybe documents which are not discoverable.

[33] In argument, the respondent was criticised for not making a factual basis in their answering affidavit of their refusal to disclose the “C” section to the applicant. Further, that the argument presented that statements were obtained in terms of section 28 of the National Prosecuting Authority Act, which explains why such statements were obtained long before the opening of the police docket, is not stated in their answering affidavit and therefore, such argument is outside court papers.

[34] The respondent explained in the answering affidavit why statements were obtained long before the docket was opened, but for a different reason than what Mr Louw orally contended. What was said in the answering affidavit is the following;

“Investigations were conducted lawfully prior to registering a police docket at Lyttelton Police Station in March 2024. The reason for not registering a docket earlier was because of the sensitivity of the matter and to prevent it becoming public knowledge, causing media and public sensationalism and speculation. Once a case is registered on the SAPS CAS System, it becomes public knowledge. The fact that the docket was not registered immediately is neither irregular or improper and it happens frequently for various reasons, but mainly to protect the sensitivity of the investigation.”

[35] The applicant contended that statements disclosed in “A” section of the docket are hearsay in nature, some irrelevant to the applicant’s case, some are of a single witness and no evidence of corroboration supplied. In my considered view, those are the aspects that can be dealt with by the applicant at the trial stage. I fail to find the relevance of the disclosure of the “C” section on the contention of the applicant. At this stage, admissibility of such evidence plays no role.

[36] Mr Kerr-Phillips contended that relevancy can be found in the trial-within-a-trial that will be conducted determining their admissibility and I fully agree with him, hence, my view that it is an aspect that will be dealt with at trial stage.

[37] It is trite that the accused must be protected against manipulation of evidence by the state. To alleviate such fear, a disclosure ought to be made. The fact that statements are not filed in a chronological manner and out of sequence, because a statement which was for example obtained in May is filed before a statement obtained in January, in my view is speculative and cannot amount to manipulation. In all the disclosed statements, it is only one witness, Nombasa who made a supplementary statement to her original statement. No criticism is levelled by the applicant that she changed or adapted her version to suit the state’s

case.

[38] The respondent denies ever making the state’s brief available to the media and it is one of the reasons why after obtaining statements from witnesses who could not immediately open a police docket for fear of media publicity, as once the docket is opened it remains in the public domain. The applicant did not find it important to traverse such an averment by deposing to a replying affidavit and as such, it remains an admitted averment on the papers.

[39] Nombasa is not an accused in this matter, but an accused in the SCCC matter which is currently struck off the court's roll. The respondent contends that a preamble used in her statement in this matter, is gleaned from the provisions of section 204 of the Act 51 of 1977. No threat was made to her and that her statement was made freely and voluntarily. The respondent further states in their affidavit that it was Nombasa's legal representatives who approached the NPA in April 2023 to report the alleged corruption against the applicant. Her first statement was prepared by her counsel and the investigating team, together with

Nombasa and her counsel went through that statement. Again, the applicant deemed it fit not respond to such averments in her replying

affidavit.

[40] It cannot therefore be correct that Nombasa was threatened to make a statement based on the above. It is also not correct that the circumstances under which Nombasa made a statement as a section 204 witness, can be found in the disclosure of section "C" of the police docket.

[41] It was further contended by the applicant that there was no disclosure made pertaining to section 205 applications and the only reason for such can be found in the "C" section of the docket.

[42] The respondent at length in its answering affidavit explained the operations of the Investigating Directorate Against Corruption ("IDAC") which is the unit in the National Prosecuting Authority responsible for the prosecution of the applicant. Further that, summons issued in terms of section 28(6) and (7) of the National Prosecuting Authority Act, is akin to a subpoena in terms of section 205 of Act 51 of 1977.

[43] For completeness, I deem it prudent to state the provisions of section 28(6) and (7), which makes the following provisions;

"[28] (6) For the purposes of an investigation –

- (a) the Investigating Director may summon any person who is believed to be able to furnish any information on the subject of the investigation or to have in his or her possession or under his or her control any book, document or other object relating to that subject, to appear before the Investigating Director at a time and place specified in the summons, to be questioned or to produce that book, document or other object,
- (b) the Investigating Director or a person designated by him or her may question that person, under oath or affirmation administered by the Investigating Director, and examine or retain for further examination or for safe custody such a book, document or other object: Provided that any person from whom a book or document has been taken under this section may, as long as it is in the possession of the Investigating Director, at his or her request be allowed, at his or her own expense and under the supervision of the Investigating Director, to make copies thereof or to take extracts therefrom at any reasonable time.

- (7) A summons referred to in subsection (6) shall-
- (a) be in the prescribed form,
 - (b) contain particulars of the matter in connection with which the person concerned is required to appear before the Investigating Director,
 - (c) be signed by the Investigating Director or a person authorized by him or her, and
 - (d) be served in the prescribed manner.”

[44] Section 205 of the Act 51 of 1977, makes the following provision;

“[205] (1) A judge of a High Court, a regional court magistrate or a magistrate may, subject to the provisions of subsection (4) and section 15 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, upon the request of a Director of Public Prosecutions or a public prosecutor authorized thereto in writing by the Director of Public Prosecutions, require the attendance before him or her or any other judge, regional court magistrate or magistrate, for examination by the Director of Public Prosecutions or the public prosecutor authorized thereto in writing by the Director of Public Prosecutions, of any person who is likely to give material or relevant information as to any alleged offence, whether or not it is known by whom the offence was committed...”

[45] What is common, in both provisions is that a person can be compelled to make a statement under oath. The difference is that the National Prosecuting Authority Act, gives the Investigating Director powers to summons any person, whereas the Criminal Procedure Act, gives the courts power to do so at the request of a Director of Public Prosecutions or a Public Prosecutor. Both provisions are meant to subpoena evidence.

[46] It is because of summons served on the applicant, that the respondent contended that the applicant could prepare her own index and chronology of the investigations in the matter and there is no need to disclose the “C” section of the police docket for such purpose.

[47] The applicant referred this court to standing order of the police pertaining to docket management which is the “C” section of the police docket, which states that;

“(1) An investigation diary must be maintained in such a matter that it-

- (a) contains a complete chronological record of all work done in the case,
- (b) serves as an index to all statements and documents contained in the case docket,
- (c) enables an inspecting officer for follow the investigation without difficulty and to satisfy himself or herself that all reasonable steps have been taken to bring the case the successful conclusion,
- (d) serves as a proper and convenient medium for the conveyance of instructions by an inspecting officer or member as well as requests

by the prosecutor to an investigator,

- (e) serves as reference in court should any aspect of the investigation process be brought into question,
- (f) serves as a cross reference or supporting document to the investigating officer's pocket book (SAPS 206) and the vehicle register (SAPS 132(b))."

[48] The main contention by the applicant, on a proper understanding of the applicant's case, is not to challenge the conduct of the investigation in toto, but for the fact of the sequence of statements and chronology.

[49] The court in *Panayiotou v S and Others* [2016] ZAECPHC 50, when dealing with this aspect stated that;

"[34] I have already referred to the correspondence addressed to the second respondent in which the applicant sought disclosure of the C section of the case docket. As indicated the reasons for seeking access are set out in some detail. The correspondence pertinently refers to the fact that the applicant intends to challenge the conduct of the investigation from its outset, in order to establish that evidence allegedly implicating him is, by reason of the manner in which it was obtained to be excluded at trial. In setting this out in the correspondence the applicant has, in my view, signaled an intention to bring into question aspects of the police investigation. The merits of the challenge is of course a matter for the trial court. In the context of a request for access to the C section of the docket however, it must be accepted that the applicant has set out, at least prima facie, an entitlement to such access on the basis that it is required in order for him to be able to adduce and challenge evidence to be presented at trial. In the absence of a justified ground for non-disclosure raised by the second respondent, the principle in Shabalala must apply and, accordingly, in my view, access to the C section of the investigation docket ought to be granted."

[50] In casu, the applicant adopted a different approach and only raised an issue of the statements filed out of sequence. The applicant does not state that the disclosure of the "C" section is meant to assist her to adduce and challenge evidence to be presented at trial.

[51] Issues pertaining to evidence of a single witness as already stated, cautionary rules, corroborative evidence, hearsay evidence, relevancy of evidence relied upon, expert opinion not provided by a qualified expert, admissibility of evidence and the issue of search procedures, those are issues in my considered view that can be dealt with by the applicant in her trial matter and are of no relevance at this stage.

[52] Section 27 of the National Prosecuting Authority Act provides protection against change in statements by witnesses and/or anything suspicious done in the investigation of the case and makes the following provision;

“[27] If any person has reasonable grounds to suspect that a specified offence has been or is being committed or that an attempt has been or is being made to commit such an offence, he or she may report the matter in question to the head of an Investigating Directorate by means of an affidavit or affirmed declaration specifying-

- (a) the nature of the suspicion;
- (b) the grounds on which the suspicion is based; and
- (c) all other relevant information known to the declarant.”

[53] When the applicant was served with the indictment, she was also served with the summary of substantial facts in terms of section 144(3)(a) of Act 51 of 1977 which details the alleged commission of the offences she is arraigned with. This is meant to equip the applicant of the type of case the state is going to present against her, for her to prepare her defence and to adduce and challenge evidence. The applicant is further afforded an opportunity to do so by the provisions of section 87 of Act 51 of 1977, a right which the applicant has to still exercise.

[54] In *Wolf v S* (16/2022) [2023] ZAECQBHC 62, para 24-25, the following was stated;

“[24] What remains a challenge is to resolve situations, such as the present, where access to documents is based on their perceived helpfulness, or relevance, to the defence. A useful exposition of the applicable principles is contained in the judgment of Goosen J in this Division in Panayiotou. That case also considered the implications of both Shabalala and King for access to the ‘B’ and ‘C’ sections of the case docket. The learned judge applied what may be reformulated as the following test, which I intend to apply in determining the matter:

- i) Has the applicant established prima facie facts which point to the contents of sections ‘B’ and ‘C’ of the case docket as being relevant in the sense required by the King matter?
 - a. If not, access to the documents should be refused.
- ii) If so, is there a justified ground for non-disclosure raised by the State?
 - a. If not, access to the documents should be ordered.

[25] With reference to the first leg, it is apparent that the notion of litigation privilege in criminal cases, notwithstanding its limitation by Shabalala, still extends to irrelevant documents or information...”

[55] The court must guard against the risk that may lead to impeding the applicant’s case and the ends of proper administration of justice. The applicant failed to show the risk of such impediment and in my considered view, failed to establish prima facie facts which indicates the relevance of the disclosure of the “C” section of the police docket.

ORDER

[56] In the result, the following order is made;

1. The respondent is ordered to provide the applicant with progress report on the representations made by Nombasa Ntsondwa-Ndlovu in the Pretoria Specialised Commercial Crimes Court, pertaining to Dequar Military Police Docket, CAS number 07/11/2017,
2. Application for the disclosure of “C” section (Investigation Diary) of the police docket, CAS number Lyttelton 176/03/2024, in this matter to the applicant, is hereby refused.

M.J. MOSOPA

JUDGE OF THE HIGH COURT

GAUTENG DIVISION, PRETORIA

Date of hearing: 28 March 2025

Date of judgment: 04 April 2025

APPEARANCES

For the Applicant : Adv R.S. Wills SC together with Adv G.E. Ker-Phillips

Instructed by:

Stephen G. May Attorney

For the Respondent: Adv P.J. Louw together with Adv D Ramsamy

Instructed by:

The Director of Public Prosecutions

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