

SOUTH AFRICA / JUDGMENT

Reggio and Another v Regional Magistrate, Belville Specialised Commercial Crimes Court (Mrs Sonnenberg) and Others (18554/2023) [2025] ZAWCHC 50 (14 February 2025)

[2025] ZAWCHC 50**COURT**

Western Cape High Court, Cape Town

BEFORE

Mthimunye, D Thulare

CASE / FILE NUMBER

18554/2023

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IN THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION, CAPE TOWN

Case no: 18554/2023

REPORTABLE

JUDGMENT

In the matter between:

LUCA REGGIO First Applicant MICHELA MORONI Second Applicant And REGIONAL
MAGISTRATE, BELLVILLE SPECIALISED COMMERCIAL CRIMES COURT (MRS SONNENBERG) &
1 OTHER First Respondent DIRECTOR OF PUBLIC PROSECUTIONS, WESTERN CAPE c/o THE
SENIOR PUBLIC PROSECUTOR BELLVILLE SPECIALISED COMMERCIAL CRIMES COURT Second
Respondent

Date of hearing: 25 October 2024

JUDGMENT DELIVERED ON 14 FEBRUARY 2025

MTHIMUNYE, AJ

Introduction

[1] This is a review of the Magistrate's decision given in terms of section 342A of the Criminal Procedure Act 51 of 1977 ("CPA"). The Applicants on review sought the following relief:

“1. Condoning the late filing of the application by the First and Second Applicants in the event that it is deemed not to have been filed within a reasonable time;

2. Reviewing and setting aside the judgment of the First Respondent given on 12 July 2023 in respect of an application brought by the

First and Second Applicants in terms of section 342A(3)(c) of the Criminal Procedure Act 51 of 1977, as amended, under case no SH7/16/2021 in the Bellville Specialised Commercial Crimes Court;

3. Granting the First and Second Applicants application in terms of section 342A(3)(c) of the Criminal Procedure Act 51 of 1977, as amended;
4. Alternatively, to paragraph 3 above, to remit the matter to the court a quo for further hearing;
5. Setting aside the First Respondent’s decision to dispose with a pre-trial conference and setting matter down for trial;
6. That such further and/or alternative relief as may be appropriate be granted to the Applicants;
7. Directing the First and Second Respondent to pay the costs of this application.”

[2] The alleged basis of the review highlights the suggestion that the Magistrate failed to consider the factors in section 342A (2) of the CPA during her enquiry, and thus could not have made the finding in terms of section 342A (3) of the CPA. This apparently related to the consideration of the Applicants application on 12 July 2023 not to strike the matter from the roll.

[3] The matter was opposed by the Second Respondent who sought that the application be dismissed with costs.

[4] To place the matter in context, a concise summary of the proceedings leading to the section 342A application in terms of the CPA is as follows:

[5] The First and the Second Applicants, both Italian citizens, were charged with nine counts of fraud, theft and money laundering. It was alleged that the First Applicant between 2014 and 2019, transferred the total amount of R4 677 146 (four million six hundred and seventy-seven thousand one hundred and forty-six Rand) from the complainant, Fila Catorama SA (Pty) Ltd, banking portal without permission from the complainant’s board of directors. The First Applicant was employed as the managing director of Fila SA from approximately August 2013 to October 2019. The First Applicant, in the role of managing director, had complete access to Fila SA’s management software, Parrot ERP software, and the company server, which housed all financial, commercial, marketing, and other business-related information and files of the subsidiary. In 2019, he was dismissed from his position as managing director of Fila SA by Fila Group.

- [6] The First Applicant now allege that due to his dismissal, he has been denied access to his corporate emails, correspondence, files, and all financial, marketing and other business-related information.

Litigation history

- [7] On 8 June 2022, the Applicants made their first appearance in Bellville Commercial Court. The matter was subsequently postponed to 8 July 2022 to allow the Applicants' attorney to obtain the contents of the docket.
- [8] On 8 July 2022, it transpired from the record that only the First Applicant was before court, and a warrant of arrest was issued, to be held over until 5 August 2022 for the Second Applicant.
- [9] On 5 August 2022, both Applicants were before court. Prosecutor placed on record that they had provided the contents to the Applicants. The attorney for applicants for Applicants' subsequently requested a further postponement to 15 September 2022 in order to secure further and detailed particulars.
- [10] On 15 September, the prosecutor informed the court that most of the contents of the docket had been provided to the Applicants, and that the outstanding documents would be provided to the Applicants within that week. The Applicants' attorney on the other hand had requested the matter be postponed for approximately three weeks to allow time for the appointment of a third party to review the bank statements provided by the prosecutor and to obtain and index for the docket. Subsequently, the matter was postponed to 7 October 2022.
- [11] On 7 October 2022, the prosecutor placed on record that an index to the docket was provided to the Applicants and that they were informally approached by the Applicants for additional documents. The prosecutor requested that the matter be postponed for trial and for a pre-trial conference to be held, resulting in the Applicants' attorney seeking a further postponement in order to consult with their auditors, as they received the docket information later than they expected.
- [12] As a result, the magistrate postponed the matter to 2 December 2022 for the aforementioned issues to be resolved. Notwithstanding the postponement on 2 December 2022, the prosecutor informed the court that since 7 October 2022, they had received two requests from the Applicants for further and better particulars. They have since responded to the first request and will address the second request within a week. The magistrate subsequently postponed the matter to 7 February 2023, allowing the State time to respond to the Applicants' request for further and better further particulars, to provide Applicants with the auditor's report and to arrange for a pre-trial conference to be held.

- [13] On 7 February 2023, the prosecutor placed on record that they had provided the outstanding documents to the Applicants, and that they are prepared to move forward with a pre-trial conference. The Applicants' attorney confirmed that they received the said documents and requested a postponement to peruse the documents and to take further instructions. Subsequently, the matter was postponed to 6 March 2023.
- [14] On 6 March 2023, the prosecutor again placed on record that the Applicants were in receipt outstanding documents, however, the Applicants wanted access to a memory stick which they claimed were blocked.
- [15] Consequently, the Applicants' attorney informed the court of their intention to formally request further particulars in terms of section 87 of the Criminal Procedure Act 51 of 1977. Whereupon the prosecutor informed the court that they will respond within seven days after receipt of the application by the Applicants.

Subsequently, the matter was postponed to 11 April 2023 for both the Applicants to submit their application in terms of section 87 and for the prosecutor to respond to the Applicants' application.

- [16] On 11 April 2023, the prosecutor requested a three-week indulgence from the court, citing their inability to respond to the section 87 application due to the delayed response of the complainant who was in Italy. Consequently, the matter was postponed to 17 May 2023.
- [17] On 17 May 2023, the prosecutor notified the magistrate, that they have responded to the Applicants' section 87 application. However, the Applicants indicated that certain statements, or information remain unclear or remained outstanding. The prosecutor requested a postponement to ensure that all the required information was provided to the Applicants. The Applicants then gave notice in terms of section 342A of the Criminal Procedure Act 51 of 1977, that an enquiry be held regarding the delay obtaining the outstanding information from the prosecutor. Subsequently, the

matter was postponed to 19 June 2023, allowing the State to furnish the Applicant with the outstanding documents.

- [18] On 19 June 2023, the prosecutor placed on record that while they have not responded to the section 87 application in writing, they have complied with the provisions of section 87 and have provided the Applicants with all the necessary documents that they have requested. They have also taken additional steps by inviting the Applicants to peruse the contents of the police docket, as a method to ensure that the Applicants had received everything that was in the police docket. In amplification, the prosecutor placed on record that the complainant also filed an affidavit stating that she was not in possession of the information sought by the Applicants. Furthermore, the Applicants were placed in possession of the complainant's affidavit and supplementary documents.

[19] The Applicants in response then brought an application in terms of section 342A of the CPA on the following grounds:

19.1. Matter had been on the roll for one year and four months.

19.2. Applicants requested the documents long ago.

19.3. Due to the First Applicant being summarily dismissed in 2019, he was barred from everything (computers, documentation etc) which he needs to prove that he acted legally.

19.4. The Applicants have a constitutional right in terms of section 35 of the Constitution to the outstanding documents.

19.5. Their request is not for the docket contents but for information, that does not form part of the police docket, as the State would be unable to prosecute the Applicants without all the evidence. (underlined for emphasis)

19.6. The court to enquire whether there was an unreasonable delay and to refuse the State a further postponement.

Section 342A Application

[20] The Applicant, in his address to the magistrate with regard to the section 342A enquiry, conceded that they were in possession of the contents of the docket and that the information they were seeking was not included in the docket, nor was it in the possession of the prosecution. They believed that the State would be unable to prosecute their case in the absence of the crucial information.

[21] In addition, they submitted that it was the State's responsibility to demonstrate that the First Applicant lacked consent to act on behalf of the complainant. They referred the court to the case of *S v Doorewaard and Another* 2021 (1) SACR 235 (SCA) and submitted that the judge held that the prosecutor must place credible evidence before the court. They conceded that the facts in the present matter are distinguishable. In addition, they submitted that the content of the docket contains exculpatory evidence, amounting to nothing, and does not assist them in proving the accused's innocence. They further asserted that they were not provided with all the relevant documents, including emails, budget planning of the new year etc, and thus sought the court to conduct an enquiry to determine whether there was an unreasonable delay in the matter. They requested that in the event the court found there to be an unreasonable delay, to refuse the State a further postponement and strike the matter from the roll.

[22] The prosecutor, in response to the Applicant's Section 342A application, submitted to the magistrate that there was no undue delay of the matter on the part of the State. Furthermore, that the delay was attributed to the Applicants in that they requested various documents on different occasions. Furthermore, that since 5 August 2022 to 19 June 2023, the State received the same request for further particulars, despite them informing the Applicants that they have already been supplied with all the necessary documents that was

in the state's possession.

- [23] The prosecutor further submitted that despite providing the Applicants with an affidavit from the complainant, which indicated that she was not in possession of the required documents, the Applicants persisted with their request for the outstanding documents. Furthermore, that the evidence that the State would be relying on to prove that the First Applicant was not entitled to salary increases consist of an affidavit along with two financial statements prepared by an independent auditor's firm which is filed under sections 3 and 4 of the police dockets. Furthermore, that the State had also provided the Applicants with audit reports on the budget and minutes.
- [24] The prosecutor further submitted that the application in terms of section 87 is being abused by the Applicants as a means to delay the commencement of the trial. Furthermore, in terms of section 84 of the CPA, the State is only required to provide the Applicants with the essentials of the charge, namely fraud, theft, and money laundering which they have complied with by providing Applicant with a detailed charge sheet to enable the Applicant to plead to the charges.
- [25] The prosecutor further submitted that the State is unable to provide the accused with resources they do not possess. . Furthermore, that they only provided the A section of the police docket to the accused and not the B and C sections of the docket as it was never requested by the accused. Additionally, the National Prosecuting Authority may prosecute any accused person on available evidence. The prosecutor referred the court to the case of National Director of Public Prosecutions v King 2010 (2) SACR 146 at 151, noting that while an accused has the right to access the content in the docket, this does not extend to an unrestricted right to all information held by the prosecution.
- [26] After considering the submissions from both parties, the magistrate chose not to make a ruling on the section 342A application. Instead, the magistrate referenced the Chief Justice Norms and Standards from 14 February 2014 and instructed the parties to convene a meeting to identify any outstanding documents. They are to return to court on 12 July 2023 for further discussion.
- [27] Upon resuming of the matter on 12 July 2023, following the directed meeting, the prosecutor again placed on record that they were not in possession of the documents sought by the accused, and requested the court to give further directives regarding the matter. The prosecutor also placed on record that they were not requesting a postponement of the matter, but rather that it be postponed for trial, as they have a prima facie case against the Applicants and are ready to proceed to trial. In light of the prosecutor's submissions, the Applicants implored the court to rule on their application and strike the matter from the roll in terms of section 342A (3) (c) of the CPA.

- [28] The magistrate in her finding, determined that the State did not delay the progress in the matter and nor was the State in possession of the information sought by the Applicants. The request by the Applicants to have the matter struck from roll was accordingly refused by the magistrate. Accordingly, the matter was postponed to 17; 18 and 19 January 2024 for plea and trial.
- [29] Consequently, the Applicant approach this court to review and set aside the decision by the magistrate not to strike the matter from the roll in terms of section 342A (3)(c) of the CPA. I now turn to deal with the review application.

Review proceedings in Magistrate's Courts

- [30] Section 22 of the Superior Courts Act 10 of 2023 deals with the grounds upon which the proceedings of a Magistrate's Court may be reviewed. Rule 53 lays down the procedure to be followed when applying to the High Court to have a decision made by a Magistrate from the lower court to be reviewed.
- [31] Generally a High Court will be reluctant to review incomplete proceedings from a Magistrate's Court, unless the review Applicant can show that he/she will suffer a great injustice or that justice would not be achieved through any other means than the review process. It is trite that where a complaint arises from the outcome of proceedings in a Magistrate's Court, the appropriate course of action is to file an appeal.
- [32] Where review proceedings are brought, it is launched in terms of section 22 of the Superior Courts Act 10 of 2013, which reads as follows:

"22 Grounds for review of proceedings of Magistrates' Court [sic]

- (1) The grounds upon which the proceedings of any Magistrates' [sic] Court may be brought under review before a court of a Division are –
 - (a) absence of jurisdiction on the part of the court;
 - (b) interest in the cause, bias, malice or corruption on the part of the presiding judicial officer;
 - (c) gross irregularity in the proceedings; and
 - (d) the admission of inadmissible or incompetent evidence or the rejection of admissible or incompetent evidence
- (2) This section does not affect the provisions of any other law relating to the review proceedings in the Magistrate's Court."

Issues

- [33] This Court must determine the following issues:

- (a) Whether the Magistrate failing to consider the factors enumerated in section 342A (2) of the Criminal Procedure Act 51 of 1977 (“CPA”) amounts to a gross irregularity.
- (b) Whether the magistrate’s finding that there was no unreasonable delay by the state and consequently postponing matter for trial without a pre-trial conference constitutes an irregularity or misdirection by the magistrate.

In this Court

Applicant’s

Submissions

- [34] Mr Smith on behalf of the Applicants asserted that that the magistrate seems to have forgotten that on 12 July 2023, that the Applicants had brought an application in terms of section 342A(3)(c) on 19 June 2023, for the matter to be struck from the roll. The basis for his submission lies in the magistrate’s response indicating that there was no application. According to him the magistrate appeared to have been of the view that the Applicants’ application was in terms of section 342A(3)(a) namely to refuse a further postponement in the proceedings. According to him the magistrate mistakenly assumed that the round table meeting on 19 June 2023, addressed aspects normally dealt with in a pre-trial conference. He conceded that the complainant was in possession of the information that the Applicants had requested, rather than the Second Respondent, and that it was also absent from the police docket. He asserted that due to a lack of information held by the complainant, the case is not ready for trial and should be struck from the roll. Mr Smith further asserted that the magistrate placed undue emphasis on the fact that the Applicants have neither made representations to the National Prosecuting Authority to have the matter withdrawn, nor applied for the stay of prosecution. In addition, he submitted that the magistrate misrepresented the case of *S v Boesak* in that the Applicants are not relying on the State to close any “loopholes and escape”.
- [35] Furthermore, that the magistrate misinterpreted the Applicants’ counsel’s argument concerning the lack of proof available to link the Applicants. Mr. Smith contends that the magistrate committed a significant irregularity by failing to properly conduct an inquiry and to take into account the factors outlined in section 342A (2) of the CPA.

Second Respondent’s submissions

- [36] Mr Serato on behalf of the Respondents submitted that the Applicants had failed to demonstrate that the magistrate committed a gross irregularity. The allegations advanced by the Applicants are based on speculation, and as a result they have not shown that they will be suffering any prejudice by not being granted access to the information that the state is not relying on and furthermore do not have in their possession. In addition, Mr Serato submitted that the evidence presented by the State is based on an affidavit deposed to by a witness, Mr Kolombo, who states under oath that his signature was fraudulently used to

increase payments to the First Applicant. This statement has been provided to the Applicants.

- [39] Mr Serato further submitted that the norms and standards of the regional court have been complied with in relation to pre-trial conference. This is evidenced by the round table discussion that the parties had where all the issues were ventilated concerning whether the matter is trial ready. According to him, to prevent further delay. They addressed and advised the court that they have provided the Applicants with all the documents / information on which their case is based and are ready to set a trial date. Mr Serato further submitted that after the magistrate considered all the factors as set out in section 342A
- (2) it was determined that there was an unreasonable delay, leading to the refusal of a further postponement;
- [40] Mr Serato asserted that there are no exceptional circumstances, as stated in the matter of Walhaus, for this court to intervene at this stage of the proceedings, as that will result in dealing with this case in a piecemeal fashion, whereas the matter can be dealt with at appeal. He requested the court to dismiss the Applicants application for review of the magistrate's proceedings.

Applicable Legal Principles

- [41] Section 342A of the CPA reads as follows:

“342A Unreasonable delays in trials

- (1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness.
- (2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:
- (a) The duration of the delay;
 - (b) the reasons advanced for the delay;
 - (c) whether any person could be blamed for the delay;
 - (d) the effect of the delay on the personal circumstances of the accused and the witnesses;
 - (e) the seriousness, extent or complexity of the charge or charges;
 - (f) actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;

- (g) the effect of the delay on the administration of justice;
- (h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;
- (i) any other factor which in the opinion of the court ought to have been taken into account;
- (3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-
 - (a) refusing a further postponement of the proceedings;
 - (b) granting a postponement subject to any such conditions as the court may determine;
 - (c) where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;
 - (d) ...”

[42] In *Ramabele v S Msimango v S* (CCT 232/17; CCT207/18) [2020 ZACC 22; 2020 (11) BCLR 1312 (CC); 2020

(2) SACR 604 (CC) (16 September 2020) the court stated:

‘[56] The overarching aim of section 342A is to “provide courts with a statutory mechanism to avoid unreasonable delays in the finalisation of criminal proceedings.” [39] Section 342A empowers a court to examine the reasons for the delay. [40] In order to ascertain whether the delay is reasonable or not, courts consider an array of factors stipulated in section 342A (2). In the event the court finds that the delay is unreasonable, section 342A (3) provides an open list of potential remedies.

[57] It has been said that section 342A is “the vehicle for giving practical application to the section 35(3)(d) right to have a trial begin and conclude without reasonable delay”. [41] Therefore, when considering section 342A, one must be mindful of section 35(3)(d) of the Constitution which entrenches an accused’s constitutional right to an expeditious trial. This section provides:

“Every accused person has a right to a fair trial, which includes the right-

...

(d) to have their trial begin and conclude without unreasonable delay”.

[43] Paragraph 62 of *Ramabele* [supra] sets out the stages of a section 342A application:

“[62] That the court went on to remark on the nature of the enquiry as follows:

“Even though section 342(3) does not specifically state that a ‘formal’ enquiry be held, it does call at the very least for an enquiry, on the basis of which a finding must be made. Such enquiry must have regard to the full conspectus of the factors in section 3(2). In absence of an enquiry, a court may find it difficult to assess whether a delay is unreasonable or how much systemic delay to tolerate. That can only be determined when there has been an enquiry albeit informal, in which the conspectuses of the factors listed has been considered. This I say mindful of the fact that the bulk of the criminal cases are heard before the magistrate’s court, and to insist on a formal enquiry is likely to be burdensome to the already overstretched court rolls. The finding should be followed by a remedy the court considers appropriate, depending on whether the accused person had already pleaded or evidence led. It seems to me that, once the provisions of s 342 are invoked, the following three stages must be followed:

- (1) investigation of the cause of the delay in the finalisation of the case, taking into account the listed factors;
 - (2) making of a finding whether the delay is unreasonable or unreasonable;
 - (3) depending on the stage of the proceedings, the application of the remedies provided.” [56]
- [44] In *S v Ndibe* (14/544/2010) [2012] ZAWCHC 245 (14 December 2012), Ndita J held, “A holistic reading of the provisions of section 342A leaves me with the impression that what was intended is first the investigation into whether the delay is unreasonable, this as a matter of course necessitates an enquiry. The investigation includes taking into account the factors listed in section 2. Those factors are not limited to the prejudice by an accused person and also include the impact an unreasonable delay may have in the administration of justice, the victim, and the State’s case.”

Discussion

- [45] It is important to note that from the onset of the proceedings the State was never in possession of the information sought by the accused, which resulted in this matter being postponed numerous times. What is apparent from the record is after the magistrate considered the information placed before her, she determined that the unreasonable delay was not caused by the state, as they were not in the possession of documents sought by the Applicants. Consequently, she refused to struck the matter from the roll, but instead postponed it to a date in January 2024 for trial.
- [46] In the matter before us, the Applicants contends that the magistrate committed a gross irregularity by finding that there was no unreasonable delay without considering the factors encompassed in section 342A (2) and postponing the matter for trial without holding a pre-trial conference. I agree with the Applicants that in terms of section 342A the court is enjoined to hold an investigation by considering the factors enumerated in section 342A (2) of the CPA. The section however does not require a formal investigation.
- [47] In *S v Van Huysteen* 2004 (2) SACR 478 (C) at para 8, it was held that an informal enquiry was sufficient. It was also stated that the factors to be considered mentioned in section 342A (2) is merely a guide which the court must consider. Traverso, J (as she then was) further held if

the presiding officer enquires as to the reasons for the request for a further postponement and concludes that a further postponement would lead to an injustice, that conclusion is sufficient. The learned judge further held that section 342A merely provides guidelines for the factors which a court should consider when deciding whether to refuse a postponement or not. Further section 342(3)(c) does not require that a formal enquiry be held nor that a formal finding to be made.

[48] There is no dispute that, despite numerous postponements and requests by the Applicants, the State had provided all the information and documents that were in the State's possession or contained in the police docket. It is also common cause that the State's is not relying on the information sought by the Applicants to prove and substantiate their case. According to the Second Respondent they have a *prima facie* case against the Applicants and have provided them with the charge sheet that contains all the essential elements of the offence for which the Applicants have been charged. This is not

disputed by the Applicants, which means that the accused had been fully informed of the State's case against him as provided for in section 84 of the CPA read with section 35(3)(a) of the Constitution of the Republic South Africa Act 108 of 1996. This

section affirms that every accused person is entitled to a fair trial, which encompasses the right to be informed of the charge with adequate detail to respond appropriately thereto.

[49] The essential issue of the matter is whether the Magistrate took into account the factors enumerated in section 342A (2) and, if she did not, whether she committed a gross irregularity in finding that the State did not cause an unreasonable delay in the matter, consequently not striking the matter from the roll but postponing the matter for trial. As was stated by Ndita J in *S v Ndibe* [supra], that the provisions of section 342A has to be read holistically when considering whether there is an unreasonable delay. The factors to be considered are not numerous clauses, meaning that any other factors may also be taken into account regarding whether the right to a fair trial is being infringed. For example, one might consider whether the delay has an impact on the administration of justice, and whether prejudice is being suffered by the witnesses, the State, or the accused as a result of the delay.

[50] In the matter before us, it is clear from the record that although the magistrate did not pose the questions verbatim as phrased in section 342A (2), she had indeed enquired about the duration of the delay, the reasons advanced for the delay, and whether any person can be blamed for the delay as shown on page 2 of the record dated 12 July 2023, "And there are allegations that you unduly delayed the matter and you gave 8 reasons why the state did not delay."

- [51] From the record it is clear that during the enquiry the court also considered the seriousness, extent and complexity of the charges before the court. This is evidenced on page 5, paragraph 20 of the record dated 12 July 2023 as follows:” COURT: You can rather say you stand by what you said on the last occasion, and you want to make the Court, to make a ruling on it but it is electronically on record as well as in this hard copy of the charge sheet.” Mr Smith then further placed on record that the Applicants were facing numerous charges.
- [52] The Magistrate further enquired about the potential prejudice that may arise if the matter were not postponed for trial. This inquiry followed the state's indication that the case was ready for trial and that a pre-trial conference was unnecessary, as a round table discussion had already taken place between the State and the Applicants to identify the outstanding information, which was subsequently provided to the Applicants. The Magistrate also determined that the evidence needed to proceed with the trial was provided to the Applicants. In my view this “irregularity” as claimed by the Applicants is not so fundamental and of a serious nature that the proper administration of justice and the dictates of public policy require it to be regarded as fatal to the proceedings of 12 July 2023.
- [53] The record clearly shows that the Magistrate went the extra mile in the section S342A enquiry by asking pertinent questions to both the prosecutor and Counsel for the Applicants, while also considering all other factors which she ought to have taken into account as envisaged by section 342A (2) of the CPA. I therefore, find the argument by the Applicants that the magistrate not to have considered the factors in section 342A (2) to be without merit and unsubstantiated.
- [54] I am of the view that the Magistrate gave a detailed judgment explaining how she came to her finding that the unreasonable delay was not caused by the State and the rationale for the postponement for the trial. Furthermore, she followed the three stages as set out in Ramabele [supra] by investigating the cause of the delay in the finalisation of the case, and taking into account the listed factors; she made a finding whether the delay is reasonable or unreasonable, she considered the stage of the proceedings and applied the appropriate remedy.
- [55] It is further important to note that when the matter was postponed for trial it was in July 2023 and matter was only to proceed six months later. In other words, if there were further pre-trial issues that the Applicant needed to address with the State before date of trial they had ample time to do so. Raising the issue of the absence of pre-trial held before matter was postponed for trial is neither here nor there as the Magistrate, acting as the case manager, can certify that a trial to be ready after considering all the factors cumulatively.
- [56] Section 35(3)(a) of the Constitution provides that every accused person has a right to a fair trial, which includes the right to be informed of the charge with sufficient detail to answer it. The exchange of particulars as an instrument to meet this constitutional obligation, is intended to the disclosure of material facts necessary for the State to prove its case, upon which the State relied. It is a mechanism to deal with and understand the case and prepare

to answer any factual disputes. It was a mechanism to deal with factual disputes and not legal disputes. It seems to me that the applicants before us sought to elevate the mechanism to something more, which is the resolution of legal disputes, more specifically whether the State

will prove its case on the available evidential material.

[57] The weight to be attached to the available evidence as seen through the lens of an accused person compared to what that accused deem necessary for the State to prove its case, was not a fact necessary to be informed of the charge which an accused had to answer. The State is not obliged, under section 35(3)(a) of the Constitution, or any provision of the Criminal Procedures Act, 1977, to provide answers to every irrelevant speculative opinion of an accused, which may arise from what the State has provided. Most importantly, the State was not expected to provide what it did not have, even to accused persons who simply refused to understand the prosecutors when they say the State and the complainants do not have what the accused was asking for. The magistrate dealt with the matter in accordance with justice.

[58] Having considered the record, I am satisfied that the Magistrate followed the correct procedure and properly considered the factors in section 342A(2) of the CPA, by refusing a further postponement and postponing the matter for trial. In the result I cannot find that the that the proceedings of the Magistrate on 12 July 2023 were grossly irregular, or that the ruling in terms of section 342A of the CPA was not made after judicious consideration of the merits and the factors

enumerated in section 342A of the CPA.

[59] In the result the application is dismissed with costs.

S Mthimunye

Acting Judge of the High Court

I agree and it is so ordered.

D Thulare

Judge of the High Court

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