

SOUTH AFRICA / JUDGMENT

S v Kwaza and Others (SS68/2018) [2021] ZAWCHC 181; [2021] 4 All SA 906 (WCC); 2022 (1) SACR 64 (WCC) (9 September 2021) [2021] ZAWCHC 181

COURT

Western Cape High Court, Cape Town

BEFORE

Gamble

CASE / FILE NUMBER

SS68/2018

Source: saflii.org · Research copy typeset by Esheria. Not court-issued or certified.

Source record

**IN THE HIGH COURT OF
SOUTH AFRICA
(WESTERN CAPE DIVISION,
CAPE TOWN)
CASE
NO: SS68/2018**

DATE: 2021/09/09

In the matter between: THE
STATE
and
PATIENCE
KWAZA
Accused 1
LOYISO
LUDIDI
Accused 2
THANDO
CHWAYI
Accused 3
SIVUYILE
SHASHA
Accused 4

RULING

GAMBLE, J:

This is a ruling which I am delivering.

1 This trial commenced on Tuesday, 3 August 2021 and was set down to run until Tuesday, 31 August 2021. It is now Thursday, 9 September 2021 and the trial is far from finished. In fact, the Court has only heard the evidence of three witnesses so far. The trial has been plagued by postponements caused by a variety of factors, to which I shall refer more fully shortly.

2 Mr Andile Gladile, counsel for accused 3 and 4, has requested the Court's permission to withdraw from the matter. An application in this regard was brought from the Bar on the morning of Tuesday, 7 September 2021 after it was foreshadowed by counsel in an email to this Court's registrar shortly after noon on Friday, 3 September 2021. The application to withdraw has two legs. Firstly, a lack of financial instructions from the clients, and secondly, a prior commitment on the part of counsel to attend a part-heard matter in the Eastern Cape Circuit Court currently sitting at Lady Frere.

3 The Court indicated during the course of the application for withdrawal on Tuesday past that it was considering applying the provisions of section 342A of the Criminal Procedure Act 51 of 1977 to investigate whether there has been an unreasonable delay in the completion of these proceedings on the part of Mr Gladile, and, if so, whether any order should be made under section 342A(3). The Court informed Mr Gladile of its intention to conduct such an inquiry, and asked whether he wished to be represented by other counsel in relation to that inquiry. He indicated to the Court that he would deal with the matter himself. The Court then interrogated certain issues, and its exchanges between Mr Gladile and the Court are a matter of record.

4 In accordance with section 342A(2), I shall list the various postponements in the matter, the causes therefore, and the explanations furnished in relation thereto.

4.1 The first postponement of the trial occurred on Wednesday, 4 August 2021 when Mr Gladile was absent. The prosecutor informed the Court that he had received a telephone call from counsel, who informed him that he had an upset stomach and was unable to attend court. The matter then stood down until the following day.

4.2 On Thursday, 5 August 2021 Mr Gladile was absent yet again. On this occasion he sent my registrar an email at 09:33 in the morning to the following effect:

"Dear Registrar. Receive my warm regards. I went for a medical consultation yesterday due to an illness I had. I had a persistent cough, lack of appetite and a running stomach. I was advised that I should remain at home for a period of at least two days. I have therefore been booked off for the day of 04 and 05 of July 2021. I was further advised that if the symptoms do not subside by the end of the day, I should go test for Covid-19. I am therefore unable to attend court proceedings today, and will come tomorrow, the 06 July 2021."

In the light hereof, and given that this Division does not sit in trials on a Friday, the matter was postponed until Tuesday, 10 August 2021, Monday the 9th having been a public holiday.

4.3 On Tuesday, 10 August 2021 proceedings were delayed by 35 minutes due to the late arrival of Mr Gladile. He informed the Court that he had returned to Cape Town from the Eastern Cape over the weekend, and that the taxi transporting him had been delayed. The Court expressly enquired of Mr Gladile whether he had been attending other court proceedings in the interim, and he replied that he had not. Mr Gladile was given a warning that if he persisted in arriving late, he might be subjected to proceedings

for contempt of court.

4.4 On Wednesday, 11 August 2021 Mr Gladile arrived late once again, approximately 35 minutes, and in this regard he proffered the excuse that the Uber that he had hailed to take him to court had experienced a flat tyre en route to town. Mr Gladile was given another stern warning by the Court and urged to take timeous steps to ensure that he was at court on time. He was formally cautioned that on the next occasion the Court would consider conducting a formal inquiry in regard to contempt of court.

4.5 On Thursday, 12 August 2021 the prosecutor requested that the matter be adjourned in order that he and others could attend the funeral of a fellow member from the offices of the DPP. After discussion with other counsel, it was agreed that the examination-in-chief of the witness then in the box would be completed, whereafter cross-examination would stand over until the following sitting of the court, which was Monday, 16 August 2021.

4.6 On Monday, 16 August 2021 the court interpreter alerted the Court in chambers to the fact that she might have been exposed to the Covid virus through contact with a fellow interpreter. She requested an opportunity to undergo testing, and accordingly the matter stood down until the next day. The interpreter received a negative test result later that day, and informed the Court thereof.

4.7 At the commencement of proceedings on Tuesday, 17 August 2021 Mr Gladile was once again absent, and arrived 35 minutes late once again. No apology or explanation was tendered by counsel, and he was then informed by the Court that a formal inquiry for contempt of the Court's earlier orders would be considered in due course.

4.8 On Wednesday, 18 August 2021 all legal representatives were present, but accused 4 was absent. His counsel, Mr Gladile, informed the Court that his client suffered from a chronic illness which required medical attention and for which he had been referred to the prison hospital at Pollsmoor. The Court was further informed that accused 4 could only consult a doctor on the following day, and for that purpose the matter stood adjourned until Monday, 23 August 2021.

4.9 Early on the morning of Monday, 23 August 2021 the Court received a message that there had been a calamity over the weekend which resulted in the High Court cells being flooded. Given that the four accused in this matter are all in custody, they were not transported through to court that day from Pollsmoor Prison, and the matter was postponed until the following day in their

absence. It bears mention that Mr Gladile was not present in court on that day, and reported to the Court's registrar via a WhatsApp group that had been set up for communication purposes between her and counsel that he had attended no less than two funerals over the weekend, and that he was experiencing Covid symptoms.

4.10 At 14:41 on Monday, 23 August 2021 Mr Gladile directed an email, with medical certificates as annexures, which reads as follows:

"Dear Registrar. Receive my regards. I went to see a doctor at the Michael Mapongwana Day Hospital in Harare, Khayelitsha for a check-up on the Covid-19 symptoms I had displayed. Attached here to this email, a medical certificate. I have been informed that, as per the Government procedure and/or guidelines, I do not have any chronic illnesses, and therefore I am a low-risk patient/person and I cannot be tested. I have been instructed to quarantine for a period of 10 days in the meantime. I am in the hands of the Honourable Court. I do not know the standard practice regarding people who have no chronic illnesses. I hope to hear from you before the end of business."

4.11 On Tuesday, 24 August 2021 Mr Gladile was not present in court, and the Court's registrar was unable to contact him telephonically. In light of the allegations made in the medical certificates, i.e. that Mr Gladile was required to self-isolate until 1 September 2021, and given that he was only said to be available to resume work on 2 September 2021, the matter was postponed until the next court day, which was Monday, 6 September

2021. It was subsequently established that Mr Gladile had spoken to his clients after court on Tuesday, 24 August 2021, and he was advised by them of the new date for the continuation of the matter, being 6 September 2021.

4.12 At 12:30 on Friday, 3 September 2021 the Court's registrar received a lengthy email from Mr Gladile explaining that he wished to withdraw from this matter, and informing this Court of a criminal matter in which he was involved in the Circuit Court being held at Lady Frere. I shall recite the contents thereof in full.

"Dear Registrar. Receive my warm regards. There are two issues this email seeks to bring to the attention of the Honourable Judge and my colleagues involved in the Patience Kwaza matter. (1) I will be withdrawing from representing both the accused number 3 and 4, respectively, and the reasons are mainly due to financial instructions."

The families of both the accused persons had entered into a payment agreement with us, and that has not been honoured, to an extent that most of the disbursements in that matter had to be paid for by the attorney and myself. It therefore makes no business

sense for us to remain on record, and we had advised both accused persons of their rights to approach Legal Aid offices for representation.

Therefore, on the date of the 6th September 2021 I will be making an application to withdraw.

(2) I am also involved in a criminal trial at the Eastern Cape High Court in the Lady Frere Circuit Court in a case of State

versus Xolisa Beja and two others under case number 20/2019. This is a partly-heard matter which began in February 2021 and was remanded for further trial on 30 August 2021. There are three counsels involved for three different accused persons. I am representing accused 3, Mr Xolisa Xamte.

The Presiding Judge Griffiths informed us that this is a priority matter, and he wants to finish it off before the term ends.

Therefore, I will be in the Eastern Cape for the whole month of September.

He has informed me to ask the Honourable Judge Gamble to contact him so that they may discuss it if Honourable Judge Gamble can excuse

me for Monday.”

After furnishing the contact details of the Judge’s registrar, the letter continues as follows.

“(3) Colleagues, I would not have agreed to the date of the 06 September for further trial, because I anticipated that the Eastern Cape matter will take more than a week.

I hope this email reaches the Honourable Judge Gamble as urgently as possible so that we know what happens on Monday. The Honourable Judge Griffiths also wants feedback as soon as possible. Thank you.”

4.13 This Court’s registrar replied to that email at 21:29 on the evening of Friday, 3 September 2021: “Dear Mr Gladile. Please be advised that your request to be excused from attending court on Monday is refused.”

4.14 When the Court convened on Monday, 6 September 2021, Mr Gladile was not present. This Court’s registrar tried unsuccessfully to make contact with him, but shortly before 10 o'clock he contacted the registrar and informed her that he was in Lady Frere. The matter stood down until 12:00 on Tuesday, 7 September 2021, and this Court contacted Mr Justice Griffiths and collegially requested him to inform Mr Gladile of the postponement of the Kwaza matter, and that he was required to appear in Cape Town at 12:00 the following day. That message was conveyed to Mr Gladile personally by Judge Griffiths.

4.15 On Tuesday, 7 September 2021 Mr Gladile arrived late at court, arriving at 12:15, and explained that the taxi that he had taken from the Eastern Cape had once again been delayed. The Court thereupon heard the application for Mr Gladile’s withdrawal as counsel of record, and conducted an inquiry in terms of section 342A as indicated above.

5 I shall deal firstly with the application for permission to withdraw. At the outset I should state that I have serious reservations about the bona fides of the application. The first time that this Court was aware of the fact that Mr Gladile appeared on a paid brief was on Friday, 3 September 2021 upon receipt of his email of that day. When questioned about this on Tuesday, 7 September 2021, Mr Gladile responded that the Court did not enquire whether he was on a paid brief, cynically insinuating that it was the Court's duty to do so.

6 He informed the Court that he was instructed by Mdanjelwa Attorneys, who apparently have offices in Cape Town and Khayelitsha. He could produce no written instruction to appear on behalf of accused 3 and 4, but said that he had been briefed telephonically. When asked which attorney at the firm was dealing with the matter, Mr Gladile fell about somewhat, but eventually settled on Mr Bahle Mathe as the instructing attorney at the firm. Mr Mathe has never attended court with Mr Gladile in this matter, nor could Mr Gladile produce any fee list which he had rendered to the attorney for payment of his account. Simply put, there is no evidence on record whatsoever of the involvement of Mdanjelwa Attorneys in this matter at all.

7 Accused 3 and 4 personally confirmed to the Court that they had no funds with which to finance their counsel, and requested that arrangements be made for their further representation in the matter by Legal Aid South Africa. It appeared later that there may have been other persons, possibly family, who had undertaken to stand in for the fees.

8 My reservations about the integrity of the application to withdraw are influenced by the fact that Mr Gladile is now double-booked with matters in both this court and Lady Frere. The apparent shortage of funds was never mentioned before to this Court, and it only arose in the context of Mr Gladile's email of Friday, 3 September when the application to withdraw was predicated both on an alleged lack of funds and a double booking. I am strengthened in this view by the fact that Mr Gladile put up a

medical certificate to this Court regarding Covid-19 as a reason for having to avoid appearing in this court, when he knew full well he had a partly-heard matter in the Eastern Cape.

9 I should also mention that at a relatively early stage of proceedings counsel for the defence were advised in chambers that this matter would run until its completion, if necessary beyond 31 August 2021. It is not uncommon for the State to underestimate the duration of a trial, and, of course, when the State does so, it cannot take account of any unforeseen delays that might arise during the running of the trial. In any event, there was no objection at that stage by any counsel to an inability to stay in the matter after 31 August other than the fact that Mr Gladile said that he had a partly-heard criminal matter in this Division before the Judge President which was due to run in the last week of term. It has subsequently been confirmed to this Court

by the Judge President that the matter will run before His Lordship from 13 to 16 September 2021. Most assuredly, no mention was ever made in chambers by Mr Gladile of the need to appear in the Lady Frere Court at the beginning of September 2021 – this in circumstances where he now says he had known about that appearance since the beginning of 2021, in January or February.

10 The fact of the matter is that accused 3 and 4 have informed this Court that they, themselves cannot afford the costs associated with being represented privately, and that they wish to avail themselves of the services of Legal Aid. This request was conveyed to the responsible person at the Cape Town offices of Legal Aid South Africa, Mr Russell Cloete, who was present in court during the sitting on Monday, 6 September 2021, and who confirmed that accused 3 and 4 would qualify for Legal Aid representation.

11 Subsequently, the Court was informed by Ms Levendall, who represents accused 2 and who is a colleague of Mr Cloete at the Cape Town offices of Legal Aid, that the necessary steps had been taken to process the applications for the accused. Furthermore, Mr Cloete informed the Court's registrar today that the brief to appear on behalf of the accused had been advertised on the Legal Aid website, and that a response from interested legal practitioners was awaited.

12 The substitution of legal representation during the course of a trial is not without its difficulties, particularly because the person taking over the defence would have to familiarise him- or herself with the facts and take fresh instructions from the accused.

Fortunately, in this matter we have a transcription of the evidence, and this will facilitate new counsel taking over and preparing the matter more speedily. The prejudice to the accused in the form of further delays while they remain in custody is, however,

unavoidable in the circumstances, and is something which the Court cannot address.

13 I do not believe that it will be in the interests of justice for Mr Gladile to continue representing the accused. As will appear shortly, he has a very poor record of timekeeping – something which is not in the interests of the accused or the other parties involved in this litigation. Bluntly put, I believe that permitting Mr Gladile to withdraw, is likely to significantly enhance the pace at which this trial progresses, and that will be to the benefit of the Court and the accused.

14 In the circumstances, and subject to what is said below in relation to the provisions of section 342A, Mr Andile Gladile will be granted leave to withdraw from the matter as counsel of record for accused 3 and 4.

15 Turning to the application of that section of the Criminal Procedure Act, it reads as follows:

"342A(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 advisor, the State or a witness.

(2) In considering the question if 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 can be blamed for the delay;
 - (d) the effect of the delay on the personal circumstances of the accused and 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 effects on the interests of the public or the victims in the event of the prosecution being stopped or discontinued, and
 - (i) any other factor which, in the opinion of the Court, ought to be 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 ...

(e) that

(i) ...

(ii) the accused or his or her legal advisor, as the case

may be, shall pay the state the wasted costs incurred

by the State as a result of an unreasonable delay

caused by the accused or his or her legal advisor, as the case may be; or

(f) that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action

against any person responsible for the delay.”

16 The facts which I have set out above, demonstrate clearly that not all the delays in the matter were occasioned by the conduct of Mr Gladile. However, it can be said with certainty that he has been responsible for the greater part of those delays. In the first place, his regular late arrivals at court have resulted in lost time of more than two hours. That amounts to almost half of the time that the court ordinarily sits in a day, or, effectively, half a day. Such conduct merits the attention of the Legal Practice Council.

17 Secondly, the delays occasioned on Wednesday 4 and Thursday 5 August 2021 are entirely attributable to Mr Gladile's misconduct and blatant dishonesty. Upon enquiry by this Court's registrar, the Chief Magistrate of Grabouw confirmed that Mr Gladile had appeared in that court on Thursday, 5 August 2021 to attend to a bail application in a pending criminal trial. When questioned about this by the Court on Tuesday, 7 September 2021, Mr Gladile admitted that he had appeared in that court on that day.

18 In the circumstances, he lied to this Court about his medical condition. He attended another court in a country town about an hour's drive from Cape Town, and when he was subsequently asked by the Court whether he had attended to other matters, he lied again.

19 Mr Gladile's conduct in this regard is to be deprecated in the strongest terms. A Court takes counsel at his or her word, because counsel owes a duty of absolute honesty to the Court. The putting up of false explanations to explain absences from court is inimical to the professional duties of an advocate. Such behaviour, too, warrants the attention of the Legal Practice Council.

20 Thirdly, the delay of nine court days from Tuesday, 24 August to Monday, 6 September 2021, lies entirely at the door of Mr Gladile. The medical certificate put up by him led this Court to believe that it was necessary for Mr Gladile to self-isolate on the basis of suspected Covid-19 infection, and he intimated that much in his email to the Court's registrar. Against that background, the matter was postponed.

21 Yet again, Mr Gladile abused the indulgence granted to him by this Court to self-isolate by travelling by public transport to a place approximately 10 hours from Cape Town, and when he arrived there he proceeded to participate for four days in court proceedings about which this Court had not been informed in advance.

22 The Court does not know whether the symptoms described by Mr Gladile to the doctor, recorded in the medical certificate, were genuine or not. If they were and he was sick, Mr Gladile had no entitlement to travel to the Eastern Cape to attend to a partly-heard

matter. He was required to self-isolate at home so that he was medically fit to return to this court on 6 September 2021. And if the symptoms were not genuine, *cadit quaestio*.

23 Furthermore, by not self-isolating and by freely mixing with members of the public on public transport and in other court proceedings, Mr Gladile showed callous disregard for the health of others. He was manifestly in breach of the State of Disaster Regulations applicable to the current level of lockdown under the Covid restrictions. Those regulations are there to protect all of us. Mr Gladile showed that he does not care anything for his fellow man. This conduct, too, merits the attention of the Legal Practice Council.

24 What then are the wasted costs occasioned by Mr Gladile's unprofessional behaviour? The prosecutor, Mr Sityata, informed

the Court that the following witness to be called by the State in the trial was a section 204 witness who had travelled to Cape Town from Knysna on Sunday, 15 August 2021. The witness, whose identity has been kept confidential, was driven to Cape Town by the investigating officer who had to travel to Knysna – at State expense and in his own time – and back to collect her. The travelling time in this regard would have been of the order of 12 hours for a return journey.

25 The cost of such travel is not known to the Court, but it must be quite significant. The witness was then put up in comfortable

accommodation near the court, paid for by the Office of the Chief Justice at a rate of R1 440 per night, and she remained in attendance in Cape Town as the State was intending to call her as soon as this was practically possible, probably on Wednesday, 18 August.

26 In the result, the witness was only allowed to return home on Friday, 27 August 2021 when she was again transported back to Knysna by the investigating officer. That arduous journey and the cost thereof was repeated. It is not clear why the witness did not return home on Tuesday, the 24th when the matter was postponed to 6 September. Her attendance in Cape Town after that date was not required for the purposes of possible testimony, as the case had been postponed.

27 As I have it, the lost expenditure incurred by the detention of the witness in Cape Town after that date was not attributable to Mr Gladile's conduct. As I have said, she would have probably commenced with her evidence on Wednesday, 18 August, and continued through that week and into the following week. Her inability to testify on Wednesday, 18 August and Thursday, 19 August was attributable to the medical problems associated with accused 4 and his resultant absence from court. Her inability to testify on Monday, 23 August was occasioned by the flooding of the cells.

28 It seems to me then that the only wasted expenditure directly attributable to Mr Gladile is the witness' stay for the night

of Monday, 23 August 2021. That would amount to R1 440. Those are, of course, the costs which can be established. But, besides that, there are the costs associated with any court sitting: the salaries of the Judge and the court personnel; the salaries of the prosecutor and the police, and the salaries of any persons employed by Legal Aid who may be assisting the Court. Those amounts are not quantifiable, but they are substantial.

29 Ms Verster, who appears on behalf of accused 1 on the instructions of Legal Aid, highlighted to the Court how she had been prejudiced by Mr Gladile's shenanigans. She provided the Court with a list of her attendances, and showed that if the court sat a full day, she would be paid R3 202 per day. But if the court only sat for part of the day, and if, for example, there was an early postponement due to non-attendance by fellow counsel, then she was only paid a part fee pro rata to her attendance. Thus, said Ms Verster, whereas she might have billed R64 040 if the court had sat for a full day on each sitting, she was actually only able to bill R25 881, and she complained that her loss was of the order of R38 158. That is the loss which Mr Gladile would have attributed in substantial part to the earnings of his colleague.

30 I have great sympathy for Ms Verster, who has behaved professionally, and who has presented herself at court as required by her

instructions, and who has been prevented by a colleague from collecting what was due to her. However, as I read section 342A(3)(e)(ii), it only provides for the payment by a legal advisor of the wasted costs incurred by the State as a consequence of any unreasonable delay in proceedings occasioned by him or her.

31 In my view, the term, “the State”, must be given a wide interpretation, as it is not limited by any definition in the

Criminal Procedure Act. Accordingly, the wasted costs of accommodation of the witness waiting to testify, would fall under

that rubric. So, too, would be any unnecessary and wasted costs incurred by the Legal Aid Board, which is an institution of, and funded, by the State. Accordingly, the actual amounts paid out to Ms Verster for her appearances on behalf of accused 1 on days when Mr Gladile was responsible for the delays and when Ms Verster was unable to discharge her contracted professional responsibility to the Legal Aid Board, constitute wasted costs to the state. See *S v Jordaan and Others* [2018] ZAWCHC 10 (7 February 2018) at para 21. And, as I have already indicated, there are other unquantified expenses relating to the running of a court, which would include the salaries of the officials present in court.

32 I have considered Ms Verster’s summary, and the wasted costs incurred by Legal Aid in this matter amount to R3 111,24.

According to Ms Verster’s list of attendances, those fees represent the amounts actually paid out by Legal Aid to her on the days when Mr Gladile absented himself from the proceedings without the Court’s consent.

33 In the result, and having regard to the criteria set out in Section 342A(2), I find that there has been an unreasonable delay in the proceedings caused by Mr Gladile’s unauthorised absences. I find further that the wasted costs to the State occasioned by such delays amount to an aggregate of not less than R4 551,24. That is, one night’s accommodation for the witness, and the billings of Ms Verster which the Legal Aid Board has had to bear. Those wasted costs would be much, much higher if the salaries of the officials in court were included in that.

34 However, I can make no order under section 342A(3)(e), because that provision in the Criminal Procedure Act has not yet been brought into operation. I am therefore precluded from making such an order, and it is regrettable that the Minister of Justice and Correctional Services has not seen fit to bring that section into operation. One hears day in and day out of the costs of court appearances being caused by dilatory defences and attitudes adopted by accused persons. It costs the taxpayer millions and millions of Rands every year. If there are accused persons and/or their legal advisors who are responsible for those delays, the State should be able to recover that money from them. But, as I have said, I am precluded from making such an order in this matter.

35 I am, however, able to make an order under section 342A(3)(f), referring this matter to the Legal Practice Council for consideration

of appropriate steps against Mr Gladile. I intend to do so, because his conduct in this matter, in my view, falls woefully short of the standard of professional behaviour expected of someone of his standing.

36 I have set out my reasons for this ruling in full so that counsel who conduct themselves in such a fashion in future might appreciate what fate awaits them. The ruling will also be forwarded to SAFLII for consideration for reporting, and also to the Legal Practice Council, who, it is hoped, will attend to this matter speedily.

37 At the end of it all, I make the following ruling.

1 Mr Andile Gladile is granted permission to withdraw from the matter as counsel of record for accused 3 and 4.

2 The trial is postponed for further hearing on 4 October 2021 only, and thereafter for further hearing on 18 October 2021 until the matter is completed.

3 The four accused shall remain in custody.

4 A copy of this ruling is to be transcribed and placed for publication on SAFLII.

5 The Chief Registrar of this court is directed to forward a copy of this ruling to the offices of the Legal Practice Council, Cape Town.

38 In conclusion, I should apologise to the accused who have been in custody now for almost five years. It is unacceptable to the Court that there have been delays in the litigation caused by counsel who has acted only in furtherance of his own selfish interests. I trust that such a situation will not arise again in the finalisation of this matter.

GAMBLE, J

JUDGE OF THE HIGH COURT

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.saflii.org/za/cases/ZAWCHC/2021/181.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-kwaza-and-others-unknown-topic-awchc-2021>

Prepared on 12 October 2026 · Esheria