

SOUTH AFRICA / JUDGMENT

S v Porritt and Another (SS40/2006) [2023] ZAGPJHC 48 (25 January 2023)

[2023] ZAGPJHC 48

COURT

South Gauteng High Court, Johannesburg

BEFORE

Spilg

CASE / FILE NUMBER

SS40/2006

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS 40/2006

REPORTABLE: NO

OF INTEREST TO OTHER JUDGES: YES

REVISED.

25 January 2023

THE STATE

v

PORRITT, GARY PATRICK Accused no. 1

BENNETT, SUSAN HILLARY Accused no. 2

REASONS

FOR ORDER OF 1 DECEMBER 2022

re

CROSS-EXAMINATION OF MR RAMSAY

SPILG, J:

INTRODUCTION

1. On 1 December 2022 it became necessary to ensure that the cross-examination of Mr Ramsay would not be delayed when the court resumed a month and a half later on 16 January 2023 and after the December recess. At that stage Ms Bennett, who is accused no 2, was cross-examining Ramsay but complained that anxiety attacks were affecting her ability to cross-examine.
2. To this end the court directed that Porritt, who is accused no 1, resume his cross-examination of Ramsay and that Bennett completes her cross-examination after that. There is an existing order that Bennett is to provide information from medical practitioners with regard to her anxiety attacks and the medication she is on, failing which she is obliged to show cause why legal-aid should not be provided to assist her with her cross-examination.

BACKGROUND

3. It will be convenient to pick up from the hearing of 19 October. On that date Bennett was to continue with her cross-examination of Ramsay. However the court adjourned almost immediately to the following day because Bennett was experiencing convulsions. On 20 October Bennett continued with her cross-examination of Ramsay and the trial was adjourned to 25 October.
4. At the hearing of 25 October Bennett said that she was unable to get sleep while cross-examining, that she tried to carry on cross-examination but forgets and gets confused, she cannot find things, loses her balance and is constantly tired.

Bennett also said that she was experiencing headaches for which she took pain killers which made her sleepy but explained that she wants to carry on with the cross-examination.

The court was concerned that Bennett was indicating a difficulty to effectively cross-examinee because of her anxiety attacks which

raised the issue of her not being able to properly defend herself if that was the case.

5. Bennett's involuntary shaking or convulsions first started in May 2021 during the virtual court hearings concerning the issue of the Swiss-interbank agreement. Bennett said that she was trying to control them through medication[1]. She confirmed at the hearing of 15 November 2022 that it did not manifest itself during the time Ramsay was led in his evidence in chief.[2] However she did add later on 15 November that the stress was also related to commuting between Knysna and the court and she was looking to relocate to Johannesburg.
6. The only section of the Criminal Procedure Act which appeared to deal with the examination of an accused who claimed to be unable to effectively cross-examine was s 77 read with s 79. The court raised the possibility that Bennett undergo observation and Porritt continues with his cross-examination of Ramsay.

7. When the court resumed at about 12.30, Bennett again said that she was anxious to continue the cross-examination, but her anxiety attacks created difficulties. Of the possible ways going forward, she was not interested in engaging legal aid to assist her in the conducting of the trial and she would prefer it if Porritt did not proceed in the interim. At that stage the applicability of a referral for observation was still being discussed.
8. On the following court date, being 27 October, Bennett continued with the cross-examination of Ramsay and on 28 October, the possibility of referring Bennett for observation was discussed- and if s 77 was applicable, whether she should receive Legal Aid assistance during that process.
9. At the hearing of 28 October it was clear that the purpose of any observation was to establish whether Bennett was able to cross-examine having regard to her anxiety attacks and to establish its cause, including whether she was being under- or over-medicated and whether it could be controlled. This would also establish if she was exaggerating the sequelae and using it to malingering. [3]

Bennett also informed the court on 28 October that she had booked a flight to England when the court adjourns for the December recess on 2 December. She said that if she was going to be placed under a 30-day referral then she would like to start immediately.

Cross-examination of Ramsay then resumed but Bennett started shaking and although she continued for a while the proceedings were adjourned during the morning session until 31 October.

10. On 31 October submissions were made regarding how best to proceed with obtaining a report. Bennett was agreeable to a referral and the State was concerned that only a provisional analysis under s 77(1) might be competent at that stage. After hearing the parties, I remained of the prima facie view that s 77 may be broad enough to apply where a party understands the proceedings but may be unable to cross-examine effectively, in the present case due to anxiety attacks. The court would not have proceeded had Bennett declined or did not want to be an in-patient if that was required by the hospital.
11. On 4 November the court made the following order.
“1. Accused No. 2 is ordered to report on 14 November 2022, at 08:30 to the admission unit at the Sterkfontein Psychiatric Hospital where she will be evaluated by Dr T Tlolane who will then conduct a physical examination and a psychiatric interview with Accused no. 2, with a view to determine whether her current medical condition requires or justifies a referral to Sterkfontein Psychiatric Hospital for an investigation in terms of section 77 of the Criminal Procedure Act, Act 51 of 1977 (“CPA”) and a report in terms of section 79 of the CPA.
12. On 15 November a letter from Dr Tlolane was handed as was an affidavit by Bennett. Dr Tlolane had interviewed Bennett on the previous day and noted that the “possibilities of a psychiatric disorder, which may impact on the accused ability to stand trial cannot be excluded. Given her age and the late onset of her reported seizures, she required further

medical work-up, psychological testing and an occupational therapy functional assessment. She also requires continuous observation as an inpatient. It is respectfully recommended that the accused be referred for an inpatient observation in terms of section 77 of the Criminal Procedure Act,

A follow up letter was also handed in. It indicated that the nature of the tests required Bennett to be admitted as an inpatient and that the average waiting period for an inpatient observation bed is approximately 9 months. Nonetheless the State advised that a bed could be secured in January but that Bennett had indicated in discussions before court commenced her concern that if it was found that she was unable to conduct her own defence then it would amount to a conviction.

Bennett then said that she was happy to go for observation but wished to place on record that section 77(1) does not apply because it only refers to a person who does not understand the proceedings[4]. While the court considered that the second part of the section may be severable and apply independently, it would have to hear argument before making a final decision. But if the section did not apply then the solution seemed an obvious one- the anxiety of cross-examining would be alleviated if legal assistance was provided, unless of course medication resolved the issue.

Bennett was again clear as to her position. She;

- a. repeated that she understands the proceedings and s 77 only applies to someone who does not;[5]
- b. said that she cannot conduct a proper defence.[6]
13. The court indicated that this was now a “no man’s land” situation. She was also informed of the court’s concern that if s 77 did not apply then an in-patient referral order would amount to an incarceration. The court also said that if s 77 did not apply then the issue came down to whether legal-aid should be provided to assist Bennett in cross-examination which would then overcome the cause of the anxiety attacks
14. Adv. Ferreira for the State submitted that s 77 required a “mental illness, or intellectual disability” as the ground for not being able to understand the proceedings so as to make a proper defence. In other words, the inability to make a proper defence was not self-standing.

On re-reading s 77(1) the court agreed with both Bennett and the State that s 77 could not apply to her situation.

I should add that having been involved in the trial since about 2016, having Bennett argue before me, present affidavits and applications

of which she claimed authorship and cross examine witnesses I am satisfied beyond a reasonable doubt that Dr Tlolane’s caution

that the “possibilities of a psychiatric disorder, which may impact on the accused ability to stand trial cannot be excluded” has no weight. It was written after a single consultation based on an interview with only Bennett, and without the advantage of considering any transcripts of her argument or cross-examination let alone all the applications and affidavits prepared by her. The record shows that she is clearly able to understand the proceedings. The only issue is whether her anxiety attacks are affecting her ability to properly exercise her fair trial right of cross-examining a witness.

15. On 16 November the court formulated an order to avoid the matter getting bogged down by the situation Bennett presented to the court.

In short it required Bennett to produce a medical report by 30 November dealing with the anxiety attacks, the medication being administered

and anything else which the medical practitioner considers relevant, failing which she was required, among other things, to show cause why an order should not be made that legal aid counsel be appointed to represent her in the trial and that if she is not ready to proceed for any reason on 16 January 2023 with the cross-examination of Ramsay that Porritt does. Porritt was also

required to show cause on 30 November 2022 why he should not proceed to cross-examine Ramsay if Bennett was not ready to do so for any reason.

The court made an order, which reads from para 6 onward:

6. By no later than Tuesday 29 November accused no 2, Ms Bennett, will deliver by email to the prosecution and the court, after having consulted with suitably qualified medical practitioners, a medical report or reports concerning;

6.1. if it can be established; the cause, diagnosis, prognosis and treatment of the attacks of involuntary shaking or convulsions she has exhibited on occasion in court during some, but not all, stages of the court proceedings, and which she attributes to anxiety and also informed the court on 15 November 2022 may in addition be affected by the stress of commuting between Knysna and Johannesburg

to attend court;

6.2. whether the medication Bennett is on, or the dosage prescribed, is a factor and if so whether correct medication properly taken can control or alleviate her anxiety;

6.3. anything else which the medical practitioner considers may be relevant to Bennett’s ability to effectively cross-examine a witness in court or otherwise properly defend herself in the criminal proceedings against her;

7. In the even that Bennett does not provide such a report or reports dealing with the foregoing by 29 November 2022 then;

7.1. Bennett must show cause on 30 November 2022 why an order should not be made;

7.1.1. that legal aid counsel be appointed to represent her in the trial;

7.1.2. that if she fails to properly consult with such counsel that the trial will nonetheless proceed with her continuing to cross-examine

Mr Ramsay;

7.1.3. that if she is not ready to proceed for any reason on 16 January 2023 with the cross-examination of Ramsay that accused no 1, Mr Porritt proceeds to cross-examine Ramsay

7.2. Porritt must also show cause on 30 November 2022 why an order should not be made that if Bennett is not ready to proceed for any reason on 16 January 2023 with the cross-examination of Ramsay that he proceeds to cross-examine Ramsay

8. In the even that Bennett provides a report or reports dealing with the matters set out in para 6 by 29 November 2022 then;

8.1. the court will consider their adequacy;

8.2. the court will hear all the parties on how to proceed further with the trial fairly and expeditiously to its conclusion

16. The court resumed on 30 November and Bennett said that she had been unable to obtain the services of a psychiatrist. She was asked when a report would be produced and replied that she would like to have a psychiatric team assess and observe her but that it would not happen in the near future. [7]

It was clear from the exchanges that Bennett was raising further obstacles in relation to obtaining a forensic report before anything

further could be done and that this may take same time. In the meanwhile Bennett was aware that the issue of her not being able to effectively cross-examine because of her anxiety attacks, and its impact on her fair trial right was of concern to the court because she had clearly introduced it into the record at the hearing of 25 October when she alleged how it was affecting her ability to cross-examine.[8]

In order to ensure no misunderstanding on this score she was pertinently asked if she can give any indication as to whether she will be in a position to carry on cross-examining when the court resumes on 16 January 2023.

Bennett replied: "I have no idea, M'Lord." [9]

17. On the following day, i.e. 1 December, the court heard the parties on why Porritt should not resume his cross-examination of Ramsay on the resumption of the trial on 16 January.

18. Porritt claimed that he had inadequate time to prepare and that his fair trial right has been infringed. He added that a major cause of Bennett's anxiety attacks was due to his incarceration nor could the trial continue while she was shaking and her mental faculties were affected. Porritt added that Bennett would endure greater stress if he were to cross-examine and that in any event she will have to cross-examine in due course.

Porritt then proceeded to explain how his fair trial right was infringed due to his incarceration. In particular he alleged that the facilities available and the time provided were inadequate. In short he contended that his right to bail was infringed by the court, that his right to legal assistance was infringed by the court and his right to prepare has also been infringed as a consequence of both because of the inadequate facilities where he is being detained. Furthermore this has resulted in there being no possibility of an equality of arms and said that they were even going to use Mr Costa Divaris as a tax expert but he has passed away.[10]

Bennett raised the issue of her condition and that she must be investigated and observed. She added that Dr Tlolane, the psychiatrist at Sterkfontein had said that the possibility of a psychological disorder which may impact on her ability to stand trial cannot be excluded. I have dealt with this earlier. Bennet also contended that she is entitled to complete her cross-examination before Porritt resumes.

19. The State challenged Porritt on his assertions that he did not have adequate time to prepare and the claim that he was deprived of legal assistance by this court rather than by the choices he had made. The State also referred to the circumstances under which Bennett took over the cross-examination of Ramsay which Porritt had commenced and pointed out that Porritt will be obliged to cross-examine at some stage if he wishes to exercise his right to do so.

Ultimately the order of cross-examination is a matter of convenience and justice. As for Bennett's reference to the suggestion by the psychiatrist regarding her ability to stand trial, as opposed to her ability to cross-examine when experiencing anxiety attacks, Adv. Coetzee pointed out that she had no difficulty drafting papers without the aid of any lawyers and of understanding the proceedings. Bennett in fact said as much when stating that s 77 did not apply to her. The prosecution argues that it was her choice not to go through

the legal-aid system and that the strategy of both accused is not to touch the merits of the matter.

20. It is correct that Porritt commenced the cross-examination of Ramsay. On 29 August 2022 he stated that it would take him "probably a month at least" to try and find all the places referred to in the court order of August which set out the issues Porritt was to deal with in the first 15 days of his cross-examination of Ramsay. He did not claim then that the conditions at prison had prevented him from preparing nor did he ask that he be brought to court on the days the court did not sit so that he could prepare here. However he did recognise the seriousness of the order.[11]

When asked what he suggests, the reply was that Bennett proceeds. Adv. Coetzee objected to this, submitting *inter alia* that Porritt had been given sufficient time to prepare and that he had in fact regularly asked the court to stop Ramsay's examination in chief, which it did, so that he could make additional notes to Ramsay's answers for cross-examination purposes. The State also raised logistical considerations by reference to the calling of witnesses.

21. In its context, Ramsay is the fourth witness to give *vive voce* evidence. It is common cause that Ramsay was involved in the auditing of the books of several companies. The State alleges that these companies were implicated in fraud on the investing public, SARS, and the JSE as well as contravening various legislation, including the tax laws. The State also alleges that Porritt had control of these companies and orchestrated the frauds and that Bennet, who was also a director of some of the companies, was aware of some or all of the frauds and actively participated in them with knowledge. Ramsay claims that he was complicit in the commission of the alleged frauds and contraventions to which he has testified.

In order to prevent delays in the cross examination of Ramsay, and while Ramsay was still being led in chief the court precognised the accused to prepare their cross-examination in good time. The record will show the dates and number of times the defendants were reminded to do so.

22. By 10 August 2022 I also considered it necessary to issue the following ruling and directions having regard to the length of time the accused claimed it would take to cross-examine Ramsay and the need to have made similar orders during the cross-examination of Mr Milne who was the first State witness:[12]

1. Within 15 court days after the completion of Ramsay's evidence in chief Mr Porritt, being accused no 1, shall have put his case in regard to at least;
 - a. whether it is denied;
 - i. that the word "Colin" which appears on the letter of 4 March 1991 which is Exhibit DQ 38 is in his, Porritt's, handwriting
 - ii. that the letter of 4 March 1991 (Exh DQ38) regarding the disallowance of s 11(b) and 11 (bis) allowances/expenditure was received by Effective Barter (Natal) (Pty) Ltd (subsequently named Synergy Management & Finance (Pty) Ltd)
 - iii. that the letter purporting to be written on 4 March 1991 by Mr Carrihill to Effective Barter (Natal) (Pty) Ltd regarding the allowance of s 11(b) and 11 (bis) allowances/expenditure (Exh DL158-160);
 1. is a forgery;
 2. did not come into existence on the date reflected in the letter
 3. only came into existence in 1999 after Exh DJ 597, being a letter of 23 April 1999 regarding the appointment of Simon Hurwitz, was signed on behalf of the board of Synergy Management & Finance (Pty) Ltd

- b. the allegations by Ramsay;
- i. of Porritt and Bennett's involvement leading up to creation of the alleged forged letter referred to in para 1() a) (iii) hereof
- ii. that Porritt made amendments to Exh DL 27
- iii. that at the time of the respective transactions concerning the intellectual property from Europoint to Asia Pacific, from Asia Pacific to Tandem and from Tandem to Shawcell Telecom each company was a related party to the other
- iv. that no value was added to any intellectual property between the time it was disposed of by Europoint to the time it was acquired by Shawcell
- v. of the facts regarding Tandem's actual business operations in Mauritius insofar as it relates to the contents of Exh DL91 and 98-99
- vi. that the Shawcell Telecom listing did not raise R150 million cash but only raised R40 million
- vii. that the shares identified in Exh DL 56-58 and 62 were not issued for cash
- viii. that R999 061 521 supposedly raised by Tigon to selected investors was not received as required and cannot be accounted for (see the last bullet point of para 30.1 on Exh DL330)
- ix. concerning notes 15 and 16 to the Annual Financial Statements at Exh DO105-106, that R1.259 billion was not actually received on the disposal of the subsidiary and that it cannot be properly accounted for;
- x. that the Tigon group would have been trading at a loss during the 1999 to 2002 financial years but for the s 11(gA), 11(b) and 11(bis) assessed losses and allowances
- 2. In the event that Ms Bennett cross-examines Ramsay first, then within 15 court days after the completion of Ramsay's evidence in chief she shall have put her case in regard to at least each of the matters set out in para 1 hereof save for paras 1 (a) (i) and (ii) and para 1(b)(i)
- 3. If the accused who first proceeds with the cross-examination fails to put his or her case to Ramsay in regard to at least the issues and documents set out in para 1 or 2 (as the case may be)- within the 15 court day period, then unless good cause is shown in a written application deposited to by that accused under oath;
 - a. such accused will be deemed to have exercised the right not to disclose his or her defence in relation to these matters and will be precluded from subsequently putting his or her case to Ramsay in respect of such matters;
 - b. the court will then determine by when the individual accused concerned is to put further aspects of his or her case to Ramsay, alternatively the court will determine by when the accused is to conclude his or her cross-examination of Ramsay.

23. Despite this order and the revised one at the end of August, it was evident that Porritt had done nothing to prepare his case[13]. The court rejected Porritt's explanation out of hand and rejected the argument that his fair trial rights were being infringed. Some of the opportunities Porritt had been given were enumerated.[14]

The court however granted Porritt's request but said:

"Everything Mr Porritt has said regarding his inability is due to his failure or his deliberate conduct to frustrate this trial and delay it. ... sooner or later he is going to have to play the ball and get to the documentation and cross-examine Mr Ramsay, but I will not allow this to be a further basis for Mr Porritt claiming that somehow or another his fair trial right has been jeopardised or frustrated."

This was said at the end of August 2022. Since then there has been the September recess and two or more other weeks where the court did not sit and Porritt could have prepared. In addition he would have the one and a half month December recess before court resumed on 16 January. Overall, since the end of August there would have been a period of some two months when the court was not sitting to prepare.

A further consideration is that save for two or three issues, Bennett was to cover within the first 15 days of her cross-examination the same issues as Porritt. No explanation has been offered as to why Bennett's preparation was not, or could not have been shared. Porritt has now run out of excuses. They ring hollow and there can be no possible prejudice to him that is not of his own making

24. Bennett claims no prejudice even though Porritt contends that his cross-examination will aggravate her anxiety attack.
25. In *S v Jaipal* [2005] ZACC 1; 2005 (4) SA 581 (CC) at para 29 the Constitutional Court explained that;

"The right of an accused to a fair trial requires fairness to the accused, as well as fairness to the public as represented by the State. It has to instil confidence in the criminal justice system ... "

26. Bennett effectively seeks an indefinite postponement until she has been assessed while having placed on record that any further cross-examination while she is experiencing anxiety attacks affects her fair trial rights.

As it turns out, by the date of this judgment she has still done nothing in that regard although she was able to launch an urgent application together with Porritt after the matter was postponed in December and remained in the country until 20 December. This is covered in the reason given on 17 December 2023 for refusing a further postponement of the trial which the accused sought when the court resumed on 16 January.

27. Porritt was obliged to prepare his cross-examination. In the reasons of 17 January the court dealt with the lengthy time each accused had to prepare since receiving the indictment, obtaining further particulars and the paint by numbers approach adopted by the State when referencing the charges to the documents and to Ramsay's statement. They are to be read into these reasons.
28. There comes a time when accused must appreciate that the obtaining of witness statements was a hard fought battle which secured their fair trial right not to be caught by surprise and to be able to prepare in good time, including locating witnesses and documents for both cross-examination and to support their defence.

The corollary is that accused have a responsibility to go through the indictment, statement and documents the State has supplied in good time. Both accused were legally represented from the get-go and Porritt claimed that some R23

million had been expended on lawyers by as early as 2010. This is also mentioned in the reasons of 17 January. There is no reason why they did not already have their ducks in a row if they were serious about exercising their fair trial rights as opposed to adopting over a decade's worth of Stalingrad defences with relatively little engagement over that time on the merits of the charges.

29. There is no prejudice to the accused, other than caused by Porritt deliberately refusing to prepare his cross-examination (as is now evident from statements recently made and referred to in the 17 January reasons). Bennett in the meanwhile will not have the stress of cross-examining.

Jaipal goes further and also requires a court to have regard to broader interests. The State contends it is prejudiced by the excessive delays in this case. That is obvious. In addition, Ramsay cannot be expected to wait indefinitely until his cross-examination is completed. Bennett claims it will take three months for her to complete her cross-examination while Porritt says he will take some three years.

30. A further aspect is that neither Bennett nor any medical practitioner can point to a physiological reason for the sudden convulsions she experienced while in court during cross-examination or, as occurred in May 2021, when the court was engaging the accused on the admissibility of Hong Kong affidavits by reference to documents that had been handed in.

The issue of Bennett's ability to cross-examine being hampered by reason of anxiety attacks is straight forward. She told the court that she had sorted out her medication for anxiety, that she did not get convulsions or shaking fits after the court had adjourned in about May 2021, that she did not have them while Ramsay was being led in chief and she now told the court that she did not get then during the December recess until shortly before coming to court on 16 January. Furthermore her own view that stress was also created when commuting between Knysna and Johannesburg is now removed from the equation since she is now settled here.

All that is required is to assess whether the medication or its dosage is correct and the consequences if she experiences anxiety attacks during the cross examination or its preparation and how that can be alleviated or addressed. To date there has been no difficulty in Bennett drafting court papers or preparing written argument.

31. However the court must be in a position to determine whether she should obtain legal aid assistance as an alternative. Bennett cannot delay the decisions which the court must make. But until then, and in the interests of justice, the court cannot run the risks attendant upon the allegations made by Bennett as to the effect her anxiety attacks may have on her ability to cross-examine.

In this regard reference may be had to *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd 1976*

- (2) SA 565 (AD) at 570E-F where Harms AJA (at the time) said:

“... a Judge is not simply a ‘silent umpire’. A Judge ‘is not a mere umpire to answer the question ‘How’s

that?’” Lord Denning once said. Fairness of court proceedings requires of the trier to be actively involved in the

management of the trial, to control the proceedings, to ensure that public and private resources are not wasted, to point out when

evidence is irrelevant, and to refuse to listen to irrelevant evidence. A supine approach towards litigation by judicial officers

is not justifiable either in terms of the fair trial requirement or in the context of resources.”

ORDER

32. On 1 December I made the following order, the reasons for which have been further reinforced by the events since 1 December which are set out in the reasons provided by the court on 17 January for refusing the postponement requested on the previous day.
 1. Mr Porritt, being accused no 1, shall proceed with his cross-examination of Mr Ramsay from the date when court resumes in 2023.
 2. Ms Bennett will resume her cross-examination of Ramsay after Mr Porritt has cross-examined Ramsay or, if applicable, on the date by when the court may rule that Porritt must complete his cross-examination of Ramsay.
 3. Within 15 court days of 16 January 2023, Mr Porritt shall have put his case in regard to at least;
 - a. whether it is denied;

- i. that the word “Colin “which appears on the letter of 4 March 1991 which is Exhibit DQ 38 is in his, Porritt’s, handwriting
- ii.that the letter of 4 March 1991 (Exh DQ38) regarding the disallowance of s 11(b) and 11 (bis) allowances/expenditure was received by Effective Barter (Natal) (Pty) Ltd (subsequently named Synergy Management & Finance (Pty) Ltd)
- iii.that the letter purporting to be written on 4 March 1991 by Mr Carrihill to Effective Barter (Natal) (Pty) Ltd regarding the allowance of s 11(b) and 11 (bis) allowances/expenditure (Exh DL158-160);
 1. is a forgery;
 2. did not come into existence on the date reflected in the letter
 3. only came into existence in 1999 after Exh DJ 597, being a letter of 23 April 1999 regarding the appointment of Simon Hurwitz, was signed on behalf of the board of Synergy Management & Finance (Pty) Ltd
- b. the allegations by Ramsay;
 - i.of Porritt and Bennett’s involvement leading up to creation of the alleged forged letter referred to in para 1() a) (iii) hereof
 - ii. that Porritt made amendments to Exh DL 27
 - iii.that at the time of the respective transactions concerning the intellectual property from Europoint to Asia Pacific, from Asia Pacific to Tandem and from Tandem to Shawcell Telecom each company was a related party to the other
 - iv.that no value was added to any intellectual property between the time it was disposed of by Europoint to the time it was acquired by Shawcell
 - v.of the facts regarding Tandem’s actual business operations in Mauritius insofar as it relates to the contents of Exh DL91 and 98-99
 - vi.that the Shawcell Telecom listing did not raise R150 million cash but only raised R40 million
 - vii.that the shares identified in Exh DL 56-58 and 62 were not issued for cash
 - viii.that R999 061 521 supposedly raised by Tigon to selected investors was not received as required and cannot be accounted for (see the last bullet point of para 30.1 on Exh DL330)
 - ix.concerning notes 15 and 16 to the Annual Financial Statements at Exh DO105-106, that R1.259 billion was not actually received on the disposal of the subsidiary and that it cannot be properly accounted for;

x.that the Tigon group would have been trading at a loss during the 1999 to 2002 financial years but for the s 11(gA), 11(b) and 11(bis) assessed losses and allowances

4. If Mr Porritt fails to put his case to Ramsay in regard to at least the issues and documents set out in para 3 within the 15 court day period, then unless good cause is shown in a written application deposed to by him under oath;
 - a. he will be deemed to have exercised the right not to disclose his or her defence in relation to these matters and will be precluded from subsequently putting his case to Ramsay in respect of such matters;
 - b. the court will then determine by when Mr Porritt is to put further aspects of his case to Ramsay, alternatively the court will determine by when the accused is to conclude his cross-examination of Ramsay.
5. If Ms Bennett contends that her ability to effectively cross-examine a witness in court or otherwise properly defend herself in the criminal proceedings against her is affected by the conversion disorder in respect of which she previously produced a document from a medical practitioner which cannot be treated by medication or therapy, then she must produce satisfactory evidence in that regard by no later than 1 March 2023.
6. The matter is postponed to 16 January 2023 and the further dates as set out in the order of 16 November 2022.

SPILG, J

DATE OF HEARING: 1 December 2022

DATE OF ORDER: 1 December 2022

DATE JUDGMENT: 25 January 2023

FOR ACCUSED: In person

FOR THE STATE: Adv. EM Coetzee SC

Adv. JM Ferreira

[1][1] On 11 May 2021 Bennett sent an email stating that she saw Dr Oliver, and claimed that he had diagnosed her with “severe depression, coupled with social anxiety disorder (the ongoing trial) and the shaking is what is termed conversion disorder” and that she could not function at the moment as she will keep on shaking and might get worse “until the new medication that he has given me starts taking effect in a couple of weeks”. This was followed up by an email from Bennett on 26 May which read: “Unfortunately, as stressful situations continue to cause me to have seizures, she (i.e. Dr. Bentley a clinical psychiatrist) requires that I do not attend court until the gradually increasing dosage of medication has the desired effect. I am now on 3/4 of a pill a day which needs to increase to 2 pills a day in increments of a quarter of a pill a week. This will take until the end of June when the term ends. She then wants me to have a further couple of

weeks on the full dose for it to take complete effect. On 25 May and again on 10 June 2021 Dr. Bentley submitted a report. In both reports she diagnosed Bennett as having a convulsion disorder and a major depressive disorder occasioned by stress or trauma. In the report of 25 May Dr. Bentley stated that the treatment required a reduction in stress, treatment of any underlying or associated depression or anxiety and psychotherapy. In addition Bennett's medication would have to be increased over a few weeks but "would not be immediately effective. It will require a period of a minimum of two weeks on an adequate dose for it to take effect. ... Ms Bennett will require time away from the trial in order to recover otherwise there is a high risk of having further seizures while in court. I have booked her off from court until the end of June 2021." In the subsequent report of 10 June, Dr Bentley extended the period to 12 July which she said was because the court had insisted that she argue in support of her "sick leave".

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[2] Record of 15 November 2022 at p19

- [3] The court had conducted a lengthy enquiry when Bennett failed to attend court after the December recess on 30 January 2017 and there was no clear indication as to length of time her alleged medical condition would prevent her from continuing the trial. Bennett claimed that she was suffering from severe stress and the court expressed concern about the way forward. In particular it was concerned about
- (a) whether the fact that Bennett representing herself was a cause of or contributed to her condition;
 - (b) whether she was fit enough to represent herself and if not whether there were other possible solutions; and (c) whether her physical or mental condition would affect her ability to attend the trial if it continued. On 5 June 2017 the contempt of court application was postponed sine die. Since then to May 2021 Bennett has continued to conduct her defence without any difficulty and without a recurrence of the disorder she claimed to have had at the time. See the judgment of 6 March 2017 and the order of 5 June 2017
- [4] Record of 15 November 2022 at pp 15-16
- [5] Id p 17
- [6] E.g. Id p 17
- [7] Record of 30 November at p8
- [8] See par 5 of these reasons
- [9] Id at p12
- [10] It is difficult to follow this as Divaris passed away at the beginning of October 2021 after battling cancer. He therefore would have been available to consult before then but would have to be replaced because of the delays in proceeding with the trial since then
- [11] Record of 29 August 2022 at p 11
- [12] Section 166(3)(a) provides that: “If it appears to a court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceeding to be delayed unreasonably, the court may request the cross-examiner to disclose the relevance of any particular line of the examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination”.
- [12] Section 166(3)(a) provides that:
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[13] This was confirmed by Porritt's express statements on 16 January which I believe are mentioned in the reasons of 17 January for refusing the postponement sought

[14] Id at pp 59 to 60

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