

SOUTH AFRICA / JUDGMENT

S v Porritt (SS40/2006) [2025]

ZAGPJHC 121 (13 February 2025)

[2025] ZAGPJHC 121

COURT

South Gauteng High Court, Johannesburg

BEFORE

Spilg

CASE / FILE NUMBER

SS40/2006

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

Source record

FLYNOTES:

CRIMINAL – Fair trial – Unreasonable delay –
Cross-examination
of key witness – Accused responsible for refusing to carry on cross-examination on any lawful ground
– Fair trial right
to continue with cross-examination was disproportionate to overriding consideration of interests
of justice – Conduct
was unreasonably delaying trial – Refusal to proceed was a deliberate tactic to prolong
trial – Termination of
cross-examination justified – Criminal Procedure Act 51 of 1977, s 342A.

IN

THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION

(Sitting in PRETORIA)

CASE

NO: SS 40/2006

(1)

REPORTABLE: YES

(2)

OF INTEREST TO OTHER
JUDGES:

YES

(3)

REVISED. YES

13

February 2025

In the

matter between: THE STATE
 and
 GARY
 PATRICK PORRITT
 Accused No.1

JUDGMENT

Section 342A(3) of the CPA

22 November 2024

SPILG, J

INTRODUCTION

1. Within the space of two days from when the trial resumed after a three week break on 18 November 2024, this court has been required to deliver three separate orders.
2. On 18 November Mr Porritt, who is accused no 1, sought a postponement because he claimed that new circumstances had arisen since my order of 18 October 2024.

In terms of that Order I directed that the proceedings were to continue in respect of the cross-examination of Mr Ramsay by Porritt in the absence of accused no 2, who is Ms Bennett.

The order was made because of medical certificates and reports which she had presented in absentia, the effect of which was to advise and recommend that she should not attend court until January 2025.[1]

3. The court had heard Porritt on the reasons why he contended for prejudice if he was obliged to continue with his cross-examination in the absence of Bennett. The reasons for rejecting the grounds raised by Porritt were then given in open court and the order requiring Porritt to proceed with his cross-examination of Ramsay in the absence of Bennett was then made.
4. The second matter the court considered it necessary to deal with on 18 November arose during the course of Porritt presenting his argument. It concerned whether certain of Porritt's utterances were in contempt in facie curiae. The court found that he was in contempt and that it was obliged to take immediate action in order to uphold the dignity and authority of the court and its institution. After hearing Porritt on whether the sentence should be a fine or a custodial one, and if so the period, it sentenced Porritt to a custodial sentence of six months imprisonment without the option of a fine. In part this was due to Porritt continuing with his utterances during argument on the appropriate sentence to be imposed.

5. The third matter, and with which this decision is concerned, arises because (still on 18 November) when Porritt's application for a postponement was dismissed and he became obliged to continue with his cross-examination of Ramsay, he refused to do so on the grounds that Legal Aid South Africa ("LASA") had declined his application to appoint a legal representative to provide him with "legal advice"[2]. He believed that such refusal was so obviously bad that if he were simply to deliver an application to review its decision, wiser counsel would prevail and LASA would reconsider before the matter was even heard.

6. Porritt expressed himself as follows:

"The circumstances have changed completely since Ms Bennett became ill. I cannot continue on my own without access to legal advice".

Since the court had already heard both Porritt and Bennett on the question of whether either would suffer prejudice if Porritt was obliged to continue the cross-examination of Ramsay, it afforded Porritt the lunch period to reconsider his position.

7. However prior to taking the adjournment, Mr. Coetzee on behalf of the State, put it on record that if Porritt did not change his mind then the State will argue that Porritt should not be granted a further postponement and that should Porritt continue with his refusal to cross-examine on the ground advanced, that the proceedings be continued as if Porritt's case in respect of Ramsay has been closed and that the opportunity to cross examine has been terminated by his refusal to continue with cross examination. This I considered was adequate compliance with the provisions of s 342A (4) of the CPA.
8. Porritt then responded that he did not refuse to continue, but that he was unable to continue "without legal advice" [3]. Porritt wanted to continue running the trial himself with Legal Aid sitting next to him or being available to consult with him, but that he would remain cross-examining and presenting argument as he wished.
9. It is necessary to also note that at that stage, in order to obtain legal advice from Legal Aid, Porritt would have to bring an application to review LASA's decision that it had already given to him with reasons as to why a lawyer could not be provided to give him legal advice during the trial; one of reasons being that it does not give legal advise and then leave it to the accused to carry on running the trial.
10. Porritt was then given a further opportunity to reconsider his position overnight because on the following day he would have to deal with the State's position that he had now forfeited his right to cross examination should he refuse to continue with cross-examination, the alternative being that he is brought to court every day for the next nine court days and everyone sits staring at the ceiling save for the ritual of Porritt being asked on each of the days whether he is going to ask questions to which he will reply that he has no questions because he cannot obtain legal advice from LASA or, should he change his position again, that he does not have proper legal representation or cannot obtain proper legal advice.

11. The nine day remaining period arises because of the terms of what I will refer to as the curtailment of cross-examination order that afforded Porritt a specific time within which to deal at least with certain identified issues which would indicate if Porritt intended to persist with unreasonably protracting his cross-examination and thereby cause the proceedings to be delayed unreasonably. If that turned out to be the case, the court would assess the situation in the manner set out in para 4 of the order of 30 May 2024.[4]
12. The order of 30 May 2024 itself had been preceded by curtailment orders in respect of the cross-examination of the self-same witness, Mr. Ramsay, on 1 December 2022 and 16 August 2023. The court was obliged to issue its first curtailment order against Porritt when he adopted the same stratagems in cross-examining the first state witness, Mr. Milne.[5]

THE ORDER OF 22 NOVEMBER 2024

13. On 22 November the court made the following order:
 - “1. The ground given by Mr. Porritt, who is accused no 1, for refusing to continue with the cross-examination of Mr. Ramsay is not a valid or otherwise lawful ground.*
 2. The refusal by Porritt to continue with the cross-examination of Ramsay is unreasonably delaying the completion of the proceedings in the manner contemplated by s 342A (3) of the Criminal Procedure Act 51 of 1977 (“the CPA”)
 3. In order to eliminate the delay and the prejudice arising from it and to prevent further delay or prejudice;
 - a. The cross-examination of Ramsay by Porritt is concluded by reason of Porritt’s refusal to continue with such cross-examination and by reason of the ground for his alleged inability to do so being rejected as not a valid or otherwise lawful ground;
 - b. The State may proceed with the re-examination of Ramsay either before or after Ms Bennett, who is accused no 2, has completed her cross-examination of Ramsay;
 - c. Further postponements of the proceedings for Porritt to bring an application to review the decision by Legal Aid South Africa not to provide him with legal advice or for any other form of legal assistance are refused.
14. The first observation is that Porritt refused to continue with the cross-examination of Mr. Ramsay, not that the court stopped him from doing so at that stage. In fact at that stage Porritt had another nine days to at least deal with certain identified issues before which the court would consider whether to terminate further cross-examination or not.
15. The second observation is that the court gave Porritt an opportunity to explain why he was refusing to cross-examine and after hearing him determined that the ground given by him was not a valid or otherwise lawful ground for such refusal.

16. In the most material way, it was therefore Porritt's refusal to continue to cross-examine without a legitimate reason which resulted in the order made.
17. This judgment will however commence by considering the court's entitlement to curtail or terminate the exercise of an accused's fair trial right.
18. The judgment will then proceed to deal with
 - a. Porritt's awareness of his rights and duties in respect of cross-examination;
 - b. Porritt's reason for claiming that he could not or would not proceed and the reason for the court rejecting his grounds;
 - c. whether Porritt is unreasonably delaying the completion of the proceedings and whether the court is satisfied that it had afforded Porritt adequate opportunity, in the form of clear Rulings and Orders, to demonstrate that he would desist from his delaying tactics and that it has exhausted all other attempts to speed up the process and eliminate the delay and prejudice arising from it before making the order. This will include why the order is limited at this stage to directing that the cross-examination of Ramsay by Porritt is concluded.
19. Once again it would be an act of supererogation if the court was to go through every order it has made and reasons it has given in respect of Porritt delaying the proceedings over the last seven years since September 2016 when he pleaded to the charges. This judgment must be read in conjunction with that history, including that set out in the judgment delivered on 29 January 2025 to the extent that it refers to him only. The judgment of 29 January 2025 concerned a request by Bennett for a further postponement, but in paras 2 to 7, 14 to 15, 19 to 24, 46 to 52, 70 read with 73 and the second para to 96 also dealt with Porritt.

CURTAILMENT AND TERMINATION OF THE FAIR TRIAL RIGHT TO CROSS-EXAMINE

20. The curtailment or deprivation of the ability to cross-examine by reason of an application of the provisions of either ss 166(3)(a) and 342A (3) read with (4) of the Criminal Procedure Act 51 of 1977 infringes on an accused's constitutionally protected fair trial right. [6]

In particular s 35(3)(i) of the Constitution provides that:

(3). Every accused person has a right to a fair trial, which includes the right-

(i) To adduce and challenge evidence"

21. Although neither Porritt nor Bennett have challenged the constitutionality of these sections I have been acutely aware throughout that the application of either section would be unconstitutional unless justified under the provisions of s 36 of the Constitution.
22. In terms of s 36 the requirements which must be met to justify an infringement of a constitutionally protected right are:

"Limitation of rights.—

- (1) The rights in the Bill of Rights may be limited only in terms of law of general application to the extent that the limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom, taking into account all relevant factors, including—
 - (a) the nature of the right;
 - (b) the importance of the purpose of the limitation;
 - (c) the nature and extent of the limitation;
 - (d) the relation between the limitation and its purpose; and
 - (e) less restrictive means to achieve the purpose.
- (2) Except as provided in subsection (1) or in any other provision of the Constitution, no law may limit any right entrenched in the Bill of Rights.
23. I have carefully considered whether such infringement could be justified under s 36 of the Constitution if the court found

that Porritt by protracting his cross-examination unreasonably was persisting with his stratagem of deliberately delaying the proceedings (as separately found to be the case as far back as 2010 by the Supreme Court of Appeal and more recently in 2023 by Monama J[7]) and had effectively abused the right accorded an accused to such a degree that the interests of justice or the overall considerations regarding a fair trial were being trampled on.

I should add that initially Porritt said that he intended to put his case to the witnesses but has since changed his position. While I do not treat this as a major consideration, it nonetheless appears to be a factor which may reinforce a court's decision to curtail or terminate cross-examination of a witness by an accused, as is the period of time which an accused claims he or she requires to properly cross-examine a witness.

24. The constitutionally protected right to cross examine acknowledges the crucial role it plays in the adversarial system: Wigmore on Evidence at para 1367 mentions that it is “beyond any doubt the greatest legal engine ever invented for the discovering of truth”.
25. Accordingly, not allowing an unrepresented accused the opportunity to properly cross examine “within the limits of fair cross examination” would offend the basic tenets of our trial system.
26. But the adversarial trial system adopted by common law jurisdictions may be subject to abuse and be undermined by the way in which a litigant engages the judicial system, particularly if he or she adopts the so-called Stalingrad tactics of infinitely or significantly regressing a trial from concluding.

27. In circumstances where a court becomes justifiably concerned that its procedures and the protected rights exercisable by an accused are not being used for their intended purpose but are being manipulated to unreasonably delay proceedings, it is then obliged to have regard to the other affected interests.
28. Firstly, the fair trial rights of an accused, including the right to cross-examine are not the only fair trial rights to be taken into consideration. The fair trial right itself comprises a bundle of different rights which contain potentially conflicting elements.

In a given situation it may not be possible to satisfy both the accused's purported exercise of a right and to provide an expeditious hearing. By way of illustration, such a situation may arise where some accused wish the trial to proceed while the co-accused claim prejudice if is not postponed. In such a case the reasons for seeking the postponement may be more closely scrutinised and competing fair trial rights weighed.

29. Secondly, there are additional considerations which either enhance an accused's right to a fair trial or may outweigh it. The one is the right of access to justice. That is if one considers the fair trial right as a sub-set of access to justice. Even if it is the converse, and access to justice is part of the overall consideration of the right to a fair trial, the outcome ought usually to be the same. Ultimately it involves weighing considerations affecting rights beyond just those of the accused, but bearing in mind the cardinal role assigned to the right to cross-examine in our justice system as set out earlier.

30. In this regard s 34 of the Constitution under the heading "Access to courts" provides:

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

31. In the context of the accused's fair trial rights, it may be said that the reasonable time requirement provided for in s 35(3)
 - (d) of the Constitution is there to protect the accused and cannot be turned against him or her. This section provides that accused persons have the right;

"to have their trial begin and conclude without unreasonable delay"

32. However other interests are also affected if a trial is unduly delayed. In criminal trials these would involve the interests of witnesses, the prosecution and the confidence the public should have in the proper administration of justice and the complainants' interests in finality.

These may in the initial instance be classified as part of the broader rights of access to justice.

Section 34 of the Constitution deals with some aspects of access to justice in the context of access to courts. The section reads:

“Access to courts. —

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”

33. In *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd* 1976 (2) SA 565 (AD) at 570E-F Harms AJA (at the time) had regard to the broader context in which fair trial rights are to be considered and 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.

34. The final consideration when having regard to the fair trial right of an accused to cross-examine is the overarching principle of the interests of justice. This is not an elusive concept but has become concretised in our jurisprudence and appears to be the ultimate arbiter of whether a limitation of the exercise of a fair trial right is reasonable and justifiable under s 36 of the Constitution.[8]
35. The broader interest of justice as limiting the extent of the right to legal representation under s 35(3)(f) has already been applied to the accused in this case.[9]. It was applied when the Supreme Court of Appeal (“SCA”) overturned the trial court’s decision which required Legal Aid to provide both Porritt and Bennett with two sets of counsel based on their fair trial right to legal representation.[10]

In *Legal Aid Board v The State* [2010] ZASCA 112 at para 40, Ponnann JA applied the case of *Dietrich v R*, an Australian decision on appeal, which noted that an accused’s fair trial right is not absolute, but can be limited by the overarching considerations of the interests of justice. The following observation contained in *Dietrich* was made in the context of an indigent accused’s right to legal representation:

‘If the interests of justice are to be pursued without regard to other considerations, then clearly they require not only a fair trial but the fairest possible trial. But the interests of justice cannot be pursued in isolation. There are competing demands upon the public purse which must be reconciled and the funds available for the provision of legal aid are necessarily limited.’

36. Although the SCA did not characterise the issue as requiring the application of s 36, the case is nonetheless authority for finding that a fair trial right is not absolute and may yield to competing interests of justice.

37. In the context of the substantive fair trial rights of an accused, the jurisprudence emanating from the European Court of Human Rights, which is obliged to apply the provisions of European Convention on Human Rights, is instructive. The Convention's protection of an accused's fair trial rights is found in Article 6, and for present purposes the following extracts of subsections

(1) and (3) are relevant. They provide:

"1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

3. Everyone charged with a criminal offence has the following minimum rights:

- (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- (b) to have adequate time and facilities for the preparation of his defence;
- (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
- (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
- (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

38. In *Colozza v Italy*

(1985) ECHR the Strasbourg court noted that the guarantees contained in Article 6.3 of the European Convention on Human Rights "are constituent elements, amongst others of the general notion of a fair trial"[11]

The court was not prepared to extrapolate a general theory of whether the right to take part in person at any hearing (which was the fair trial right issue before it) is of a qualified character requiring it to be reconciled "through striking of a 'reasonable balance' with the public interest and notably the interest of justice". It however was prepared to recognise that the impossibility of holding a trial by default may, in the circumstances of a given case, paralyze the conduct of criminal proceedings as it may lead to the dispersal of evidence, the expiry of the time limit for prosecution or a miscarriage of justice.[12]

39. These considerations fall under the broader framework of the interests of justice, which appears to find application where the rights of an individual clash with the rights of society at large. In order to resolve this dichotomy s 36 of our Constitution also requires that the “limitation is reasonable and justifiable in an open and democratic society based on human dignity, equality and freedom”.
40. This is reinforced by s 39(1)(b) which requires a court when interpreting our Bill of Rights provisions to consider international law (the term used is “must”). Section 39(1)(c) also indicates that reference may be had to foreign law but is not prescriptive; it provides only that a court “may” consider it when interpreting these provisions.

The Universal Declaration of Human Rights accepts that there are justifiable limitations to the enjoyment of rights and that such limitations are grounded essentially on reasonableness and proportionality. Article 29.6 provides that:

“In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society.” [13]

41. I am therefore satisfied that the right to cross-examine is not an absolute right. It remains subject to fair trial considerations arising from the rights of other affected parties and of accessing justice (including the State and those who laid complaints which form the subject matter of the charges)

The fair trial right to cross-examine is also subject to the ultimate considerations of the interests of justice, aspects of which have been referred to in other decisions of our appellate courts and those to which we are entitled to refer. These include that public and private resources are not wasted, ensuring that criminal proceedings are not only conducted fairly but with reasonable expedition having regard to the rights and interests of others such as witnesses, the complainants’ interests in finality in respect of their alleged pursuit of justice and the confidence the public should have in the criminal justice system.[14]

42. Confidence in the criminal justice system is lost if cases run interminably because of strategies which have the effect of delaying the trial unreasonably.
43. In an earlier judgment in this matter delivered on 17 January 2023 I pointed out the following at paras 10 to 13:

“

10. The court has also explained previously that if the accused wish to make allegations which compel the court to engage in credibility findings or where it is obliged to draw adverse conclusions regarding the true purpose of a course of conduct adopted by an accused then it will do so.

11. A stage is reached in a lengthy trial where a court is able to assess whether an accused is abusing his or her fair trial right and, if so, to ensure that this is addressed firmly but fairly even when the litigant raises judicial bias or a mistrial as an ogre.

Furthermore, I have sufficient experience and training to make credibility findings or to determine an ulterior purpose in relation to procedural matters and tactical stratagems (such as the so-called Stalingrad defences or if an accused is abusing the fair trial right) which do not affect at all credibility findings I may be obliged to make in order to determine if the State has proven its case beyond a reasonable doubt.

The one has nothing to do with the other because the underlying rationale for a person being untruthful or seeking to adopt a stratagem may have a different objective to testimony which is relevant to guilt or innocence.

12. Courts regularly disbelieve an accused on non-material facts and will still find him or her to be a credible witness on the essential elements of the charge and acquit.

So too, courts regularly admit confessions in a trial within a trial, which expressed or otherwise may mean that the accused's version was disbelieved but will find that the accused's version is reasonably possibly true based on a favourable credibility finding.

In other words, courts are expected to ignore unfavourable findings on credibility, or those as to purpose and motive, made on issues unrelated to the actual merits of the offence with which the accused has been charged. Not only that, but the collective experience is that courts regularly acquit in cases where the accused is found to be a credible witness on the essential facts yet is disbelieved on other aspects.

13. It is in the hands of accused as to how they wish to engage the court and if they do so for an ulterior purpose, or are untruthful, in order to defeat the ends of justice then they must appreciate that they bear the consequences of their actions.

A court should not shirk its responsibility to make decisions fairly, transparently and honestly based on solid grounds. If an accused wishes to engage the court on credibility issues during the course of the trial or seek to undermine the fair administration of justice, then he or she does so with open eyes and must accept that the court will be obliged to make such findings. That is its job, which cannot automatically amount to a perception of bias if regard is had to the test which must be applied.

If it were otherwise, then accused could play the system with impunity and courts would not be able to secure the proper and fair administration of justice. Courts are obliged to act having regard to the interests of justice. [15]

I have been obliged to make findings that at certain stages in the trial each of the accused has been responsible for delay and that they have elected not to engage legal representation through legal aid or otherwise. I have made these findings based on the conduct or statements of the accused before this court, and independently of the Supreme Court of Appeal's finding that both accused adopted Stalingrad type defences to delay the trial and independently of the late Judge Monama's own finding that the accused were adopting these tactics." [16]

44. The contents of the last paragraph regarding the stratagem adopted by the accused, and for now I need only confine it to Porritt, apply equally now save to add that the record of proceedings since that judgment was delivered demonstrates a continuation of the same stratagem, if not more heightened in recent times as it appears from statements made by the State in court that effectively, after Ramsay has concluded his testimony the State will be wrapping up its case with less than a handful of short duration witnesses.
45. The termination of Porritt's right to continue the cross-examination of Ramsay only arose after Porritt had been cross-examining Ramsay for an extensive period, despite a number of orders being made against him under s 166 (3)(a) and because Porritt himself refused to continue with his cross-examination of Ramsay on grounds which the court rejected. Accordingly, aside from Porritt being responsible for refusing to carry on cross-examination on any lawful ground, his fair trial right to continue with the cross-examination of Ramsay is disproportionate to the overriding consideration of the interests of justice as well as the fair trial rights and access to justice which other affected parties are entitled to exercise.

PORRITT'S AWARENESS OF HIS RIGHTS AND DUTIES RE CROSS-EXAMINATION

46. In about November 2017 the court appointed Adv van Schalkwyk SC as amicus to inform both accused of their fair trial rights. At that stage Porritt was in custody. Counsel informed the court that he had

contacted attorney Frank Cohen and engaged Adv Osborne as his junior to assist with the research. He also advised that he could only see or consult telephonically with Bennett but would be prepared to meet her at a venue between Johannesburg and Pietermaritzburg.

47. The appointment of Adv van Schalkwyk as amicus was done because the court was concerned that the accused may at some stage in the future contend that it had inadequately advised them of their fair trial rights and duties. Adv van Schalkwyk was identified by Porritt as the counsel who had agreed to represent him but would only be available some seven months after he had been approached to do so [17]. Furthermore during the course of the trial the state had submitted advisories on evidence and the court itself from time to time reminded the accused of the importance of cross examination, the potential consequences of not doing so while still respecting an accused right to remain silent, and identifying in the s 166(3) orders certain relevant topics which Porritt was required to deal with within the specified period because of their potential impact on his defence.

48. On 19 November 2024 and during the course of argument in respect of the present matter, Porritt for the first time claimed that he had been incarcerated at the time and it was not possible for counsel to speak to him and although Bennett had reported back to him and had explained to him what council had said regarding their rights and duties of cross examination, they had said no more than that “it is impossible to explain to somebody how to cross examine”.
49. This was the first time that the court was informed that counsel appointed as amicus had not advised the accused of their rights and duties in relation to cross- examination. The court’s recollection of Bennett’s

report back on whether or not she had consulted with counsel was that they had indeed informed her of a cross-examiner’s rights and duties. Had it been otherwise, then the court would have engaged council to explain why he or his junior had not performed the required mandate as amici.

50. The explanation by Porritt rings hollow for other reasons. The court was not informed by him at the time that counsel had failed to perform the mandate entrusted and subsequently, despite claiming that they did not have counsel, various other counsel who were engaged from time to time could have advised Porritt if he was serious about exercising his rights and responsibilities of cross examination. Porritt’s only response to the court when that was put to him was as follows;

“... if a counsel, a senior counsel, gives me advice that something is impossible, I would expect another senior council to give exactly the same advice, ... I accept that advice, that was his response to what you have requested.”

Either counsel failed to understand that his (and his appointed junior’s) mandate was to inform the accused of their rights and responsibilities of cross examination, which are to be found in the standard textbooks of both Hiemstra and Du Toit et al, or Porritt’s explanation carries no weight. Having regard to the circumstances as a whole the court is satisfied that counsel

would have carried out their responsibilities to the court, particularly bearing in mind that Adv van Schalkwyk had also

referred the contents of the letter to Porritt’s erstwhile attorney, Frank Cohen.[18]

PORRITT’S GROUNDS FOR CLAIMING AN INABILITY TO PROCEED WITH CROSS-EXAMINATION AND ITS REJECTION

51. The court picks up the narrative from the morning of 19 November.[19]

When court resumed on that day, Porritt advised that it was impossible for him to carry on because he had carefully planned the sequence of cross examination and that the next section that he wished to deal with was very important. After the witness and the representative of SARS had left the court at its request, Porritt was asked to provide details. He replied that there are legal technical issues which implicate State Counsel and fraud and that there are certain aspects

which affect Bennett but he does not know how far to go on this because he is “not sure of the legal implications”. [20]

52. The court then reminded Porritt that he together with Bennett, had made the election not to engage Legal Aid lawyers to represent them and that it was only when the State suggested that LASA might be willing to assist in providing somebody who could take notes for him, because at that stage he said that he could not write due to an injury inflicted by an inmate at Johannesburg Central which exacerbated a carpal tunnel syndrome and had required surgery, that Porritt decided to explore that possibility.
53. When LASA responded that they do not provide such a service, only one for legal representation, Porritt saw the opportunity to claim that he now sought legal advice from them but not full legal representation. Porritt’s conduct in this regard and the further engagement between himself and the court demonstrates that he grabbed this opportunity to further delay these proceedings. The reasons are set out in the following paragraphs.
54. Porritt, after confirming that he was seeking legal advice but not full legal representation, was then asked why he had taken no steps to review LASA’s decision that they would not represent him, since they had informed him some three weeks earlier that their highest internal body had refused his request.
55. The initial response was that the Correctional Service facility where he was in custody had refused to let him make a call during the past three months. When it was pointed out that he had claimed on the previous day to have spoken to the Bar Council and the Attorneys Association about obtaining pro bono legal representation to assist in bringing a review application, Porritt then attempted to give a lengthy explanation as to what had occurred.

It turned out after much obfuscation that he had in fact communicated with both bodies and had emailed them over two weeks earlier on 1 November. Once again Porritt sought to blame Correctional Service who “will not allow me to phone out.”[21]

56. Once again Porritt sought to circumvent direct questions asked by the court. Eventually the full picture emerged. It was necessary for Porritt to obtain a specific phone card which needed to have money in order to phone out. Correctional Services would not let him get money into prison and he then said that;

“I cannot get anybody to provide me with money”[22]

There followed the following engagement:

“COURT: So nobody is giving you any money? MR PORRITT: No.

COURT: No family member, nothing?

MR PORRITT: No. I cannot phone out.

COURT: So they are happy to let you stew and you are now asking the Court to

assist?

MR PORRITT: Well I cannot phone out, I cannot even ask them.[23]

57. After giving reasons as to why Bennett could not assist or Adv Ferreira, Porritt then said that he in fact "... got money sent to somebody to bring me to the prison." [24]

His reply then resulted in the following exchange:

"COURT: So now you tell me you actually did get somebody.

MR PORRITT: Yes.

COURT: I thought previously you were telling me you got nobody.

MR PORRITT: Because you keep interrupting me ... "

58. Porritt then acknowledged that he had in fact received money from his son who lives in Pietermaritzburg through a fellow detainee's family. [25]
59. When the court enquired why his son could not come through and give him the money or to even assist in obtaining pro bono counsel, Porritt said that this was the only family member who was assisting him "... with various things" and although he was not involved with the farms and is not allowed on the farms the son has his own business and cannot assist:

"Because he is incredibly busy trying to keep his own balls in the air..." [26]

... if he has to come running here there is a very high chance that he would be dropping balls elsewhere" [27]

60. Porritt also claimed that his son cannot even find two days to assist, not even on weekends to come through because; "He works through every weekend". [28]
61. It was evident to the court that Porritt was not serious about engaging legal representation since he was persisting with an entitlement to no more than legal advice from LASA, a request which their highest internal body had declined. Furthermore, while professing a desire to bring a review application, which by its nature must be brought within a reasonable time, Porritt took no reasonable steps to initiate save for letters seeking pro bono assistance without following up.
62. Despite the lapse of time since November, Porritt has yet to bring a review application. While the court cannot second guess what the outcome of such a review application might have been, it appears that he has a difficult task ahead as he has not yet secured pro bono representation and that his past utterances that he would not utilise legal aid because he has no confidence in them remains his position, bearing in mind the dicta of the SCA in the Legal Aid case mentioned earlier as to the pool of funds LASA have at their disposal to fund litigation within their statutory terms of reference.

63. Porritt produced one further argument. He said that the position adopted was not a refusal to proceed with cross examination but an inability to do so.
64. It is unnecessary for this court to engage in semantics. If there is no valid ground for seeking a postponement of the cross examination then whatever its basis the failure to continue with the cross examination amounts to a refusal.
65. Porritt claimed that he had carefully planned the sequence of cross examination, that it involved legal technical issues which may step over the line because it implicates State Counsel and fraud. The record will show that Porritt has had no difficulty in accusing the State prosecutors of fraud on this court and the SCA, lying, filleting documents which he claims existed but are no longer there, having a hand in creating false evidence, and that despite the State requiring Porritt to retract these accusations, he has persisted with them and has in fact done so during the course of both the evidence of Mr. Milne and Ramsay.
66. There is a further reason for rejecting Porritt's reason for not carrying on with his cross examination. He has blown hot and cold about whether he has done preparation for cross examination. He has previously sought postponements because he claims not to have been able to prepare or did not bother to prepare, yet when most postponements are refused he produces a file and proceeds with cross-examination. Furthermore he has been repeatedly informed that he is required to deal with the topics identified by the court in its earlier orders by a particular date failing which:
- “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 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.”
67. Porritt's response to this has varied from the position that a court cannot dictate to him how he is to cross-examine to the position that he still has so many days remaining and that he will get to it. However during the course of cross-examining Ramsay on an issue where clearly a version is expected to the answer given by the witness, even if only a denial, he will be invited by the court to either put to the witness whether the answer given is denied or to put a version yet he is prone to move away from the topic.
68. The court is therefore satisfied that Porritt has no genuine impediment to continue with the cross examination of Ramsay, that any professed impediment is of his own making and that he has therefore refused to continue with the cross- examination because the grounds relied on are either not valid or otherwise not lawful.

UNREASONABLE DELAY, EXCEPTIONAL CIRCUMSTANCES AND THE FAILURE OF OTHER ATTEMPTS

69. In the judgment of 29 January the court said the following:

1.
2. However, the reasons for the orders which the court now makes must be understood in the context of the many judgments and orders (including rulings) which have preceded it and which found, on the facts in each instance, that the accused were adopting delaying tactics which required the court to put each of them on terms to finalise the cross-examination of their two alleged co-conspirators, Messrs. Milne and Ramsay.
3. These findings were not novel in relation to the accused. The Supreme Court of Appeal in *Legal Aid Board v S and others* [2010] ZASCA 112; 2011 (1) SACR 166 (SCA) per Ponnann JA said that

“But as has been made plain both in this court and the one below they intend to employ every stratagem available to them in order to delay the commencement and thereafter continuation of the trial for as long as they possibly can. Whilst pursuing that as their chosen course may well be their right, it may not be without its consequences. For as the Constitutional Court has endeavoured to stress (S v Jaipal):

'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 with the public, including those close to the accused, as well as those distressed '

4. In 2018, Judge Monama who presided in a bail application launched by Porritt found that Porritt was continuing with his strategy of delay and felt compelled to state[29]:

The delay in this matter is totally unacceptable. Approximately 17 judges have in one way or another dealt with this matter not on trial but on peripheral issues.

The Applicant is using the old well-known tricks to cause a delay. The Applicant is now representing himself. He has dismissed the attorneys from the case The Applicant continues to manifest his negative and demeaning attitude towards the bench and the prosecution. Such tactics reflect negatively on our justice system and particularly the criminal justice system.... The conduct of the Applicant is a negation of what any true lawyer will ever call justice. His tactics are inherently unjust, cruel and primitive. We cannot condone his conduct in terms of which he is trampling the administration of justice into dust. In my view his conduct is vexatious.”

5. Back in September 2010, the SCA also noted that Porritt and Bennett had already incurred legal costs of some R23 million for “various

preliminary legal skirmishes”[30]. This was said some six years prior to the accused actually pleading to the charges.

Ponnan JA also said in the same judgment at para 34 that:

I have referred in some detail to the evidential material that served before Borchers J because it illustrates, I believe, a complete lack of candour on the part of both Bennett and Porritt.....

Both Bennet and Porritt adopted an intractable attitude and for well on one year refused to furnish the LAB with information that was legitimately sought for the purposes of assessing their entitlement to legal aid. They eventually furnished information only after being directed by the court to do so. When they eventually did many of their responses were deliberately evasive and cagey.”

6. The SCA concluded that the information each accused had supplied to Legal Aid in order to obtain legal assistance fell;

“... far short of satisfying one that their personal circumstances are such that they do indeed qualify for legal representation at State

expense. I thus am of the view that given the paucity of reliable information the learned trial judge wrongly concluded that Bennett

and Porritt have shown themselves to be indigent as defined.”[31]

7. The accused however contend that the SCA and subsequently Judge Borchers, who was originally seized of the case before she recused herself, were misled by either Legal Aid or the prosecution or both; the implicit proposition being that both the SCA judges and the trial judge had not read the papers but relied on counsel.
70. This court rejects Porritt’s explanations of the SCA or Judge Monama dicta.
71. This court will not repeat the number of occasions it has held that Porritt has deliberately delayed the proceedings unreasonably. They are adequately set out in other judgments and also in the various s 166(3) orders this court has been obliged to make in respect of the cross examination by Porritt of Ramsay alone and which go back as far as the s 166(3) order of 10 August 2022 which required him to deal with specified topics in his cross examination within a 15 court day.[32]

A subsequent s 166(3) order to the same effect was made on 1 December 2022. It is the most complete of the early s 166(3) orders made in respect of the cross-examination of the present State witness, Ramsay, and reads as follows:

“IT IS ORDERED AND DIRECTED THAT:

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 the 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.”

72. The following paragraphs in this section were omitted from the original judgment handed down earlier today.
73. Porritt has received transcripts of the evidence of Ramsay, was given effectively a paint by numbers indictment and through Bennett would have accessed the further particulars she had obtained which were cross referenced to the indictment and the documents the State relied on.

Aside from receiving the transcripts, Porritt was also given time in court to contemporaneously write down not only the evidence in chief of Ramsay but at the same time to make notes for cross-examination purposes. He had more than adequate time to prepare for Ramsay’s cross-examination even before being detained in custody and also since Ramsay commenced with his evidence in chief.

74. Porritt was reminded on numerous occasions to properly prepare for Ramsay’s cross-examination in good time. This occurred even prior to the completion of Ramsay’s evidence in chief because even at that stage Porritt told the court that the trial would carry on for another 10 years. Prior to the judgment of 11 August 2022, which was in relation to the curtailment of the accused’s cross examination, Porritt said that it would take another three years, and then added for clarity, just to cross examine Ramsey.[33]
75. In a judgment given on 25 January 2023 the court referred to what had transpired in the intervening five months and said at para 23:

“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.”

76. In its reasons given on 17 January 2023 for refusing the accused a postponement to prepare a constitutional invalidity application, the court was again obliged to refer to Porritt’s delaying tactics[34]. It was also compelled to say the following:

“36. To demonstrate Porritt’s continued delaying tactics: He confirmed when pressed by the court that he had not even begun to prepare cross-examination on the aspects identified by the court in the order given as far back as August 2022. The order is to prevent the interests of justice and its proper administration from being subverted as the accused have already attempted to do.

The order framed by this court in August 2022 and repeated on 1 December 2022 regarding the issues which must, at the minimum, be dealt with during the first fifteen days of cross-examination will establish if the accused genuinely intend exercising their fair trial right in relation to cross-examination.

37. As just mentioned, Porritt squandered the time he was given in terms of a court order going as far back as August 2022 regarding the preparation he had to do. He was given the opportunity to make notes for cross examination purposes which resulted in Ramsay’s evidence in chief taking considerably longer, despite both accused being given transcripts of the record. He openly stated during argument that he has not bothered to prepare.
- 38 ... One must have regard to the history going back some 15 years when each accused would have been appraised of the case they had to meet and of the significance of the testimony that Milne and Ramsay, who claim to be insiders, would present to the court as set out in their statements. I understand that the accused would have received the statements and would have been in a position to consult their legal representatives and prepare if they were serious about having their day in court.
39. The conduct of Porritt displays a contemptuous attitude to the orders made by the court to secure shortened court days to accommodate him, to sit no more than three weeks at a time with a break of not less than two weeks in between in order to enable him further time to prepare. Simply put, Porritt has still not bothered to prepare his cross examination.
40. The court has structured the order it hands down today in a way that will assist it to determine whether, going forward, the accused genuinely intend exercising their fair trial right of cross-examining Ramsay or not. If they do not, then the court will act accordingly and ensure that the interests of justice are respected.

41. The exceptional and egregious conduct of their defence by the accused to date requires the court to reassert the underlying constitutional values including procedural requirement for conducting a fair and expeditious criminal trial in a manner that fully serves the interests of justice.

(Emphasis added)

77. The contents of para 41 which identified the conduct of Porritt (as well as of Bennett) as exceptional and egregious were said two years ago. Porritt has not changed his conduct. It remains egregious, and more to the point for the purposes of s 342A
- (4) the circumstances which the court finds itself in are exceptional. The court has taken every reasonable step, including the utilisation of s 166(3) , which has in fact been extended as to time, but to no avail. In short, all attempts to speed up the process have failed.
78. The adversarial system is being put at risk and the confidence in our criminal justice system is jeopardised if such stratagems do not remain exceptional but are permitted to become the norm. The limited responses available to a court under other provisions of the CPA have been undermined by Porritt's delaying tactics In the cross-examination of Ramsay , even those under s 166(3)(a).

The court has been left with no alternative but to invoke the provisions of s 342A, albeit in ameliorated form since the order made does not have the effect of closing Porritt's case, only his cross-examination of Ramsay. The history of these delaying tactics

and the attempts made by the court to deal with them are set out in various reported judgment including the three just mentioned and should be read as incorporated in this judgment.[35]

79. The court order of 22 November 2024 was therefore necessary because it was clear to the court that the order couched in the manner it was, is the only way in which the unreasonable delay occasioned by Porritt and his refusal to continue with the cross examination of Ramsay can be eliminated and is the only way now available to avoid the prejudice that follows to the rights and interests of the present witness, the complainants' interests in finality and the confidence the public should maintain in the criminal justice system.

ORDER

80. It is for these reasons that the order of 22 November 2024, which is set out earlier, was made.

DATE OF HEARINGS 18 and 19 November 2024

DATE OF ORDER

22 November 2024

DATE OF JUDGMENT 13 February 2025

FOR THE STATE

Adv EM Coetzee SC

Adv CB Smith

FOR ACCUSED no 1 In person

[1] The court was already alive to the risk that there was no definitive statement that Bennett would be able to attend court after that, as that uncertainty had resulted in further postponements being sought in the past. Its concerns were in fact realised when Bennett sought to postpone the case when it resumed on 20 January 2025 until she was examined again, and a report received from Dr Rowji a neurologist. See the judgment inter alia refusing the postponement which was delivered on 29 January 2025 (identified as “Reasons for Order of 23 January 2025: Regarding; 1. Postponement Sought by Ms Bennett and, 2. Continuation of Trial In her Absence if Granted”). I will be referring to this judgment later.

[2] This is the terms that the accused used

[3] Record 18 November 2024, p 94 l 20 to 22

[4] Para 4 of the order of 30 May which substantially repeats the essence of all the previous curtailment orders reads: “ 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.

[4] Para 4 of the order of 30 May which substantially repeats the essence of all the previous curtailment orders reads:

“ 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] See the order of 5 June 2018

- [6] Section 166(3)(a) provides: If it appears to a court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination. Section 342A (3) and (4) read: “(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 further postponement of the proceedings; (d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed; (4)
- (a) An order contemplated in subsection (3) (a), where the accused has pleaded to the charge, and an order contemplated in subsection
- (3) (d), shall not be issued unless exceptional circumstances exist and all other attempts to speed up the process have failed and the defence or the State, as the case may be, has given notice beforehand that it intends to apply for such an order.

[6] Section 166(3)(a) provides:

If it appears to a court that any cross-examination contemplated in this section is being protracted unreasonably and thereby causing the proceedings to be delayed unreasonably, the court may request the cross-examiner to disclose the relevancy of any particular line of examination and may impose reasonable limits on the examination regarding the length thereof or regarding any particular line of examination.

Section 342A (3) and (4) read:

“(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 further postponement of the proceedings;
-
- (d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed;
- (4)

- (a) An order contemplated in subsection (3) (a), where the accused has pleaded to the charge, and an order contemplated in subsection
- (3) (d), shall not be issued unless exceptional circumstances exist and all other attempts to speed up the process have failed and the defence or the State, as the case may be, has given notice beforehand that it intends to apply for such an order.

[7] Legal Aid Board v S and others [2010] ZASCA 112; 2011 (1) SACR 166 (SCA) at para 35 and S v Porritt [2018] ZAGPJHC 45 at paras 18 and 19

[8] This case is only concerned with the fair trial rights protected under s 35 of the Constitution (and presumably may affect s 34). For this reason the judgment is circumscribed to the fair trial rights paradigm and also does not suggest that every constitutionally

protected right is capable of limitation as the type of matter which can be contemplated has not yet to come before the courts

[9] Section 35(3)(f) provides that an accused has the right: “to choose, and be represented by, a legal practitioner...” “

[9] Section 35(3)(f) provides that an accused has the right:

“to choose, and be represented by, a legal practitioner...” “

[10] See Legal Aid Board v The State [2010] ZASCA 112 at para 38

[11] Colozza at para 26

[12] Id. at para 29

[13] Compare s 36 of our Constitution

[14] 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 ... “

[14] 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 ... “

[15] In S v Basson 2007 (1) SACR 566 (CC) at para 33 the Constitutional Court adopted the following passage in Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd 1976 (2) SA 565 (AD) at 570E-F per Harms AJA (at the time): “. . . 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.” 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 ... “

[15] In *S v Basson* 2007 (1) SACR 566 (CC) at para 33 the Constitutional Court adopted the following passage in *Greenfield Manufacturers (Temba) (Pty) Ltd v Royton Electrical Engineering (Pty) Ltd* 1976 (2) SA 565 (AD) at 570E-F per Harms AJA (at the time):

“ . . . 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.”

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 ... “

[16] See *Porritt v S*

[2018] ZAGPJHC 45 at paras 18 and 19. At para 19 Monama J expressed inter alia the following:
“The conduct of the Applicant is a negation of what any true lawyer will ever call justice. His tactics are inherently unjust, cruel and primitive We cannot condone his conduct in terms of which he is trampling the administration of justice into dust. In my view his conduct is vexatious.”

[17] Porritt informed the court by no later than 30 August 2016 that Adv van Schalkwyk had been approached to represent him and would only be available in March 2017.

[18] The court may be mistaken, but its own recollection is that it had printed out the extracts from either or both of the aforementioned

textbook writers to which the accused were referred. The court has not checked this against the record and therefore at this stage places no wait on such recollection.

[19] The events of 18 November where Porritt said that he was unable to continue cross-examination until LASA provided him with a person who would provide legal advice.

[20] Record 19 November 2024, p7 l 12 to p 9 l 5

- [21] Record 19 November 2024 at p 25
- [22] Id. At p 26
- [23] Id at p 26
- [24] Id at p 29
- [25] Id. At p 30
- [26] Id. At p 36
- [27] Id. At p 37
- [28] Id. At p 38
- [29] S v Porritt [2018] ZAGPJHC 45 at paras 18 and 19
- [30] At para 35
- [31] At para 36
- [32] On revisiting the s 166(3) orders, it appears that the first order made curtailing Porritt's cross-examination of Ramsay was on 10 August 2022. However there were cross-references to document errors which were subsequently corrected in the Order of 31 August 2022
- [33] See paras 2 and 3 of the judgment of 11 August 2022 (2022) ZAGPJHC 661
- [34] See judgment of 17 January 2023 (Reasons for Order of 17 January 2023 re: Postponement and to prepare Constitutional Invalidity Application)
- [35] The three just mentioned are open source cited as (2022) ZAGPJHC 661; (2023) ZAGPJHC 48; and (2023) ZAGPJHC 49

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/ZAGPJHC/2025/121.html>

CASE PAGE <https://chat.esheria.ai/case-law/south-africa/s-v-porritt-unknown-topic-agpjhc-2025--6a3ea5193b1caa912980febb>

Prepared on 11 October 2026 · Esheria