IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: SS 40/2006

(1) REPORTABLE: **NO**
(2) OF INTEREST TO OTHER JUDGES: **YES**
(3) REVISED. **YES (25 January 2023)**

17 January2023 .....

SIGNATURE

THE STATE

v

PORRITT, GARY PATRICK Accused no. 1

BENNETT, SUSAN HILLARY Accused no. 2

REASONS FOR ORDER OF 17 JANUARY 2023

re

POSTPONEMENT AND TO PREPARE CONSTITUTIONAL INVALIDITY APPLICATION

SPILG, J:

17 January 2023

INTRODUCTION

1. Yesterday was the recommencement of the trial after the recess and the date when Mr Porritt, who is accused no 1, was required in terms of a court order given on 1 December to resume his cross-examination of Mr Ramsay. Instead of doing so, he brought an oral application without papers to postpone the continuation of the trial until an application to declare part of s 67 of the Criminal Procedure Act constitutionally invalid (the constitutional invalidity application) was finally determined. This could only occur when the Constitutional Court becomes seized of the matter either through certification or on appeal to it.

   Bennett also joined in the application and presented her own submissions and argument.

   The accused did precognise the State or the Court of their oral application, despite previously being informed that any application for a postponement had to be done on written application supported by an affidavit.

2. In addition, both accused applied to utilise 17 to 20 January, being allocated dates for the resumption of the trial and Porritt's cross-examination of Ramsay, to prepare either a new constitutional invalidity application, or to amend the existing one which had been struck off the urgent court roll over a month ago on 9 December 2022.

3. Ordinarily if counsel had represented the accused, the argument before me by all the parties would be completed within the hour. However, both Porritt and Bennett have persisted in accusing the court of depriving them of their fair trial rights when I have directed the argument to its essential issues and raised difficulties with the argument they have presented when the direction was obvious, repetitive, completely irrelevant or simply time wasting. In the result the argument was eventually completed at 14.30 with only the mid-morning

adjournment and after acceding to Porritt's initial request to consult with Bennett for half an hour when the court commenced.

4. The relevance of Porritt consulting with Bennett in advance of presenting argument is of some relevance.

   This is because the position Porritt initially adopted (presumably after such consultation), that the court cannot continue with the trial because of a pending constitutional invalidity application, the merits of which have not yet been determined due to it being struck off the roll on a technicality, changed tack later during the course of Bennett's argument. She now contended that they wished to bring a fresh application since they understood that a completely new application had to brought after it had been struck from the roll.

   The reason for the change of tack is sufficiently clear – the accused cannot satisfactorily explain why they did not promptly go to the registrar on the same day the application was struck from the roll (which was during the morning of 9 December) and re-enrol it in conformity with the practice directives. The directives require a party to enrol an urgent application no later than the previous Thursday for a Monday hearing. The accused advised the court that the application had been struck off the roll because it was enrolled on the Friday for the Monday. It was apparently only served some time later on the Friday.

5. It will be demonstrated later, or in a subsequent set of reasons this court will hand down on Monday next week, that the accused failed to satisfactorily explain why they did not re-enrol the original constitutional invalidity application at any time between 9 December and 20 December when Porritt clearly understood, as stated to the court when he proceeded with his argument, that there is a pending constitutional invalidity application which has not been decided on its merits- not that the effect of the urgent court's decision on 9 December required them to bring a fresh application which had not yet been finalised.

6. I have attempted to provide reasons in what amounts to an *ex tempore* judgment. I may amplify it in the subsequent decision to be handed down on Monday.

   Nonetheless I will provide some background at this stage.

7. This is not the first time Porritt, supported by Bennett, has brought an application at the beginning of a court session which, if granted, will result in the delay of the trial. This, despite clear rulings or orders made during the previous session in order to secure a smooth and expeditious continuation of the trial on its resumption.

8. Neither of the accused formally applied for a postponement as they were obliged to in terms of court rulings previously made. They have chosen to ignore previous court orders as to the necessity of bringing applications for a postponement in good time. They are also aware by now that submissions made during argument as to facts which are not confirmed under oath carry little to no weight unless self-evident.

9. The accused are astute litigators. Applications brought by them and the nature of the arguments presented, which they state were without the assistance of any legal representative bears witness to that. They therefore know the reason why the court has required applications supported by affidavits in cases where they wish to support submissions with factual allegations. Yet they persist in not doing so.

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. [1]

I have been obliged to make findings that at certain stages in the trial each of the accused have 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 of Appeal's finding that both accused adopted

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[1] 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 (4) SA 581 (CC) at para 29 the Cnstitutional Court expalined 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 ... "*

Stalingrad type defences to delay the trial and independently of the late Judge Monama's own finding that the accused were adopting these tactics.[2]

14. A further factor is that the court has now heard the completed testimony of three witnesses over a period of six or more years. Since the evidence of the first State witness, Mr Milne, two forensic accountants have testified, hundreds of (if not over a few thousand) documents have already been admitted into evidence[3], and some documents material to the State's case have clearly passed through or were written by one or other or both accused.

15. To date the accused have stated that they do not wish to exercise their right to remain silent. They have therefore put such version as they consider appropriate to the witnesses previously called and have made submissions in respect of the admissibility of documents. This after the counsel Porritt claimed he intended to engage was requested by the court to advise them of their rights and duties in relation in relation to putting up a defence and the right to remain silent.

    This is mentioned because at the present stage the court is aware of what has been challenged, what version the accused have elected to put and what has gone unchallenged in relation to the witnesses who have fully completed their testimony as well as documents that were handed up and admitted prior to Ramsay commencing his evidence in chief. The court therefore has a fair idea of the issues on which testimony has already been given or documents produced by such witnesses.

16. The charge sheet and further particulars may have been complex to draw, requiring the distillation of many alleged facts.. Furthermore, Ponnan JA referred

[2] 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 in 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 in to dust. In my view his conduct is vexatious*."

[3] By October 2020 some 10 000 pages had been introduced into evidence. See the recusal judgment Bennett *and Another v S; In Re: S v Porritt and Another* [2020] ZAGPJHC 275; [2021] 1 All SA 165 (GJ); 2021 (1) SACR 195 (GJ); 2021 (2) SA 439 (GJ) at para 62

to the case as being complex and requiring the assistance of counsel, yet both Porritt and Bennet have elected not to engage counsel, whether legal aid or otherwise. They were afforded an opportunity to explain why, and the explanations provided at the time were rejected by the court.

In broad terms the accused knew from the start the case they were obliged to meet in relation to Ramsay. These issues do not appear to be factually complex. The accused had the indictment since about 2007 and one of them sought and obtained comprehensive further particulars. They have been in possession of Ramsay's statement for a considerable time (and certainly at the time when they were legally represented). As best as the court can gauge from submissions made by the parties during the course of the case, the prosecution has adopted a paint by numbers approach, cross-referencing charges to documents to Ramsay's statement.

17. A diligent accused would already, on receipt of the further particulars, have consulted and prepared their defence, identifying what they wished to challenge as well as obtaining such relevant documents as they contend the State has not referred to or provided[4]. During revision, I located the passage where the Supreme Court of Appeal in its judgment of 2010 referred to Porritt mentioning that he had already expended over R20million on legal fees. The passage I had in mind reads:

> *"Given the information supplied by them, one is none the wiser as to why the trusts (or indeed which ones) furnished as much as R23m for various preliminary legal skirmishes. And why they are no longer willing to fund the defence of either in the criminal trial proper. Moreover, one cannot discern on what basis the respondents and in particular Bennet qualified for assistance from those trusts. It is also somewhat rich for Bennett to say that she qualified for assistance from the trusts because her legal expenses and those of Porritt have invariably been the same and yet in the face of that to assert an entitlement separate from him to representation at State expense. On the*

[4] This would include documents which the accused believed should have been contained in Ramsay's statement or which they could have used to challenge Ramsay's version of events

LAB's reckoning the criminal trial would cost substantially less than the R23m already spent. A more pragmatic utilisation of the funds at their disposal from the outset of would have rendered their application for legal aid unnecessary." [5]

18. The accused take a photograph in time of the period 1 December 2022 to 16 January 2023 and say that their fair trial rights have been infringed if this court does not accede to their application or if it imposes the order made as to cross-examination. However one cannot take an isolated snapshot when considering the continued overall disregard of this court's orders or the opportunities the accused have had to prepare their defence including cross-examination once the further particulars had been provided, which after all is the purpose of seeking them.

Porritt persisted with his delaying tactics after he was placed in custody. When this was raised with him, he explained that he believes that the State will not have the stomach to continue indefinitely. Whether at the time or on another occasion, but certainly since being detained and during the course of Ramsay's testimony, he said that the trial would run another 10 years or more. Yesterday he contended that the court was rushing the case. This despite the trial already running some eight years before me, in respect of both pre-plea issues and since then[6], with the evidence of only three witnesses and argument on the receipt of what has been termed the Hong Kong documents and affidavits being concluded.

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[5] *Legal Aid Board v S and Others* [2010] ZASCA 112; 2011 (1) SACR 166 (SCA); 2010 (12) BCLR 1285 (SCA); [2011] 1 All SA 378 (SCA) at para 35

[6] The accused initially raised certain pre-plea issues in about August 2015. All pre-plea issues, including those subsequently raised, were determined by early July 2016. The accused pleaded to the charges by the end of the month. The special post-plea of lack of jurisdiction was then dealt with. After being dismissed, the evidence of Mr Milne, who was the first State witness, was proceeded with in September 2016 and was finally concluded on 27 November 2019. During the course of his cross-examination it was necessary to invoke s166(3) of the CPA in respect of each accused in order to ensure that they did not continue to delay their cross-examination of Milne. See paras 12 and 59 of this court's judgment of 12 October 2023 in the recusal application.

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*".

Porritt claims that his fair trial rights are affected because the court should only sit one week in every four. At this stage, the court day has also been curtailed to account for Porritt having to be transported back to reach the correctional facility by 16h00 the latest and being given effectively private transport to and from court because of his back issues.

19. Bennet claims that she has not delayed the process. I have previously found that she did and put her on terms to complete her cross-examination. The very reason for Porritt now being ordered to proceed with the cross-examination of Ramsay (in terms of the order of 1 December) was because Bennett claimed that she may not be able to competently cross-examine because of her condition which results in anxiety attacks, onset by having to attend court (her present position) or the fact that Porritt is incarcerated (previous assertion). She now adds that a psychologist has said that she may not be competent to stand trial at all.

20. On 30 November her position was evident: She did not know when she would be examined to determine if she was able to conduct an effective defence despite the issues being whether she was on too much medication, too little or whether she was malingering in part.

21. The order of 1 December resolved the dilemma with which the accused sought to confront the court. The court directed the management of the case as opposed to being subject to Bennett's decision as to whether and by when she would approach a psychologist.

22. Now the accused contend that they should be given a postponement until their constitutional invalidity application is heard.

23. The background to it as presented yesterday by the accused to the court is as follows: The accused brought an urgent application for *habeas corpus* so that Porritt could be released as his detention, under the order I made in terms of s 67

of the CPA when he deliberately failed to appear at the resumed hearing, was unconstitutional. It was alleged by Bennett that she had come upon a case, somehow obtained the heads of argument presented by counsel and on doing so it struck her that s 67 was in part unconstitutional.

24. The application was brought after Bennett had spoken to the Deputy Judge President who she understood had directed that she could bring her application on short notice. The notice was given on Friday for a Monday hearing.

25. When the State received the application it took the point that under the court's directives an urgent application had to be brought by no later than the Thursday for a hearing on the following Monday. In reply Bennett apparently raised her discussion with the DJP and she understood his response to be a direction that she could bring her application despite the terms of the practice direction.

    I have a fundamental difficulty in accepting Bennett's explanation. I have not approached the Deputy Judge President ("*DJP*") for obvious reasons, but I am satisfied that I can draw the following conclusions: No person in the position of Bennett could believe that the DJP would give a direction at odds with directives effectively issued under his hand that an urgent application had to be brought no later than the Thursday for the Monday, that the DJP would direct the judge of the urgent court to hear a mater with such abbreviated times when the matter is one for the presiding judge to determine and when the affected party was absent at a meeting when its interests were being prejudicially affected. I have little doubt that Bennett did no more than enquire as to where the papers were to be filed for the urgent court and she was informed that it would have to be filed with the relevant registrar and not at the DJP's office.

26. I am forwarding this judgment to the Deputy Judge President and if the facts are otherwise then I will apologise to Bennett.

27. However the real issue is whether this court should postpone the trial until the application is finalised, which it is common cause can only be by the Constitutional Court- either by way of confirmation or by way of appeal if the high court does not grant the application.

    And that issue is firstly resolved by determining whether there will be any prejudice to the accused if they continue with the cross-examination now and a court subsequently upholds the application of constitutional invalidity. Both Bennett (who Porritt handed over to argue first) and Porritt could not provide any rational explanation despite being asked to focus on what would happen to the trial if Porritt was released and the point of constitutional invalidity was good.

    The effect of constitutional invalidity of part of the wording of s 67 at best for Porritt is that the trial will still continue and it is always open for him on good cause to re-open cross-examination. There is therefore no prejudice and any perceived view of the outcome of such an application is premature. The court will consider any such application on its merits, provided it is properly brought by way of application with supporting affidavits.

28. There is another difficulty which presents itself. The application of constitutional invalidity is premised on Porritt being currently detained because this court found that he had failed to attend court while on bail.

    It however appears that on two separate occasions after that finding, Monama J considered fresh applications for bail brought by Porritt. I located the judgment in respect of the first occasion on SAFLII. On that occasion Monama J dismissed it because of the pending appeal against my order. I am unable to find the other in the SAFLII reports and am reluctant to go outside that open source.[7]

29. Nonetheless Porritt may have provided the answer when he said that he was required to bring the bail applications before Monama J in order to exhaust his local remedies before launching the constitutional challenge.

[7] The second new bail application was heard by Monama J in about July 2020. See paras 98 and 105 of my judgment of 12 October 2020 in the recusal application

This suggests one of two things: Either one of the subsequent bail applications was a new and independent application based on other grounds and presumably opposed on other grounds or else Porritt should have brought such an application but perceived some impediment as to its success; despite it being a much quicker route if successful before the High Court.

In the first situation the application for constitutional invalidity is moot (because Porritt was refused bail on different grounds to those which led to the withdrawal of his bail), or if the first situation did not arise before Monama J in July 2020, then the Constitutional Court may direct constitutional invalidity to operate prospectively which would require him to apply for bail afresh yet, if the second situation postulated earlier is correct, Porritt will in fact be obliged to apply for bail afresh.

30. The first reason, that there is no demonstrable prejudice, is dispositive of the application.

31. There are other reasons which would disincline the court from granting the application for postponement and include:

    a. The application does not seek the release of Porritt. It seeks a declaration of constitutional invalidity, a *habeas corpus* and a refund of the forfeited bail money.

    b. The relief of *habeas corpus* is inapplicable. Porritt was detained in terms of a lawful court order, confirmed on appeal in respect of one of the three days on which Porritt failed to appear and the application for leave to appeal that decision was dismissed by the SCA.

The refund of the bail money is irrelevant to the issues which this court needs to currently address.

c. The accused provide no acceptable explanation for failing to pursue the application for constitutional invalidity after it was dismissed on 9 December 2022 by Mudau J.

Bennett claims that she was moving home, had to be out by 20 December and that she then went to the United Kingdom to be with her family on about 21 December. Despite the accused being in the presence of each other when the application was struck from the roll, which was still on the morning of 9 December, they did not go back to the registrar and re-enrolled the application. They claim they did not know they could do that.

Yet Porritt when he commenced the argument (before handing over to Bennett to continue and after being afforded a half an hour to confer at their request) pertinently claimed that the postponement was being sought because the application was still pending as the merits had not been decided on; only that it had been struck from the roll. I have dealt with this elsewhere.

Only later (sometime during the course of the court's engagement with Bennett) was this position changed to one where they were going to launch a fresh application- and then later still, to one of amending the present application and that they had both been working on it.

While Bennett was in the UK (from about 21 December to 14 January) she should have appreciated that she could not rely on legal representation and was obliged to bring such applications as were necessary in good time. She does not provide a reason for her failure to do so while in the UK. Signed applications and depositions which were emailed would have sufficed at that stage.

Bennett also said that she had no money to consult with lawyers concerning the next step once the application had been struck from the roll. This was in part an explanation as to why nothing was promptly done. Yet she was able to find money (as she did not claim that she was being sponsored) to pay extra for changing the departure date of her airline ticket to the UK or why she could not do anything between 9 December and 20 December to re-enrol the application or bring an application to be dealt with on 16 December for a postponement.

None of the expiations are convincing and the court is driven to the conclusion that this eleventh hour application without any date being provided for the hearing of the application for constitutional invalidity is by design, bearing in mind that Porritt supported by Bennett claimed that the application was to be set down as it was still pending and therefore according to him) debarred this court from proceeding with the trial.

d. Added to this is their failure to join the Minister of Justice and Constitutional Development to the application for constitutional invalidity- clearly a necessary party in such an application.

Bennett has demonstrated her ability, without legal assistance, to research the requirements to bring the applications she previously has, including those where she has assisted Porritt. The fact that one case did not cite the Minister when the background was not the same cannot assist Bennett. This is because the other case she did rely on pertinently cited the Minster in the application. Bennett has shown that she can be a careful litigant when she choses, despite not having a legal degree. By her own statements to the court she had been involved in considering contracts and has claimed that applications which appeared to have been drawn by competent counsel were her work with either no or little assistance from lawyers.

32. The application for a postponement therefore fails.

33. Bennett and Porritt requested that they be given a few days to complete either a fresh application for constitutional invalidity taking into account the points apparently raised by the State in its answering affidavit or to amend the present one and that this be done at prison with the court ordering correctional service to allow Bennett to bring her lap top.

34. Porritt in the meanwhile complained that the poor lighting in his cell during load shedding (even during daytime) was preventing him from preparing and that the position he had to take to go through documents was uncomfortable or unbearable. He however said that he had decided not to prepare cross-examination, either immediately after the court adjourned on 1 December or even after 9 December until now when the application for constructional invalidity was struck from the roll. He said he has been busy preparing to deal with the State's arguments raised against that application.

35. Porritt cannot approbate and reprobate.

Firstly, he was able to diligently go through the State's answering papers in the constitutional invalidity application despite being subject to the same alleged limitations as would arise if he prepared cross-examination.

He also has not brought any application, as required, to go to Pietermaritzburg to search for documents despite being given ample opportunity to bring such an application a significant time ago.

Thirdly, he has made it plain that irrespective of the poor lighting and conditions he in any event was not going to comply with the court order directing the issues he would have to cover in the first fifteen court days of his cross-examination. This same order had been made previously in August and the issues which had to be dealt with were spelt out as long ago as then.

36. Porritt's only response is that this court cannot dictate how he is to commence his cross-examination and the order as framed allows him to leave the cross-examination on the issues identified in it to the last few days he has been afforded- indicating that he would deal with the court identified issues from the eleventh day of his cross-examination. Considering that Porritt has previously said that his cross-examination of Ramsay alone could take more than a year (I will locate the exact period, as he may have said 3 or 4 years) this court is obliged in the interests of justice to ensure that this trial does not drag on interminably. [8]

    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. The accused will not be given any time during the present session to finalise their application of constitutional invalidity.

    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

[8] Porritt had said that it would take another three years just to cross-examine Ramsay. See para 3 of my judgment on 11 August 2022 with regard to both accused's cross-examination of Ramsay

both accused being given transcripts of the record. He openly stated during argument that he has not bothered to prepare.

38. I have already mentioned that one cannot look at this only be reference to a snapshot of events since December 2022. 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.

ORDER

42. The following revised order and directions were given earlier today:

1. *The application for postponement of the cross-examination of Mr Ramsay and the trial as a whole until the final determination of an application by Mr Porritt, being accused no 1, and by Bennett as accused no 2 to declare part of s 67 of the Criminal Procedure Act constitutionally invalid ("the constitutional invalidity application") is refused.*

2. *The application by Porritt and by Ms Bennett for leave to use the allocated dates for this trial of 17 to 20 January 2023 to prepare, complete or revise the constitutional invalidity application is refused.*

3. *Porritt and Bennett are afforded the 17 to 20 January 2023 to complete their preparation of the cross examination of Ramsay. They will do so;*

    a. *in court on 17 January 2023*

    b. *at the correctional service facility from 18 to 20 January 2023 inclusive*

4. *Bennett shall be entitled to bring her lap top into the correctional service consultation room for that purpose and this order is to be handed by the Investigation Officer or his delegate to the most senior responsible person at the correctional facility*

5. *Should any impediment present itself to Porritt or Bennett being able to prepare the cross-examination together then they shall be obliged to do so separately.*

6. *Porritt and Bennett shall write down their cross-examination for Ramsay which shall include the cross examination of those issues identified by the court that*

each has been ordered to deal with as required in the order of 1 December 2022. In the case of Bennett such writing may be on a lap top or smart phone

7. *Such writing shall be confidential and the rules of privileged documents shall be deemed to apply and correctional service officials may not read its contents unless good cause is shown to this court why they should.*

8. *Porritt will continue the cross examination of Ramsay on Monday 23 January.*

9. *Within 15 court days of 23 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

10. *If during this period of 15 days the court is concerned that Porritt is continuing to abuse his fair trial right, the court will determine whether or not Porritt has the genuine intention of cross-examining and exercising his fair trial right for that purpose.*

11. *If the court finds that he has no such intention he will be required to forthwith deal with the above issues set out in para 9 and complete cross-examination in respect of them within the remainder of the 15 days, whereafter Bennett will forthwith resume her cross-examination of Ramsay and the provisions of para 2 and 3 of the corrected ruling of 10 August 2023, signed on 31 August 2023 will continue to apply to her with regard to putting her case to Ramsay within the remaining part of the 15 day period not yet utilised by her prior to 1 December 2022.*

12. *Subject to the qualification in paras 10 and 11, if Porritt otherwise fails to put his case to Ramsay in regard to at least the issues and documents set out in para 9 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 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.*

13. *If Ms Bennett contends that her ability to effectively cross-examinee 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;*

    c. *produce satisfactory evidence in that regard by no later than 1 March 2023;*

AND

    d. *have applied for a postponement to enable her to do so in a formal application deposed to under oath by no later than Friday 17 February 2023. The State will be afforded until Friday 24 February to answer under oath and Bennett shall reply thereto under oath by no later than Friday 28 February 2023.*

14. *The matter is postponed to 23 January 2023 and the further dates as set out in the order of 16 November 2022.*

15. *The court finds that the applications for a postponement and to use the trial court allocated dates to finalise their constitutional invalidity application an abuse by the accused. At the end of the trial the court will require the accused to argue whether it is competent to order costs against them where they have brought an application before a criminal court which relates to a matter being pursued in the civil courts and if so on what scale.*

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SPILG, J

DATE OF HEARING:	16 January 2023
DATE JUDGMENT:	17 January 2023
REVISED[9]:	25 January 2023
FOR ACCUSED:	In person
FOR THE STATE:	Adv. EM Coetzee SC
	Adv. JM Ferreira

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