



**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

11 August 2022

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SIGNATURE

THE STATE

v

PORRITT, GARY PATRICK

Accused no. 1

BENNETT, SUSAN HILARY

Accused no. 2

REASONS OF 11 AUGUST 2022

REGARDING BOTH ACCUSED'S CROSS-EXAMINATION OF MR RAMSAY

SPILG, J:

INTRODUCTION

1. On a number of occasions commencing , I believe, in early June 2018 this court was obliged to make orders limiting firstly Mr Porritt's and later Ms Bennett's cross-examination of Mr Milne who was the first witness called by the prosecution ¹. It did so because both accused continued to unreasonably protract their cross-examination.

¹ The orders circumscribing Porritt's cross-examination of Mile appear to have been made in early June, early July and again in late August 2018. The order circumscribing Bennett's cross examination of Milne was made in May 2019

2. The necessity for doing so now in respect of the present state witness, Mr Ramsay, has not changed. A while ago, while Ramsay was being led in chief, Porritt told the court that the trial would carry on for another ten years and explained what he believed would be achieved. Bennett did not disagree.
3. Recently Porritt said that it would take another three years, and then added for clarity, just to cross-examine Ramsay. Bennett did not disagree at the time but last week, I believe it was, said that she cannot be associated with Porritt's comments.

The difficulty is that Bennett was the one who complained when I indicated some time back that it will be necessary to identify the issues that will have to be covered in the initial few weeks of cross-examination. As I recall it, her response was to the effect that this would impermissibly limit her entitlement to challenge Ramsay's credibility, either stating or implying that just testing Ramsay's credibility could take up the whole of that period.

The issue of protracted cross-examination is an aspect of trial delay and it is not just Porritt who has been found to be adopting a stratagem of delay by this court; Bennett has too. The Supreme Court of Appeal also found that Porritt and Bennett as well were adopting a stratagem of delay in commencing and thereafter continuing the trial. Ponnann JA speaking for the court said:

"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 by the audacity and horror of crime.'*²

² See *Legal Aid Board v S and Others* 2011 (1) SACR 166 (SCA) at para 35. The passage was immediately preceded by the court observing that:

"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

This was said over a decade ago in relation to these very same trial proceedings.

4. At the time the accused indicated how long Ramsay's cross-examination would take and that the first three weeks alone would be taken up testing his credibility, I informed them that Ramsay's credibility was already tarnished as his evidence so far had placed him squarely as a willing and active party to at least acts of fraud, misrepresentation and theft³. I advised that the court was quite prepared to accept that Ramsay has demonstrated himself to be untruthful. The real evidence which the court will have to weigh is contained in the documents produced by the prosecution.
5. Ramsay's evidence of whether each accused was aware of a document's existence, when they met Ramsay and what they discussed may also be clear from the documents themselves. I naturally accept that the extent to which Porritt or Bennett were privy to them may not appear from the documents themselves and that Ramsay's veracity and reliability on discussions he claims to have had with either or both accused must be subjected to cross-examination.

But without a version being put on certain key elements of the testimony, particularly if they are based on admitted documentation or documentation which is said to be in Porritt's hand (and which he has not expressly disputed), such extensive questioning on credibility alone may lack overall relevance in relation to some overarching issues, delays the trial and is intimidatory

6. This is so for the simple reason that irrespective of how untruthful the messenger is, there remain a series of documents which the court must consider and weigh based on their content and the version the accused may or may not elect to put to Ramsay concerning their content. Unlike most criminal trials, in a so called white collar crime involving investors in listed public companies, oversight authorities such as the JSE or in tax related offences, the prosecution relies heavily on documentation. This is such a case and at this stage of the trial the court has already heard testimony from accounting

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 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 would have rendered their application for legal aid unnecessary. "

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³ Ramsay's evidence and its value already comes under closer scrutiny because he was warned as a s 204 witness.

forensic experts which were subject to such cross-examination as the accused elected to engage in.

7. The accused have already indicated that they intend cross-examine Ramsay for three weeks or more without putting any version to him. The court does not wish to face the same situation it did previously when, despite being cross examined for fifteen days, very little had actually been put to Milne concerning the substance of his testimony. Even then the court had indicated on several occasions to Porritt in the presence of Bennett that the case in relation to the charges to which Milne had been led in evidence, may turn on the documents that are admitted into evidence irrespective of the court taking into account, as it must, that Milne had confessed to fraud and lied to the members of the investing public, albeit in respect of a different company to the ones which the overwhelming portion of Ramsay's testimony relates. Despite being put on terms by orders in June and July 2018, by late August it was necessary to again circumscribe Porritt's cross-examination of Milne.

8. . Section 166(3)(a) of the Criminal Procedure Act 51 of 1977 provides :

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".

The two powers that the court is entitled to exercise are discreet; a court may require the cross-examiner to demonstrate the relevance of a particular line of protracted cross-examination or if it appears that cross-examination as a whole will be unreasonably protracted. If this were not so the manner of applying the power would make no sense.

9. In previous reasons, the court set out why it was circumscribing cross-examination. They included a consideration of all the grounds raised by the accused for the length of time required to do so. The same overall considerations which weighed with the court then, including the accused's constitutional right to cross-examine and the justification for their curtailment, apply now.

10. I am satisfied that the accused have made their intention clear to embark on protracted cross-examination of Ramsay in the same vein as with Milne. The court does not have to wait for this to occur but needs to be proactive while ensuring that the accused's fair trial rights are respected. The accused's indication of how long Ramsay's cross examination will take together with the length of Milne's cross-examination and its content already demonstrates the desirability to place time constraints in order to focus the accused on asking questions responsibly, avoid irrelevant or repetitive questions and, if so minded, to put a version, fully appreciative by now of the possible consequences of not doing so.

RULING

11. These are the brief reasons for issuing the following ruling and directions on 10 August:

1. *Within 15 court days after the completion of Ramsay's evidence in chief Mr Porritt, being accused no 1, shall have put his case in regard to at least;*

a. whether it is denied;

i. that the word "Colin" which appears on the letter of 4 March 1991 which is Exhibit DQ 38 is in his, Porritt's, handwriting

ii. that the letter of 4 March 1991 (Exh DQ41-42) 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 by Mr Carrihill to Effective Barter (Natal) (Pty) Ltd regarding the allowance of s 11(b) and 11 (bis) allowances/expenditure (Exh DQ 75 also DM GHR4-6);

- 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 Board*

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 (and the contents of Exh DL98 are to be dealt with)*
 - 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 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 Exh DJ 330)*
 - ix. concerning notes 15 and 16 to the Annual Financial Statements at Exh DO106, that R1.259 billion was not actually received on the disposal of the subsidiary and that it cannot be properly accounted for;*
 - x. that the Tigon group would have been trading at a loss during the 1999 to 2002 financial years but for the s 11(gA), 11(b) and 11(bis) assessed losses and allowances*
- 2. In the event that Ms Bennett cross-examines Ramsay first, then within 15 court days after the completion of Ramsay's evidence in chief she shall have put her*

case in regard to at least each of the matters set out in para 1 hereof save for paras 1 (a) (i) and (ii) and para 1(b)(i)

3. *If the accused who first proceeds with the cross-examination fails to put his or her case to Ramsay in regard to at least the issues and documents set out in para 1 or 2 (as the case may be)- within the 15 court day period, then unless good cause is shown in a written application deposed to by that accused under oath;*
 - a. *such accused will be deemed to have exercised the right not to disclose his or her defence in relation to these matters and will be precluded from subsequently putting his or her case to Ramsay in respect of such matters;*
 - b. *the court will then determine by when the individual accused concerned is to put further aspects of his or her case to Ramsay, alternatively the court will determine by when the accused is to conclude his or her cross-examination of Ramsay.*

SPILG, J