

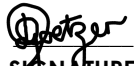


**IN THE HIGH COURT OF SOUTH AFRICA  
MPUMALANGA DIVISION, MBOMBELA (MAIN SEAT)**

(1) REPORTABLE: ☒ YES / NO  
(2) OF INTEREST TO OTHER JUDGES: ☒ YES / NO  
(3) REVISED.

**CASE NUMBER: CC41/2019**

26/10/2022  
DATE

  
SIGNATURE

In the matter between:-

**STATE**

versus

**ELVIS AARON ZULU**

**Accused**

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**JUDGMENT**

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**GREYLING-COETZER AJ**

[1] Delays within the criminal justice system raise significant concerns pertaining to the rights of an accused, the victims' and access to justice. But most predominantly, the eroding effect it has on the proper administration of justice. Although some delays are unavoidable, others call for fitting action to be taken in order to curb further prejudice of setting in.

[2] The prosecuting authority is easily branded to be the culprit in causing delays.

But one is left with a perplexing sense of concern when the delays appear to be the product of an accused or even worse an officer of court such as an attorney or advocate, whose very persons who took an oath on their admission to the profession. An oath that seems to be long been forgotten by those who make themselves guilty of such eroding conduct.

[3] The Accused stands arraigned on twenty charges emanating from seven dockets, including:-

(a) Seven counts relate to Rape in circumstances where the victim was raped more than once and/or in the execution of another crime and/or at gunpoint.<sup>1</sup>

(b) Six counts of Kidnapping.<sup>2</sup>

(c) Four counts of Contravention of the Firearms Control Act 60 of 2000.

(d) Three counts of Robbery with Aggravated Circumstances.

[4] The offences were all allegedly perpetrated between 13 January 2011 and 15 November 2014.

[5] The Accused was arrested on 1 May 2011, but failed to attend court. He was only re-arrested 7 years later on 23 November 2018. The matter was transferred to the High Court on 14 October 2019. It's not approximately three years later and the trial has yet to commence.

[6] The matter came before this court on 17 October 2022, when it was enrolled for trial for the sixth time. On said day and notwithstanding being certified trial-ready, it could not proceed. The reason:- the Accused's private legal representative, Advocate Mandla Mamba ("Mr Mamba") failed to attend court.

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<sup>1</sup> Contravention of Section 3, read with Sections 1, 56(1), 57, 58, 59, 60 and 61 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act 32 of 2007; further read with Section 51(1) of the Criminal Law Amendment Act 105 of 1997

<sup>2</sup> Kidnapping, read with Section 51(2) of the Criminal Law Amendment Act 105 of 1997

The accused professed to be unaware why his legal representative failed to appear. The instructing attorney Mr Labe was also not in court. Contact was made with Mr Labe who later appeared and explained that Mr Mamba<sup>3</sup> was brief to attend to the matter, and the whereabouts of said was unknown to him too. From the court file it was not the first time that Mr Mamba failed to appear on days allocated to this matter.

- [7] The matter was kept on the roll, and rolled over to 19 October 2022, together with a directive calling for the appearance of Mr Mamba.
- [8] On 19 October 2022 Mr Mamba attended court as directed. He explained from the bar that he failed to appear on the trial date of 17 October 2022, as his car was torched on 16 October 2022. According to him he was unable to inform or relay the message of the incident to either the State, the court or his instructing attorney. Mr Mamba was directed to file an affidavit by 24 October 2022, explaining his failure to appear at court on the trial date in detail, together with contemporaneous documents. He was specifically directed to explaining why his failure to appear does not constitute unprofessional conduct and should not be referred to the Legal Practice Council for investigation.
- [9] Having lost two allocated trial dates due to Mr Mamba's non-attendance, the court reassured by Mr Mamba that the matter will commence immediately and will be finalise within the remaining allocated days. The state had already provided Mr Mamba with a proposed Section 220 admissions bundle weeks before, in order to curtail the issues. The court was further advised that there would be an intended plea by the Accused. For this purpose, Mr Mamba requested the court to allow him time to finalise the written plea explanation statement. Mr Mamba and the Accused was allowed this time at the expense of the State who was of the view that these issues should have been sorted out prior to the trial date. It took 3 hours, in which time the State attended to

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<sup>3</sup> an advocate as defined in Section 34(2)(a)(i) of the Legal Practice Act 28 of 2014 (being an advocate without a trust account).

re-organising its case bundles taking cognizance of the intended plea.

[10] The court reconvened shortly before the end of the day. Mr Mamba indicated that he was instructed by the Accused that he no longer intended to plead and was not willing to make the Section 220 admissions previously agreed to. This Accused position was accepted by all and the matter rolled over to the following day for the trial to commence and the Accused to plead as he wished.

[11] On 20 October 2022, Mr Mamba indicated that the Accused wanted to say something. The Accused simultaneously raised his hand and indicated that he no longer wished to retain the services of Mr Mamba. The Accused explained that he had lost faith in Mr Mamba, who never properly advised him, but merely indicated to him that he needs to plead guilty. Consequentially, the Accused sought a postponement of the matter for purposes of obtaining new legal representation. Attempts by the court to explain to the accused that Mr Mamba has already indicated that a guilty plea would not ensue and that the matter was to proceed with a “full trial”, was fruitless and he insisted on new legal representation.

[12] It is against the aforementioned background that Section 342A was invoked. Section 342A of the Criminal Procedure Act 51 of 1977 (as amended) provides as follows:-

***“342A Unreasonable delays in trials***

*(1) A court before which criminal proceedings are pending shall investigate any delay in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness.*

*(2) In considering the question whether any delay is unreasonable, the court shall consider the following factors:*

- (a) The duration of the delay;*
- (b) the reasons advanced for the delay;*

- (c) *whether any person can be blamed for the delay;*
- (d) *the effect of the delay on the personal circumstances of the accused and witnesses;*
- (e) *the seriousness, extent or complexity of the charge or charges;*
- (f) *actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;*
- (g) *the effect of the delay on the administration of justice;*
- (h) *the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;*
- (i) *any other factor which in the opinion of the court ought to be taken into account.*

*(3) If the court finds that the completion of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order-*

- (a) *refusing further postponement of the proceedings;*
- (b) *granting a postponement subject to any such conditions as the court may determine;*
- (c) *where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general;*
- (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;*

(e) *that-*

(i) *the State shall pay the accused concerned the wasted costs incurred by the accused as a result of an unreasonable delay caused by an officer employed by the State;*

(ii) *the accused or his or her legal adviser, as the case may be, shall pay the State the wasted costs incurred by the State as a result of an unreasonable delay caused by the accused or his or her legal adviser, as the case may be; or*

(f) *that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.*

*[Date of commencement of para. (e): to be proclaimed.]*

(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.*

...”

[13] The common law principle that a criminal trial should be commenced and completed expeditiously, was given constitutional protection through the right to a fair trial entrenched in Section 35(3) of the Constitution, which reads as follows:-

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

(a) *to be informed of the charge with sufficient detail to answer it;*

(b) *to have adequate time and facilities to prepare a defence;*

(c) *to a public trial before an ordinary court;*

- (d) *to have their trial begin and conclude without unreasonable delay;*
- (e) *to be present when being tried;*
- (f) *to choose, and be represented by, a legal practitioner, and to be informed of this right promptly;*
- (g) *to have a legal practitioner assigned to the accused person by the state and at state expense, if substantial injustice would otherwise result, and to be informed of this right promptly;*

...”

[14] Ignoring for the moment all the occasions the matter had been stood down for one and two days in order to facilitate consultations with the Accused and like, it was confirmed that the matter was formally set down for trial on at least six occasions. Throughout, the Accused has been legally represented, initially through Legal Aid, and after terminating the mandates of three different legal practitioners from Legal Aid South Africa, the Accused also enjoyed the benefit of a private legal practitioner through Judicare at the expense of Legal Aid South Africa.

[15] From that before court, the events that took place between October 2019 to date can be summarised as follows.

15.1 The Accused appeared for the first time on **14 October 2019** in the Graskop Circuit Court. The matter was then transferred to the Mbombela High Court for the purposes of trial to commence on 21 October 2019. At this point in time the Accused was represented by a legal practitioner appointed by Legal Aid South Africa. The trial however did not proceed and was postponed to 27 July 2020. The Accused terminated the mandate of the legal practitioner so appointed; a new legal practitioner was appointed by Legal Aid South Africa;

15.2 During **July 2020**, the trial again did not proceed. According to the Accused, this was due to him falling ill. Again, there appears to have

been a change of legal representation due to the mandate of the second appointed Legal Aid legal practitioner being terminated;

- 15.3 On **14 October 2020**, the matter was postponed to 19 October 2020, and after the accused complained of ill health, the court directed the Nelspruit Correctional Services Centre (Hospital Division) to assess, examine and attend to the Accused on the basis of the report compiled by Rob Ferreira Hospital, dated 13 October 2020. The aforesaid report was received and the Accused was confirmed to be fit to attend the court proceedings. As a result of aforesaid, the matter was postponed to 26 April 2021 for trial;
- 15.4 On **26 April 2021**, Advocate Mabelane, withdrew from record due to his mandate being terminated by the Accused. Such termination was alleged to be without reasonable cause, and the matter was postponed to 10 May 2021 for a final opportunity to be afforded to the Accused to obtain legal representation by Legal Aid. Ms Mthethwa was so appointed, and the matter was postponed to 22 November 2021 for trial;
- 15.5 On **22 November 2021**, the court granted the Accused an indulgence in order for the matter to stand down so that the Accused could consult with Ms Mthethwa amongst other to take instruction in respect of Section 220 admissions. In the afternoon of 22 November 2021, Legal Aid South Africa (Mbombela local office) withdrew finally as attorneys of record for the Accused, and returned the content of the docket and the Section 220 files to the office of the Director of Public Prosecution. Legal Aid explained in correspondence handed up to the court that such withdrawal was necessitated due to the fact that the Accused refused to cooperate and give any instruction in respect of the prosecution of his defense. The Accused further refused to speak during any consultations at all, making it impossible to ascertain his instruction and to proceed with the matter. It was further placed on record that the decision to withdraw was motivated by the Accused's

unreasonable termination of the mandates of the previously appointed legal practitioners so appointed by Legal Aid South Africa;

- 15.6 The matter accordingly rolled over to the following day, being **23 November 2021**, to afford the Accused an opportunity to obtain a private legal representative. This continued until 29 November 2021 when private counsel (Mr Mamba) was confirmed, but he was unable to appear, as said counsel was suffering from ill-health. It boggles the mind why a legal presentative would be appointed when the very person was unable to attend court due to ill-health.

15.6.1. According to Mr Mamba he was briefed by MM Labe Attorneys on 26 November 2021, but due to his ill health, he never managed to attend court when he was supposed to. Mr Mamba indicated that he provided the court with a medical certificate, which appears on file, and which seems to be that of a pharmacy clinic dated 29 November 2021.

- 15.7 According to Mr Mamba, he attended court on 1 December 2021, and the matter was postponed to 18 February 2022. This is incorrect, as it was postponed to **18 January 2022**, and it was for the purpose of securing a trial date;

- 15.8 Between the period **18 January 2022** and **March 2022**, the matter did not proceed as a result of a pending complaint against Mr Mamba with the Legal Practice Council. Said would potentially have the effect of frustrating the continuance of the trial. The parties, being the State, the Accused and Mr Mamba, agreed that in order to avoid a situation where new legal representation might be necessary in the middle of the trial, that this issue needed to be addressed before the trial commenced. For this purpose, the matter was postponed to 11 April 2022 for both the State and the Defense to arrange for a trial date, as it was envisaged that by that time the Legal Practice Council issue against Mr Mamba would have been clarified. The accused was

warned that this issue pertaining to Mr Mamba might cause him prejudice and frustrate the finalization of the matter. The Accused reconciled himself with said position.

15.9 On **11 April 2022** , Mr Mamba failed to appear before court. Mr Mamba indicated to the State that he was ill. The court ordered him to appear by 14 April 2022, together with a doctor's letter;

15.10 On **14 April 2022**, Mr Mamba again failed to appear in court, and the court ordered that the matter be postponed to 20 April 2022 for Mr Mamba to appear before the court, and that such order would be issued by the Registrar. According to Mr Mamba he submitted a medical certificate. However, same does not appear from the record. At this point in time, Mr Mamba confirmed on behalf of the Accused that the matter remained trial-ready, and that it will proceed on the next trial date. As such, the matter was postponed to 17 October 2022.

[16] Before the aforesaid date, the matter was enrolled for case management on 26 September 2022. On said date Mr Mamba again failed to appear, but communicated to the State, who in turn communicated to the court, that the matter remained trial-ready, although Mr Mamba was ill, he confirmed that there was no reason why the matter ought not to proceed on 17 October 2022.

[17] As at that point, and save for a three month delay due to the Legal Practice Council enquiry in respect of Mr Mamba, Mr Mamba had failed to appear due to allegedly being ill on four occasions and the matter had been postponed due to the Accused changing his legal representatives on four occasions.

[18] That brings us to the events of **17 October 2022**. As alluded to herein above, there was once again no appearance by Mr Mamba on 17 October 2022.

[19] In addition to being directed to file an affidavit in re his nonappearance of 17 October 2022, and pursuant to his mandate being terminated by the Accused, Mr Mamba was further directed to make written submissions in respect of the

Section 342A enquiry, for as far as he had been implicated by the Accused as the cause of delay. Mr Mamba was directed that same stood to reach the Registrar by 09h00 on Monday, 24 October 2022. Should it be received, Mr Mamba would be excused from the proceedings. As at 09h00 nothing had been received.

[20] The matter proceeds there without, and the State made its submissions in terms of that which stands to be considered by the court in conducting the enquiry. The matter was stood down for this judgment to 26 October 2022.

[21] At approximately 16h00, the afternoon on 24 October 2022, Mr Mamba sent a four-page affidavit via e-mail. Upon enquiry by the Registrar, Mr Mamba indicated that same constituted both his submissions in respect of the Section 342A enquiry, as well as his exonerating affidavit pertaining to his non-appearance on 17 October 2022.

[22] According to Mr Mamba, the full extent of his explanation for his failure to appear was that:-

*“On the 16<sup>th</sup> day of October 2022 while attending a meeting of the ANC an incident occurred whereinafter that my car was torched. The incident was reported to the police and it is under investigation with the Barberton police.*

...

*... my robe was inside the car, many of my important belongings were burnt inside the car, I could not communicate with any of my colleges because I left my phone while we were running away. I communicated with Advocate TD Mahasha in the afternoon of the 17<sup>th</sup> of October 2022 to inform him about the incident.”*

[23] In respect of Mr Mamba’s involvement in this matter and the delays, he submitted that he was, as already stated herein above, briefed during November 2021. He consulted with the Accused in April 2022 and again in the first week of October 2022. According to Mr Mamba he advised the Accused to plead. This was seemingly as early as the first week of October 2022.

According to Mr Mamba, this was accepted by the Accused, and that was the position throughout up until the court appearance on 19 October 2022.

- [24] According to Mr Mamba, the Accused never told him that he did not want to pursue the plea, but nevertheless, he confirmed to be ready to proceed with new instructions. He was surprised when the Accused changed his mind in respect of his legal representation on 20 October 2022. Mr Mamba submitted that the Accused abused Section 35(3) of the Constitution, and has delayed this matter's finalisation because he had changed his legal representatives many times, and even in circumstances previously when he was said to be sick, the doctor confirmed that the Accused was fit to proceed with the trial.
- [25] It is evident from that set out herein above that the delay in this matter has now been in excess of three years. It is estimated by the State, and confirmed by the erstwhile legal representative of the Accused (Mr Mamba), that the trial can effectively be finalized within two to three weeks. This is also confirmed, considering the time that was previously allocated by the roll planner when the matter was previously set down for trial.
- [26] It is reasonably accepted that a criminal trial will have some delays, and the mere lapsing of time will not always amount to an unreasonable delay. This is however not the case in this matter. The delay here is manifestly unreasonable.
- [27] The reasons for the three-year delay in this matter can almost exclusively be attributed to the Accused and Mr Mamba. After explaining the purpose and process envisages in section 342A, relaying the relevant factors and happenings in this matter to the Accused, he was asked to indicate if there is any person to blame for the delays. He indicated that he was to blame together with the court as the court postponed the matter for lengthy periods at a time.
- [28] The delays are categorised by repeated termination of the mandates of the appointed legal representatives. First the three Legal Aid South Africa

representatives, then the Judicare appointed legal representative and now private counsel. A pattern appears to emerge where, as soon as consultations reached the point of specific instruction (for example in respect of Section 220 admissions or the trial being about to start), the appointed legal representative's mandates are terminated.

- [29] The right to be assigned a legal representative, is enshrined in the Constitution, but remains a limited right. The reason for the qualification is obvious. Although an Accused should be given a reasonable opportunity to obtain and/or be appointed legal assistance. Similarly, if a legal representative withdraws, an accused must be given an opportunity to apply to Legal Aid South Africa for the appointment of another legal representative.<sup>4</sup> However it does not include the right to demand a legal representation at the expense of the State of your choice.<sup>5</sup>
- [30] An accused is also entitled to appoint a private legal representative. But an Accused cannot be allowed to exercise these rights in such a fashion as in this case where after three years no progress has been made. The Accused has exhausted and utilized all his rights in respect of the appointment of a legal representative and/or being assigned a legal representative.
- [31] On the appointment of Mr Mamba, the cause for the delay seem to have shifted slightly from the continues change in legal representatives to the conduct of the chosen legal representative. Since November 2021, the delays were caused by the conduct of Mr Mamba either by being ill on the allocated trial dates, as well as the case management, or being unable to attend court due to some unforeseen event such as the torching of his vehicle.
- [32] Reviewing the one medical certificate on file, as well as the content of the previous orders made in respect of Mr Mamba's non-appearance, it is clear that his professed excuses for his non-attendance at court were unconvincing.

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<sup>4</sup> **S v Kok** 2005 (2) SACR 240 (NC)

<sup>5</sup> **S v Halgryn** 2002 (2) SACR 211 (SCA)

Yet he was favored with the benefit of the doubt.

[33] Similarly, the explanation professed for his non-appearance on 17 October 2022 is equally unconvincing. Notwithstanding explicitly being directed to provide contemporaneous proof of the incident of 16 October 2022 relied on, Mr Mamba only placed that quoted herein above before court to consider the veracity of this averments. No mention of a case number, who the investigating officer is , no copy of his statement made to the police or photograph of the after math. Mr Mamba also failed to explain why his conduct does not constitute unprofessional conduct. The aforesaid failure in itself evidences the lack of appreciation Mr Mamba has for his conduct in this matter.

[34] The Legal Practice Act 28 of 2014 and the accompanying Code of Conduct<sup>6</sup> place a mandatory positive obligation upon legal practitioners to maintain the highest standards of honesty and integrity, uphold the Constitution of the Republic and the principles and values enshrined in the Constitution, and honor any undertaking given by them in the course of their business or practice.

[35] A practitioner as Mr Mamba is obliged to treat the interests of their clients as paramount, provided that their conduct shall be subject always to, their duty to the court, the interests of justice, observance of the law; and the maintenance of the ethical standards prescribed by this code, and any ethical standards generally recognised by the profession;.

[36] Paragraph 28 of the Code of Conduct provides:

*“... 28.5 Counsel, upon accepting a brief, shall perform the necessary work to the best of their abilities, in keeping with counsels' seniority and relevant experience and:*

*28.5.1 counsel, upon acceptance of a trial brief, tacitly represent that*

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<sup>6</sup> paragraph 3

*they can properly commit themselves to remaining available throughout the period of the trial without compromising such commitment by reason of any prior commitments in other matters, regardless of whether such other matters have been set down at a time before or after the period estimated for the duration of the trial;*

.....

*28.6 Counsel must decline the offer of a brief if their other commitments do not reasonably allow them to discharge their duty of diligence in the preparation of the brief. In particular, counsel shall not accept any brief if it is reasonably foreseeable that –*

*28.6.1 counsel shall be unable to attend to all of the necessary work within a reasonable time;*

*28.6.2 the risk exists that counsel might, because of a conflict of interest or any other reason, have to surrender the brief;*

*28.6.3 the failure to attend to the brief timeously or the surrender of the brief is likely to result in embarrassment, inconvenience or prejudice to the instructing attorney or the client or a fellow counsel who might be briefed thereafter, or to the court.*

*28.7 If, after counsel has accepted a brief in any matter, any circumstance arises that imperils the proper discharge of counsel's duty of diligence, counsel shall, once such eventuality is apparent, especially in respect of trial briefs, report such circumstances to the instructing attorney to facilitate timeous steps to inhibit prejudice to the client and facilitate a successor to be briefed in time to take over the brief.*

[37] Mr Mamba's conduct by failing to attend alternatively continuously being of such ill health that he was unable to attend court and execute his obligation and duties towards the Accused, and the court, offends the Code of Conduct.

[38] In the event that a legal practitioner is of such ill health that he or she can no longer execute his or her brief, such legal practitioner is obliged to timeously

inform his or her client to obtain new legal representation, so as to not frustrate the proper administration of justice. Ignorant of this fact, Mr Mamba remained on brief. His personal issues, either through ill health, the pending complaint at the Legal Practice Council, the alleged torching of his car, founded the basis for various postponements being sought and granted, are concerning. One cannot be blamed when in these circumstances the mind moves to the question as to whether all of this amounts to tactics employed for the purpose of delay. The probabilities are just unlikely.

- [39] As stated in **Johannesburg Society of Advocates and Another v Nthai and Others** 2021 (2) SA 342 (SCA) at par [1]:

*“As officers of the court, advocates serve a necessary role in the proper administration of justice. Given the unique position that they occupy, the profession has strict ethical rules. The observance of those rules is, regrettably, not always assured. Because —*

*‘(t)he preservation of a high standard of professional ethics [has] been left almost entirely in the hands of individual practitioners, it stands to reason, firstly, that absolute personal integrity and scrupulous honesty are demanded of each of them and, secondly, that a practitioner who lacks these qualities cannot be expected to play his part’.”<sup>7</sup>*

- [40] The conduct displayed by Mr Mamba in this matter is concerning and warrants a referral to the Legal Practice Council. The Legal Practice Council ought to investigate and consider, and for this purpose this judgment will be made available to the Legal Practice Council, together with a copy of the court file.
- [41] The delay, although not specifically professed by the Accused, must have an effect on his personal circumstances, considering that he has been incarcerated since 2018. The only sensible conclusion is that there is committed attempt to frustrate the finalisation of this matter.

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<sup>7</sup>

Referencing Hefer JA in **Kekana v Society of Advocates of South Africa** 1998 (4) SA 649 (SCA)

- [42] The witnesses and the victims of the seven cases are left silenced. The majority of the witnesses consist of the alleged victims of the rapes and kidnappings. It is trite that rape and sexual assault are acts that remove power, control and dignity from victim-survivors. By this trial not proceeding, they are similarly and in a continuous fashion, reminded that they are not on control. That they are required to be dragged along in the hope that justice will prevail. They are unconsciously required to re-live those events in order for them to remain current in their minds while awaiting the day to testify in vindication of that which happened to them. This is so in circumstances where the landscape for victim-survivors of rape and sexual assault are already very challenging, and they are particularly susceptible to secondary victimisation.
- [43] As alluded to above, the majority of the charges emanate from as far back as 2011.<sup>8</sup> The victims of these cases can effectively not allow to “heal” and move on with their lives for as long as these proceedings are pending.
- [44] The charges, as set out above, are not complex, but very serious. They are acts of violence against women.
- [45] The delay causes potential prejudice to the State, as it is unknown for how long these victims and witnesses will remain willing to endure and re-live that which they allege had happened to them at the hands of the Accused. Not to mention the potential death or disappearance or non-availability of other witnesses, or loss of evidence, considering the extended time from 2011 to date.
- [46] The delay has an undeniable negative and eroding effect on the administration of justice. The mere fact that an alleged rapist and kidnapper, over a period of eleven years has not be tried, alternatively acquitted, sends a message of incompetence to the community at large.
- [47] Why would any accused looking in from the outside, believe that he or she

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<sup>8</sup> Case 1: 30 January 2011; Case 2: 19 February 2011; Case 3: 21 April 2011; Case 4: 10 September 2011; Case 5: 2 November 2011; Case 6: 20 January 2012; Case 7: 15 November 2014

would receive a fair trial when it takes this inordinate amount of time. Similarly, why would any potential victim be motivated to report and to pursue justice, where from this very matter it appears that such a victim would have to wait more than a decade for the matter to be finalized. There can be no doubt in the present matter that the delay up to date is an unreasonable delay which calls to be eliminated in order to restore that which remains.

- [48] Further relevant considerations would be the manner in which this case is presented, considering that on more than one occasion, and notwithstanding indications of admissions and/or a plea, the Accused has shifted gears at the eleventh hour, necessitating the calling of various further witnesses which the State had previously been made to believe to be unnecessary.
- [49] It appears that the Accused is averse to advice. As such it can reasonably be anticipated that the Accused will in the future again find himself in the position where he loses trust in his elected legal representatives founded on the advice given to him by such a legal representative.
- [50] This court is required to strike a balance between the interest of the Accused, the harm to the rule of law and criminal justice system, and the conduct as displayed by the Accused and his legal representative inflicts.
- [51] Motivated by that written by Edward Cameron, JJ Du Toit and Alexia Katsiginis,<sup>9</sup> on delays, yet acutely aware that time limits are constraining in nature, the only option remaining is to set specific time limits to ensure that the delays caused in this matter are expediently eradicated.
- [52] Although it is warranted in the present matter to refuse any further postponement, and effectively oblige the Accused to proceed without obtaining further legal representation, the practicalities and impact on the prepared rolls of this court, and manner in which the case stands to be presented make it inappropriate. So too the allocated time for this matter has

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<sup>9</sup>

***Completing the puzzle – Is there a solution to the delay in criminal trials?*** De Rebus  
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effectively been eroded by the conduct of Mr Mamba and the Accused. On enquiry it appears that matters allocated for the weeks to come, cannot effectively be pushed out to facilitate the hearing of this matter.

[53] Taking all of the above in consideration, the order set out below is the most effective manner in moving this matter to finalisation while striking a balance between the interest as this court is required to do.

[54] The following orders are made:

IN RESPECT OF THE SECTION 342A ENQUIRY:

1. In terms of Section 342A(3)(b) a final postponement of the trial is granted and the matter is postponed to 16 January 2023 on the following conditions:

1.1. The trial shall commence and be finalized between the period 16 January 2023 to 24 March 2023;

1.2. The accused is afforded a final opportunity to secure new legal representation. Aforesaid legal practitioner shall appear before this court on 21<sup>st</sup> of November 2022 at 09h00 in order to be properly informed about the content of this order;

1.3. Having been informed of the content of this order, the legal practitioner contemplated in 1.2 above shall appear on the 28<sup>th</sup> of November 2022 at 09h00 and confirm *inter alia*:

1.3.1. that said legal practitioner has been provided with a copy of the docket

1.3.2. that said legal practitioner has consulted with the accused and has been properly and adequately instructed in the matter;

1.3.3. that said legal practitioner is and will remain available for the duration of the trial to commence and be finalized within the period 16 January 2023 to 23 March 2023;

1.4. The legal practitioner contemplated on 1.2 above and the state shall conduct an *inter partes* pre- trial by no later than 10 December 2022 which pre-trial shall meaningfully deal with the aspects set out in paragraph 12.12.5, Form D and D1 of the Practice Directive<sup>10</sup>

1.5. The state shall enroll the matter for Judicial case management as contemplated in paragraph 12 of the Practice Directive<sup>11</sup> on the criminal case management roll and complete the required Form D providing the information per Form D1.

1.6. *In the event* that the accused fails to secure a legal representative per 1.2 or there is a failure by the legal practitioner to appear and or adhere to 1.3, the steps contemplated in 1.3, 1.4 and 1.5 above shall be undertaken by the accused and the trial shall proceed with the accused being unrepresented.

2. A copy of this order will be provided to the Accused immediately on it being handed down and before he leaves the court building.

3. Resultant from the accused indication that Adv Mashele has been secured to represent him, but Adv Mashele not being present in court, a copy of this order will also be made available to Adv Mashele by the Registrar.

IN RESPECT OF THE CONDUCT DURING THIS MATTER BY MR MANDLA MAMBA:

4. The Registrar should forward a copy of this judgment and the court file to The Legal Practice Council – Mpumalanga, for the purpose of an investigation into the conduct of Mr Mandla Mamba.

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<sup>10</sup> issued on 3 October 2022.

<sup>11</sup> issued on 3 October 2022

  
GREYLING-COETZER AJ

DATE OF HEARING:  
DATE OF JUDGMENT:

24 OCTOBER 2022  
26 OCTOBER 2022

FOR THE STATE:

ADV MOLOTUDI with ADV MAHASHA

FOR THE ACCUSED:

IN PERSON