



**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Reportable:	YES/NO
Of interest to other Judges:	YES/NO
Circulate to Magistrates:	YES/NO

REVIEW NUMBER: R180/2019

In the matter between:

THE STATE

and

LESIBA JACKSON LEDWABA

CORAM: LOUBSER J et RAMLAL, AJ

JUDGMENT BY: RAMLAL, AJ

DELIVERED ON: 14 NOVEMBER 2019

- [1] This matter was referred to us for Special Review in terms of section 304(4) of the Criminal Procedure Act, Act 51 of 1977, with a request to set aside an order made by the Regional Magistrate at Theunissen, on 19 September 2019.

- [2] The trial of the accused, who pleaded not guilty to three counts of breaching the provisions of the Prevention of Corrupt Activities Act, Act 12 of 2004, began on 10 September 2015.
- [3] On 1 August 2018, when the trial was scheduled for continuation, the accused informed the court that he had employed new legal representation. The case was then postponed to the 17th August 2018, for the new legal representative to obtain a transcript of the proceedings so as to enable him to properly represent the accused.
- [[4] During the period 17th August 2018 to 26th April 2019 the case was postponed on eight different instances to obtain the transcript of the proceedings.
- [5] On 26 April 2019 the Regional Magistrate conducted an enquiry in terms of section 342A of the Criminal Procedure Act, to determine whether there were any unreasonable delays in the completion of the trial and, if so, to determine who was responsible for the unreasonable delay. Three Department of Justice and Constitutional Development officials were called to explain the delays that were being experienced in obtaining the transcripts of the proceedings. The Accused then testified to explain the financial prejudice that he suffers as a result of paying his legal representatives to be present at court, even though no progress has been made since 17 August 2018.

- [5] The Regional Magistrate then proceeded to rule that the delays were unreasonable, to the prejudice of the accused and that the unreasonable delays could be attributed to the inability of the officials to make available the transcript of the proceedings, as requested. The relief thus granted was an order in terms of section 342A(3)(e)(i) of the Criminal Procedure Act, in the following terms:

"In terms of Section 342A(3)(e)(i) of Act 51 of 1977 as amended the Court orders that the state(DOJ) shall pay the accused in this matter the wasted costs incurred by the accused as a result of the unreasonable delay caused by the officers employed by the state (DOJ)".

- [6] I am mindful of the frustrations and the dissatisfaction that is experienced by diligent judicial officers who want to uphold the rights of the accused and that of the general public by bringing matters to finality within the shortest possible time, especially in instances where the delays seem to be interminable. It is plausible that such judicial officers would seek to find relief to promote the proper administration of justice.

- [7] However, as the date of the commencement of section 342A(e)(i) of the Criminal Procedure Act has not yet been proclaimed, the order of the Regional Magistrate is irregular.

- [8] The order made in terms of section 342A(3)(e)(i) of Act 51 of 1977, by the Regional Magistrate on 19 September 2019, is accordingly set aside.



A.K. RAMLAL, AJ

I concur



P.J. LOUBSER, J