IN THE HIGH COURT OF SOUTH AFRICA

FREE STATE DIVISION: BLOEMFONTEIN

Appeal Number: 2648/2013

In the matter between:

MOHLOUA ISAAC SEOE	1st Applicant
VIRGINIA MOSEIA	2nd Applicant
And	
THE DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS OF THE FREE STATE	Respondent

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JUDGMENT: JAJI, AJ

HEARD ON:

DELIVERED ON: 27 NOVEMBER 2014

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[1] The applicants seek a permanent stay of prosecution on the charges contained in the indictment annexed as "A" to the founding affidavit of first Applicant.

[2] The applicant relies on the so called statutory matrix being:

a. Provisions of section 35(3)(d), (h) and (i) of the Constitution of the Republic of South Africa, Act no 108 of 1996 ("the Constitution").

b. Section 342 A of the Criminal Procedure Act no 52 of 1977 ("the Criminal Procedure Act") especially on factors to be considered by a court before which criminal proceedings are proceeding in investigating *inter alia* any delay in the completion of proceedings which may be unreasonable in given circumstances; (paragraph 4 of the applicant's heads of argument).

c. The submission that the factors spelled out in Section 342A of the Criminal Procedure Act are also to be considered in an application in terms of Section 35(3) of the Constitution (paragraph 5 of the heads of argument).

[3] Further, it relies on the legal principles involved as laid down in the following cases:

a. **Sanderson v Attorney General Eastern Cape** 1998 (2) SA 38 CC;

b. **Director of Public Prosecutions and Another v Phillips** (2012) 4 All SA 513 (SCA);

c. Unreported judgment of **John Robbs and others v the Deputy Director of Public Prosecutions** for the Province of KwaZulu Natal, Case no 13510/2011.

[4] The applicant finally relies further to undisputed facts regarding allegations and circumstances giving rise to the charges against the applicants occurred a decade ago from periods varying 2001 – 2013.

[5] It relies on compliance with legal principles especially the inordinate delay, effect of delay, trial prejudice and consequences resulting from the effects of the above principles.

[6] The respondent is opposing the application. The issue as crystallised amongst the parties, is whether the court should grant a permanent stay of prosecution on the basis as set out in the applicant's affidavit and whether the applicants would suffer irreparable trial related prejudice if the matter proceeds to trial.

[7] The applicant contends that the critical issue is the determination of reasonableness of time taken to prosecute. The conduct of the prosecution and accused has to be weighed as a balancing act. It contends that a permanent stay of prosecution is appropriate when there is prejudice. Applicants were charged prematurely as it took five years to obtain forensic report.

[8] It took further two years to arrest the applicant and the alleged offence took place in 2001 to 2003. The respondent alleged that the forensic report was the source of delay. According to the applicant, the earlier trigger of prosecution was the letter dated 03 December 2003, which was written instructions to charge the applicant. Applicant contends that this date is important to calculate time frames in this matter. In the case at hand, applicant alleges that there was no explanation for delay to obtain the forensic report. There was no forensic report before charging the applicants. An inordinate delay ensued and according to the applicant there was no explanation.

[9] Applicant claims that the report was in limbo until 2005 when funding was secured for the purposes of obtaining the forensic report. The case was withdrawn against applicant on 09 May 2005. It is contended that the prosecution did not act with required measure as expected. There was no expedition to proceed with this matter. Applicant alleged that there was lack of appreciation to bring the matter to finality. Clearly there was a total disregard of applicants' rights to a fair trial.

[10] Applicant contends that Section 342A (1) and (2) of the Criminal Procedure Act considers certain factors as to whether the delay is unreasonable or not. These are the following:

a. Duration of time delay (applicant claims is seven years herein);

b. Reasons for the delay (applicant claims that there are no reasons advanced or they are inadequate herein);

c. Person to be blamed for delay (applicant claims that the state through its organs was responsible herein);

d. Effect of delay (effect on applicant and his family).

e. Seriousness and complexity of the charges;

f. The actual or potential prejudice caused, for instance possible death, disappearance or non-availability of witnesses, loss of evidence and problems regarding gathering of evidence.

[11] Applicant complains of trial prejudice suffered as a result of the inordinate delay. It referred the court to the case of **Sanderson** (above) where it was held that a stay of prosecution is appropriate relief where there was trial prejudice. If contended that a stay of prosecution was granted in **Robb's** case (above) after seven and a half years' delay. It referred to the case of **Phillips** (above) where a stay of prosecution was granted after two years and five months' delay to prosecute an appeal. The offence in the case at hand emanated from 2001 and applicant contended that the delay herein was inexcusable and inexplicable as was held in the case of **Broome v Director of Public Prosecutions**, Western Cape and Others.

[12] Applicant insists that one of the witnesses who died, a certain Puleng Komareng could have exonerated him as she was the one who completed the bid tender. The witness would have also testified that the payment referred to in count four (4) was due to Liona. Puleng Komareng had information about business affairs as she was a business manager. Clearly she was a decisive witness for the applicant. Another witness who died was a certain Rodney Manawa. It was alleged that he would have exonerated the applicant against the allegations that he bought suits for and as gifts. The whereabouts of Manawa's family is unknown. The said Manawa passed away and his family had moved. It is claimed that they would have exonerated the applicant as well. The witness would have confirmed that the names of the members of the tender committee were not published. He would have conceded that there was nothing untoward with Mabolela Distributors. Applicant alleged that five (5) of the witnesses were not available. It claimed that in the instances, trial prejudice was considerable and irreparable. It was impossible to trace evidence. Memory has faded and people had died. It therefore contended that prejudice was clear and irrefutable. As a result, applicant averred that the prosecution had an unfair advantage. In any event, applicant contended that he was only charged for receiving R219 000.00 of the 30 million claim, which was the value of the tender.

[13] Applicant asked for costs of the application. It argued that in the event the court finds against applicant, no adverse costs order should

be ordered against it. It submitted that where parties are seeking to assert their constitutional rights, they should not be chilled by adverse costs order. It referred to the case of **Affordable Medicare Trust v Minister of Health** 2005 (6) BCCR 529 (CC) and Bio Watch Trust 2009 (10) BCCR 1014 (CC). It submitted that there was no justification to proceed with the criminal trial and consequently prayed for the order as per the notice of motion.

[14] The respondent submitted that all the arguments made by the applicant be made in trial court which would listen to the arguments and was best suited to deal with the application of this nature. The respondent does not contest that applicants were charged, that they were brought to High Court and does not contest the date when these applications were brought. It, however contends that the date of trial was already agreed being November 2013. It confirmed that before Haneke J, applicant advised that it had instructions to bring an application for permanent stay. All this time, applicant knew that date of November 2013, was arranged as trial date.

[15] Five other applicants, brought similar applications on the same circumstances, called for respondent to answer separately on the same issues. These were brought fully aware of the trial date which was already available. The indictment was there so was the trial date. The application naturally made a further delay. Applicant argued that the court must make a finding on value judgment as was

pronounced by the Constitutional Court in the matter of Sanderson (above). The delay applicant averred that it cannot be extra-curial punishment. The barring of prosecution before trial commenced was far reaching.

[16] Respondent contends that there was no basis for the prejudice as alleged by the applicant. There must be more than what has been argued to justify that the remedy asked for the applicants is the one given. Respondent argued that there are less radical and appropriate remedies available to the applicant i.e. mandamus, a refusal to grant prosecution remand or a bar on various range of circumstances. These would be applicable where the applicant has proved or showed a daring prejudice. It averred that motion is not the place to deal with these kinds of matters. The object of the current exercise is not the general concern suffered by the accused as a result of charges but aggravation of prejudice ascribed to a delay.

[17] Respondent contends that a stay of prosecution is relevant when there is trial prejudice. The applicant was not in custody, he continued working, he never stopped from travelling overseas, the dates of postponements suited him and there was no frequent attendance to court needed. One of the postponements was done at the instance of the applicant who was legally represented. In February 2013, the matter was ready to proceed and applicant had intimated that it will proceed with the application for stay of

prosecution even though it never proceeded until recently. The application for stay will not clear his name and as such respondent submitted that this was not an appropriate case for stay of prosecution.

[18] The respondent in explaining the delay was frank and open with the court, the applicant gave account taken out of the sworn statement by respondent witness. There was no attempt to gloss over the challenges in the statement. The witness even explained his removal from the case without an explanation. The deponent explained virtually each factor. There is a frank explanation for the delay suffered. There was no likelihood that the delay would result in trial prejudice. The court was referred to the matter of **S v Naidoo** 2012 (2) SACR 126 (WCC). The court herein sought to examine exceptional circumstances that must be determined to come to the conclusion that the delay prejudiced the accused's person. The respondent argued that the case of **Broome v Director of Public Prosecutions**, Western Cape 2008 (1) SACR 178 (C) was distinguishable from the facts in the present case. The factual basis in Broome was quite exceptional in that the state confiscated documents which was lost or destroyed by its agents. The result was that significant evidence was lost. The factors such as loss of memory and disappearance of witnesses might not be sufficient in the matter at hand to justify a stay of prosecution. Respondent argued that the passage of time in the abstract does not necessary justify the stay of the prosecution. It submitted that the effect must be

demonstrated and clearly established. In advance of trial, it contended that it would be difficult to deal with such alleged prejudice. It claimed that in the facts of the current case, the trial could not begin in February 2013. Applicant advised that it would bring the application for stay of prosecution which was never brought. This is covered by the affidavit of the respondent witness, Johan Brosman Knegler Swanepoel in opposition to this application. .

[19] The respondent insists that all arguments rose relating to the alleged delay and its consequences must be made at the trial court to consider such trial evidence. If the court is persuaded that the alleged delay is a violation of rights to the fair trial as alleged by applicants, the court must conclude a number of things if the relief is granted.

a. It must weigh the alleged violation against the permanent stay would do by way of violation to Section 34 of the Constitution which deals with access to courts. Section 34 makes it clear that everyone has a right to have any dispute resolved by the courts. If there is order for permanent stay of prosecution, respondent argued that it was not only an interference on the prosecution to prosecute but also violation of Section 34. It was submitted that the court had to enquire whether the violation is not saved by provisions of Section 36 of the Constitution, the so called limitation clause that was stipulated in the case of **Sanderson** (above);

The present case is unique in the sense that it was trial ready and has been as such on February 2013. The applicants are charged with serious crimes which needed to be tried in a court of law. The effect of delay as far as it was relevant to the disappearance and death of witnesses as averred by the applicant, brings serious dispute of facts for the respondents.

The allegations made in support of the submission that her death (Puleng Komareng) would have caused prejudice. It was alleged that she completed the bid application tender 67/2001/2002, that she would have confirmed the tender documents were not fraudulent. Payment was legally done and would have refuted all allegations that the applicant was involved in fraud and corruption.

[20] The respondent has submitted that in an earlier application, the applicant advised that his chauffeur (Lefa Molefe) was not the business partner (page 290, annexure B). There is an inherent contradiction in what has been alleged in page 292, paragraph 6.3 and 6.4 where the respondent (applicant in the application) alleged that the first respondent (Lefa Molefe) submitted a tender on his behalf, upon his instructions and described himself as a managing director which was not true because the first respondent was only an employee. The respondent has issues with the fact that applicant does not say it was Puleng Komoreng. He raises the issue that Lefa Molefe describes himself as a managing director. This for, the

respondent (State) raises serious issues, it was alleged. In the tender document, annexure “C”, there’s no reference to Puleng Komareng. The only person in the tender document who purported to sign is Lefa Molefe. Puleng Komareng does not even sign the tender. The declarant, sole managing director and declarant is one Lefa Molefe. In page 305 of the documents (Annexure “C”) Lefa Molefe is a taxpayer and tenderer and had in his posession tax income reference no. In page 314, Lefa Molefe, signed on 5 july 2001 as a managing director of Mabolela Distributors, the same business that the applicant alleged in his papers to be the owner as per page 290 (annexure B and page 16 , paragraph 26 of the papers). There is no mention of Puleng Komareng neither as managing director, nor contact person. Instead Lefa Molefe is a 100% shareholder. The applicant does not appear in the documents in spite of the allegations that Lefa Molefe was doing business “on my behalf and on my instructions”. Respondent submitted that on the face of it, this supposed to be the tender of Lefa Molefe. There is no mention of applicant, his wife and Puleng. This contradiction, maintains the respondent, is raised by respondent in its papers (page 222, paragraph 22.1 and paragraph 22.2).

[21] In page 335, the responses from the applicant in relation to the contradictions and truthfulness of the statements under oath. There is no response to the submission that a contradiction exists from the applicants papers. This, the respondent argued constituted perjury. It questioned if the motion court was the appropriate forum where one

could explain his own contradictions. Respondent asked what assistance would Puleng Komareng bring? The tender is riddled with issues calling for witnesses to answer. Respondent asked if the tender (had any relevance to applicant and his wife), why it belonged to Lefa Molefe. The respondent claims that the trial court is the one to deal with all these issues raised here above. Modern jurisprudence points to trial court as better place to deal with these issues. Now that Puleng Komareng is dead, it is alleged that she is the one who signed the tender documents. The respondent asks for the production of that tender. It questioned if this was the court to find out where the truth lied. The contradiction, respondent claims, cannot be resolved in papers. It raised an issue with an applicant who says something else in another day and something else another day about the same incident. There is no explanation in any event for the contradiction. The respondent only says legal arguments would be provided to specific contradictions. The court in this instance was referred to the case of **Knox D'Arcy AG v Land and Agricultural Development Bank of SA** (654/2012 [2013] ZASCA 93 delivered on 5 June 2013). In paragraph 35, the court held

> "It is trite that litigants must plead material facts relied upon as a basis for the relief sought and define the issues in their pleadings to enable the parties to the action to know what the case they have to meet. And a party may not plead one issue and then at the trial, and in this case on appeal, attempt to canvass another which was not put in issue and fully investigated."

The respondent submitted that it was impermissible, therefore, to advance any argument that seeks to explain away the contradictions. Legal argument has not been raised even on heads of argument for the respondent to answer. Cross examination would be necessary in the circumstances under the watchful eye of the judicial officer who could see the demeanour of witnesses. The respondent was ready for trial and has not removed the case from the roll but only postponed it. It submitted that the court should be slow to grant a permanent stay if granting would have adverse effect on the public interest.

[22] There has been a delay but the respondent has explained it. In pages 231 – 234, paragraph (C – R) Swanepoel explains all the challenges ranging from six applicants in five different applications seeking same relief, the time consuming nature of these unconsolidated applications, the cumbersome nature of dealing with these applications was brought to the attention of applicants' attorney of record and in the letter respondent points, the nearly impossible task of having to file six different answering affidavits on a date contemplated by the rules. The respondent raised with the attorneys of record that the best forum to deal with issues raised was trial court. It was put to the applicants that these applications had a potential to compromise the trial date and thereby exacerbating delay. It would take time to deal with each fact raised as some of the investigating officers had retired. The above explanation seems not to have bothered the applicant until they face the reality that the case was

proceedings. Respondent submitted that in the present case, there is no waiving of enthusiasm as pointed out by Satchwell J, in the case of **Phillips v Director of Public Prosecutions**. The State was ready as far as 2013. All the authorities contend that the delay though a factor but not an issue. The issue is the effect the delay had on the applicant. It has not been stated in what way the delay had an effect on the accused's person, it has only been alleged that the delay is inexcusable. In the end, the respondent prayed for applicants' application to be dismissed with costs. Regarding costs, it accepted that in a constitutional democracy, jurisprudence was developing. The respondent argued that the cases where courts have agreed that awarding costs against those entrenching their rights against the state would have chilling effect are not absolute. It argued that it can't be that all cases against the state, parties losing should not be faced with costs. In any event the applicant had been warned from the beginning especially under cover of a letter dated 30 July 2013, marked annexure JBKS 1, at pages 253 – 255 (in last paragraph at pages 255). The respondent submitted that this case calls for a departure.

[23] The applicant in reply insisted that there was no explanation for the delay. It submitted that it was irrelevant that the case was trial ready. It argued that reasons for delay were not reasonable. It insisted that it was perfect to bring the application in this court. It referred to Sanderson's case and submitted that there might be circumstances where a stay is possible without even a delay. It claimed that

applicant showed prejudice and that the facts in the present case are not similar to Sanderson's case. Applicant insisted that Puleng Komareng completed tender documents and alleged that it had offered a reply which was denial of the issues raised in pages 244 – 245.

[24] The explanation of the delay by the respondent appears from the papers. It explained the challenges caused as a result of applications by six applicants seeking same relief of permanent stay of prosecution. In page 231 – 234 (paragraph C – R) the respondent's witness explained the time consuming nature of the process of having to deal with each application on a voluminous nature of papers. In page 269 (paragraph 7 and 8) he explained that they were expected and requested to analyse transactions reflected on 63 (sixty three) bank accounts for periods 01 March 2001 to 30 April 2004 (three years) in respect of numerous individuals and entities, report on the flow of funds and review and evaluate 364 (three hundred and sixty four) tender applications.

It submitted as per the affidavit of Swanepoel that these bank accounts were held at various banks and different branches. It alluded that it was time consuming process to obtain transaction statements and documentation in respect of transactions reflected on bank statements from the banks. The delay is explained further in detail from page 269 to 273.

It should be borne in mind that it took time to compile and complete a forensic report. It is not something untoward in these kinds of matters to do so. The nature of the offence where a group of companies, individuals and entities are involved normally takes long to investigate and prosecute. Some of the reasons are explained by the witness. It is normal that before investigations are complete, reports being available that some of the investigators involved in these matters are not available as a result of a different reasons i.e. retirements etc. This has a bearing on the tempo of the investigation. It is exacerbated by the removal of some of the investigators presently dealing with the matter before completion without explanation. It is not a duty of court to venture into those administrative matters.

[25] The submission by the applicant regarding trial prejudice where it relates to the witnesses in favour of defence raises its own challenges. It alleges that some of the dead witnesses would have given positive evidence and would have disputed some of the allegations. The fact that they were now dead prejudiced the applicant. The respondent raised serious contradictions regarding the alleged evidence that was supposed to have been led by these witnesses. Correctly so, the respondent submitted that those contradictions could not be resolved in papers. In any event, the applicant did not deal with these contradictions save to only respond that legal arguments would be put forward, assumingly to deal with

these contradictions. The so called evidence supposedly to have been led cannot be tested and it is only the submission of the applicant. Most of the issues rose regarding the trial prejudice, only the trial court could resolve. It would have to listen to evidence and make a determination after listening to evidence of both prosecution and defence as to whether anybody could be held responsible for the prejudice allegedly suffered.

Clearly on papers before court, the contradictions relating to the tender documents and application by the applicant in trying to disprove ownership of one of his company involved herein, by his chauffer, is material. The non-appearance and non-existence of the name of the applicants' alleged star witness, Puleng Komareng from all tender documents raised serious issues for the applicant.

The respondent further submitted that one of the postponements was due to the applicant. The matter was ready for trial in February 2013 when the applicant advised that it would proceed with the stay of prosecution. It took applicant a further year to bring the application. The respondent advised applicant of the delay to be caused by the application which had a potential to compromise the ready trial date to no avail. The applicant argued in court that it was irrelevant that case was trial ready. The question was whether the delay was reasonable, it argued. In spite of all the challenges pointed to the applicant regarding the manner it dealt with this matter and the correct advise that the issues it raised could only be dealt by a trial court, applicant insisted that the motion court where parties stand and fall by their papers, was a perfect court to deal with the application.

[27] The respondent submitted that the delay in this matter was not due to waiving enthusiasm, clearly when the applications were brought, matter was trial ready and the date was ready. All the issues raised, could have been raised in the trial. If substantial prejudice would result it's pre-eminently a matter for the trial court to adjudicate upon. This would involve having regard to the alleged infringement of rights and the resultant prejudice (if any). In the case of Sanderson the court stated that the

> "courts will apply their experience of how the lapse of time generally affects the liberty, security and trial related interests that concern us. Of the three forms of prejudice, the trial related variety is possibly hardest to establish, and here as in the case of other forms of prejudice, trial courts will have to deal with sensible reference from the evidence by and large, it seems a fair although tentative generalization that the lapse of time heightens the various kinds of prejudice that Section 35(3)(a) seeks to diminish".

The court dealt with the most important factors i.e. nature of the prejudice, nature of the case and a systematic delay. The nature of the case is important. In this regard, the court said that judges must bring their own experience to bear in determining whether a delay is over lengthy. The court stated that "systematic delay should be considered. The systematic delays are more excusable than cases of individual dereliction of delay". The court importantly noted that barring a prosecution before the trial began was far reaching. The trial had not begun; there was no real opportunity to ascertain the real effect of the delay on the outcome. Kreigler J, observed that such an order prevents the prosecution from presenting society's complaint against an alleged transgressor of society's rules of conduct and that in the absence of significant prejudice to an accused, it would seldom be warranted. After weighing all necessary factors, the constitutional court held that it was not an appropriate case to order a stay of prosecution.

[27] The applicants are indicted for serious offences i.e. corruption (giving benefit), racketeering, fraud alternatively failing to establish, ensure and maintain an appropriate procurement and provisioning system which had to be, fair, equitable, transparent, competitive and cost effective. These are corruption related charges. Corruption is a cancer to the body of South Africa from time immemorial. The country has been facing the challenge of corruption which is unfortunately not subsiding. Different legal instruments, enforcements units/agencies, laws and regulations have been introduced to fight this scourge, seemingly to no avail. The Scorpions, Hawks and organized crime units have not managed to deal properly with these types of offences to such an extent that we can safely believe that they are becoming few and far between. The public, taxpayers, are

directly affected by the offences as they inadvertently further burden the public with tax and high cost of living which is a direct consequence of these. On daily basis, the state from different departments, provinces and municipalities is strenuously faced to contend with these types of matters. These involve officials and other closely connected individuals. Whistle-blowers and upright officials have not escaped the wrath of those involved in these activities. Clearly, the public interest is that those involved should be prosecuted and these matters be disposed of in open courts.

[28] The applicants, in this kind of matter clearly deserve an opportunity to have their day in an open court. If a permanent stay is ordered, applicants would forever be tainted as not have been cleared by court. The charges against applicants are widespread and unbaiting.

{29] In the case of **Bothma v Els** 2010 (2) SA 622, the constitutional court considered that in the balancing of various factors relating to prejudice to the accused, the nature of the offence was a necessary counter weight to be taken into account. The court quoted the case of **Zanner v Director of Public Prosecution**, 2006 (2) SACR 45 (SCA).

> "It was considered important to have regard to those distressed by the horrors of the alleged offence. The court thought that against the accused's

> interest should be juxtaposed the societal demand in serious offences that an accused should stand trial".

[30] It can therefore not escape the court's that investigating these kind of offences, by their nature, is not a simple and straight forward matter. The state deals with syndicates assisted by some officials and as such would need experts like forensic auditors to properly investigate. The investigation, following of a paper trail and collating evidence clearly needs time. The nature of evidence, number of accused and their occupation as against the state cannot be overlooked. The court in Sanderson case clearly stated that even where severe prejudice may flow from charging the accused, the remedy of a permanent stay of prosecution should only be considered as a last resort. Such a remedy, the constitutional court said

> "… is radical, both philosophical and socio-political. Barring the prosecution … That will be seldom warranted in the absence of significant prejudice to the accused."

> "We all benefit by our belonging to a society with a structured legal system, a system which requires the prosecution to prove its case in a public forum. We also have to be prepared to pay the price for our membership of such society, and accept that a criminal justice system such as ours inevitably imposes burdens on the accused. But we have to acknowledge that these burdens are profoundly troubling and incidental."

[31] In the present application, it would not be sufficient for the applicant to show that he has suffered emotionally or that the case has been dragging for ten (10) years. He would have to show that it would be impossible to have a fair hearing because the case has dragged for so long and that witnesses would be unable to remember what had happened. The permanent stay of prosecution will not remedy the main prejudice of which an accused complains of because it will not clear his name.

[32] The concept of "unreasonableness" when dealing with delay is not defined, the question is left to interpretation. A deliberate delay in bringing an accused before court will not be tolerated. It has been held that the test of establishing whether the time lapse was reasonable should not be unduly stratified or pre-ordained, as it was not helpful for the court to impose semi-formal time constraints on the prosecuting authority.

[33] In the case of **Zanner** above, the applicant argued the following:

a. His right to a fair hearing was violated because of the lapse of twelve (12) years;

b. Possible witness (eye) could no longer be traced;

c. The quality of the available evidence would be materially flawed as a result of the effect of the time lapse on the memories of the witness and the appellant.

[34] The SCA found that the grounds relied upon by the appellant were speculative and that concerns raised would be considered by the trial court when assessing evidence. The court held owing to the serious nature of the offence involved, the appellant had failed to establish trial related prejudice or extraordinary circumstance which would justify drastic remedy of a permanent stay of criminal prosecution.

[35] The trend is similar to foreign jurisdictions. In the Supreme Court of Namibia, **S v Mybrugh** (SA 21/01, NASC 16, 14 October 2012) the appellant's appeal against the finding and the court rejected his application for a stay of prosecution.

[36] The court is in this present application is of the view that the applicant has not shown the trial prejudice complained of. The reasons as stated by the SCA are speculative and the respondent is indeed correct to argue that they would have to be ventilated in trial court.

[37] Consequently, therefore the application for a permanent stay of prosecution is dismissed with costs. The conduct of the applicants in

bringing these applications piece-meal created challenges for the respondent. The applicants were warned by the respondent in a letter dealing specifically with these challenges and the impact of same on arranged trial date. Applicants were warned of an adverse costs order but seemingly it never faced them.

[39] I therefore make the following order:

1. Application is dismissed,
2. Applicants are ordered to pay costs of the application on a normal court scale.

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N. P. JAJI, AJ

On behalf of the applicants: Adv. C. Ploos van Amstel SC
with Adv. G. Langenhoven
Instructed by:
Bezuidenhout Inc
BLOEMFONTEIN

On behalf of the respondent: Adv. D. Ntsebeza SC
with Adv. R. Rathidili
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