



**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG**

CASE NO: 2023/036454

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED: NO



DATE: 3 March 2025

In the matter between:

BRENDON REVERNDREN NAIDOO

Applicant

And

**MR MAGAMPHA NO
THE DIRECTOR OF PUBLIC PROSECUTIONS**

First Respondent
Second Respondent

JUDGMENT

H M VILJOEN A J

INTRODUCTION

- [1] This is an application to review and set aside a ruling of the first respondent, the presiding Regional Court Magistrate in case number SCCC-0190-2018. At issue is the first respondent's ruling on the applicant's request for particulars to the charge sheet.

THE CHARGE SHEET

- [2] The applicant faces 53 criminal charges:

2.1. Counts 1-26: Contraventions of Section 36(a) of the *Financial Advisory and Intermediary Services Act*, 2002 ("the FAIS Act"), read with Sections 1, 7, 8, and 13. The applicant is alleged to have unlawfully and intentionally acted and/or offered to act as a financial services provider without the necessary licence and/or as a representative of a financial service provider without the necessary licence. The charge sheet provides a detailed list of transactions, including the dates and amounts involved.

2.2. Counts 27-53: Charges of theft, also detailing specific transactions, dates, and amounts.

- [3] Comprehensive schedules accompanying the charge sheet provide detailed breakdowns of the transactions in question.

REQUEST FOR FURTHER PARTICULARS AND INFORMATION

- [4] Pursuant to Section 87 of the *Criminal Procedure Act*, 1977, and Section 35 of the *Constitution of the Republic of South Africa*, 1996, the applicant requested further particulars and information from the State. This request extended beyond the immediate scope of the charge sheet, and included matters that arise from witness statements. The State responded to this request.
- [5] Dissatisfied with the State's response, the applicant filed a request for further and/or better particulars, or alternatively, an application to compel the delivery of further particulars. The applicant did not take issue with all the answers provided by the State.
- [6] In his ruling, the first respondent, for the most part, found the State to have adequately addressed the applicant's requests.

THE HIGH COURT'S POWERS OF REVIEW

- [7] This court's power to review proceedings before a magistrate's court is derived from Section 22 of the *Superior Courts Act*, 2013. The present application lacks an explicit articulation of grounds falling within this section. Its premise is formulated in the closing paragraph of the founding affidavit as follows:

"With the aforementioned in mind, it is my respectful submission that the learned magistrate was wrong in ruling that I am not entitled to the specific information sought without same, I believe that a substantial injustice may result."

- [8] If a magistrate, in the performance of his statutory duties, gives a wrong decision, that does not constitute an irregularity. The remedy against a wrong decision is an appeal after the proceedings have been concluded.¹
- [9] To bring the application within the ambit of Section 22, Counsel for the applicant argued that the cumulative effect of the errors the magistrate is alleged to have made constitutes a gross irregularity in the procedure, thus bringing the matter within the scope of Section 22(1)(c).
- [10] In *De Vos v Marquard & Co*,² the court allowed for the possibility that a cumulation of irregularities, none of which is gross, may be held to constitute a gross irregularity in the proceedings upon which the proceedings may be set aside. I was not referred to any authority to suggest that a cumulation of incorrect factual findings may constitute a gross irregularity in the proceedings.
- [11] It follows that absent gross irregularity, the application for review must fail.

INTERVENTION IN INCOMPLETE PROCEEDINGS

- [12] Another ground exists for dismissing this application.
- [13] It is a well-established principle that the High Court does not intervene in ongoing criminal proceedings in lower courts except in rare and exceptional circumstances.³ This principle aims to prevent piecemeal litigation and ensure the efficient administration of justice. It applies irrespective whether an

¹ *Wahlhaus and others v Additional Magistrate, Johannesburg and another* 1959 (3) SA 113 (A) at 119C-E

² 1916 CPD 551

³ *Claassen v Beyleveld, NO en 'n Ander* 1963 (3) SA 302 (O), *Goncalves v Addisionele Landdros, Pretoria en 'n Ander* 1973 (4) SA 587 (T)

applicant seeks the review of proceedings before a magistrate or a mandamus compelling the magistrate to perform certain actions.

- [14] This principle is so compelling that, as remarked in *Wahlhaus*,⁴ the High Court typically refrains from intervention before a conviction, even when a preliminary point bears directly on the accused's guilt. The legal standard for intervention in incomplete proceedings demands a showing of *grave injustice*⁵ where justice might not otherwise be attained,⁶ a considerable threshold to cross. The applicant bears the onus of demonstrating a grave injustice demanding this court's intervention.

ANALYSIS OF THE FURTHER PARTICULARS

- [15] This being a review application that concerns procedural irregularity, I express no view on the substantive correctness of the first respondent's findings. However, to assess the threat of grave injustice to the applicant, the charge sheet, the request for further particulars and the State's response must be considered.
- [16] The applicant's request for further particulars, though extensive, largely sought information either already provided, readily obtainable through other means, or not essential to the preparation of his defence.
- [17] Regarding the identity of shareholders and directors of ACM Gold & Forex Trading (Pty) Ltd., the information is collateral and its absence does not impede the applicant's ability to understand the charges. Similarly, requests

⁴ Ibid. at 119G

⁵ *Wahlhaus*, *Ibid* at 120A-B

⁶ *Claasen*, *Ibid* at 303H

for bank statements and deposit methods were adequately addressed by the State's disclosures. There is no discernible significant prejudice to the applicant.

- [18] The applicant's queries concerning alleged contraventions of the FAIS Act are by and large answered by the Act's extensive definitions of "*financial service*", "*financial service provider*" and the like. The charge sheet, coupled with these definitions, provides parameters of the State's case, sufficiently clear to prevent significant prejudice to the applicant.
- [19] On the charges of theft, the charge sheet specifies amounts, dates, and individuals, providing a clear understanding of the accusations. The State's response to the "how" of the theft, while brief, is not prejudicial, as the core details are in the charge sheet.
- [20] Challenges to the complainants' "lawful possession" of funds, insofar as they are material to the charges, are evidentiary matters that the applicant is free to address during trial. The State's response, "matter for evidence," is not a ground for grave injustice.
- [21] Specific document requests, such as bank statements and electronic transfer details, were either fulfilled by the State or, where the State lacked the information, the applicant was correctly directed to use a *subpoena duces tecum*.
- [22] Where statements or details were missing, either the State subsequently provided them (Questions 2-4, 11, 13, and 19) or the applicant was advised to seek them independently, as is his right (Questions 14, 16, and 20). The court

record was in some respects incomplete, and this prevented me from assessing the materiality of some requests, particularly those related to the statement of Sashin Govender and Edith Munsamy's inquiries (Questions 14, 15, 16, and 20).

[23] The applicant's inquiries about specific acts constituting theft, and the distinction between acting in a personal capacity versus as a director, were met with responses that, while potentially terse, did not obscure the core allegations. The State's stance, articulated through the charge sheet and responses, provides sufficient notice of the case to be met, ensuring that no significant prejudice to the applicant arises.

[24] The State's assertion that it does not possess certain information requested by the applicant raises the issue of the State's disclosure obligations. In *Shabalala and Others v Attorney-General, Transvaal, and Another*,⁷ the Constitutional Court held that the State has a constitutional duty to disclose all relevant material in its possession to the accused, irrespective of whether it strengthens or weakens the State's case, and irrespective of whether the State intends to use the evidence at trial.⁸ This duty is essential to ensure a fair trial. In this case, there is no basis to doubt the State's assertion that it does not possess certain information.

[25] The applicant has not definitively established that the State's responses to his request for further particulars were so inadequate as to create a real risk of

⁷ 1996 (1) SA 725 (CC)

⁸ *S v Rowand* 2009 (2) SACR 450 (W)

grave injustice. Consequently, he has not met the threshold for High Court intervention in the proceedings before the magistrate's court.

CONCLUSION

[26] It follows, for the above reasons, that the application is to be dismissed with costs to be taxed on Scale B.



H M Viljoen

ACTING JUDGE OF THE HIGH COURT

GAUTENG DIVISION OF THE HIGH COURT, JOHANNESBURG

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on CaseLines. The date for hand-down is deemed to be 3 March 2025.

Date of hearing: 3 February 2025

Date of judgment: 3 March 2025

Appearances:

Attorneys for the applicant: Sasha Pillay Attorneys

Counsel for the plaintiff: Adv. P Jorgensen

Counsel for the second respondent: Adv. N Mogagabe, NDPP