

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: 005245/2025

(1)	REPORTABLE: YES / NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
3 October 2025	
DATE	SIGNATURE

In the matter between:

LUKHANYO BRUCE MATTHEWS CALATA

First Applicant

ALEGRIA KUTSAKA NYOKA

Second Applicant

BONAKELE JACOBS

Third Applicant

FATIMA HARON MASOET

Fourth Applicant

TRYPHINA NOMANDLOVU MOKGATLE

Fifth Applicant

KARL ANDREW WEBER

Sixth Applicant

KIM TURNER

Seventh Applicant

LYNDENE PAGE

Eighth Applicant

MBUSO KHOZA

Ninth Applicant

NEVILLE BELING

Tenth Applicant

NOMBUYISELO MHLAULI

Eleventh Applicant

SARAH BIBI LALL

Twelfth Applicant

SIZAKELE ERNESTINA SIMELANE

Thirteenth Applicant

SINDISWA ELIZABETH MKONTO	Fourteenth Applicant
STEPHANS MBUTI MABELANE	Fifteenth Applicant
THULI KUBHEKA	Sixteenth Applicant
HLEKANI EDITH RIKHOTSO	Seventeenth Applicant
TSHIDISO MOTASI	Eighteenth Applicant
NOMALI RITA GALELA	Nineteenth Applicant
PHUMEZA MANDISA HASHE	Twentieth Applicant
MKHONTOWESIZWE GODOLOZI	Twenty-First Applicant
MOGAPI SOLOMON TLHAPI	Twenty-Second Applicant
FOUNDATION FOR HUMAN RIGHTS	Twenty-Third Applicant

and

GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA	First Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Second Respondent
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Third Respondent
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS	Fourth Respondent
MINISTER OF POLICE	Fifth Respondent
NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE	Sixth Respondent

***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 e-mail and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be __ October 2025.*

JUDGMENT

JANSE VAN NIEUWENHUIZEN, J

Introduction

[1] This application concerns the plight of family members of freedom fighters who were brutally tortured and murdered during the apartheid era. Their search for justice has been a long and odious one.

[2] The applicants' journey commenced on 21 March 2003, being Human Rights Day, with the release of the Truth and Reconciliation Committee's final report. The report highlighted the imperative need for "*a bold prosecution policy*" in cases where amnesty was not granted to the perpetrators of apartheid era atrocities.

[3] Twenty-two years later, the applicants are still waiting for justice to be served. The lack of will to prosecute the perpetrators, led to the launching of the main application.

[4] Due to events that unfolded subsequent to the launching of the main application, the first and second respondents brought an application for the postponement, alternatively, stay of the relief sought in the main application pending the outcome of the Commission of Inquiry's inquiry into the delay in the prosecution of the apartheid era perpetrators.

Main application relief

[5] In order to place the postponement/ stay application in context, it is apposite to have regard to the relief claimed in the main application, namely:

1. Declaring the conduct of the first to sixth respondents in unlawfully refraining and/or obstructing the investigation and/or prosecution of apartheid-era cases referred by the Truth and Reconciliation Commission (**TRC**) to the National Prosecuting Authority (**the TRC cases**), or to otherwise unlawfully abandon or undermine such cases to be:
 - 1.1 a violation of the rights of applicants, and more generally the families of victims and survivors of apartheid-era crimes (**the families**), to equality, dignity and the right to life and bodily integrity in terms of sections 9, 10, 11 and 12 of the Constitution, Act 108 of 1996 (**the**

Constitution);

- 1.2 inconsistent with the constitutional values set out in section 1(a) and the rule of law as enshrined in section 1(c) of the Constitution;
 - 1.3 inconsistent with the principles, values and obligations arising from the Promotion of National Unity and Reconciliation Act, 34 of 1995 read with the postscript to the Constitution of the Republic of South Africa Act 200 of 1993 (**the Interim Constitution**);
 - 1.4 in breach of the duties and obligations contained in the Constitution, the National Prosecuting Authority Act 32 of 1998 and the South African Police Service Act 68 of 1995 to investigate and prosecute serious crime, and not to interfere with legal duties of prosecutors and law enforcement officers; and
 - 1.5 inconsistent with South Africa's international law obligations in terms of sections 231 to 233, read with section 39(b), of the Constitution.
2. The payment of constitutional damages by the first respondent for purposes of affirming constitutional values, vindicating the rights of the applicants and families and deterring future interference in the following amounts:
- 2.1 R115 261 625.00 (one hundred and fifteen million, two hundred and sixty-one thousand, six hundred and twenty-five Rands) over a five-year period for purposes of enabling families and organisations supporting families to advance truth, justice and closure by assisting them to pursue investigations and research, inquests, private prosecutions and related litigation;
 - 2.2 R8 000 000.00 (eight million Rands) over a five-year period for purposes of enabling families and organisations supporting families to play a monitoring role in respect of the work of the policing and justice authorities charged with investigating and prosecuting the TRC cases; and
 - 2.3 R44 000 000.00 (forty-four million Rands) over a ten-year period for purposes of enabling families and organisations supporting families to pursue commemoration, memorialisation and public education activities around the TRC cases, including the holding of public

events, publishing of books and making of documentaries.

3. If the order in prayer 2 is granted, the legal representatives of the applicants are ordered to cause a Trust to be established within three (3) months of this order, in accordance with the provisions of the Trust Property Control Act 57 of 1998, to hold and disburse such funds in furtherance of the purposes set out in prayers 2.1 to 2.3.
4. Declaring the failure and/or refusal by the second respondent (the President) to establish a commission of inquiry into the suppression of the investigation and prosecution of the TRC cases (the decision) to be:
 - 4.1 inconsistent with his constitutional responsibilities under section 84(2)(f) read with sections 1(c), 7(2), 83(b) and 237 of the Constitution, and
 - 4.2 a violation of the families of victims and survivors of apartheid-era crimes' rights to equality, dignity and the right to life and bodily integrity of the victims in terms of sections 9, 10, 11 and 12 of the Constitution.
5. Reviewing and setting aside the President's failure and/or refusal to appoint a commission of inquiry as described in prayer 4 above.
6. Directing the President to:
 - 6.1 promulgate in the Government Gazette, within thirty (30) calendar days of this order, the establishment of a commission of inquiry in terms of section 84(2)(f) of the Constitution, which commission of inquiry shall be headed by a sitting or retired judge designated by the Chief Justice, and shall be tasked to inquire into:
 - 6.1.1 whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the National Prosecuting Authority and/or the South African Police Service to stop investigating and/or prosecuting the TRC cases;
 - 6.1.2 whether any members of the National Prosecuting Authority and/or the South African Police Service improperly colluded

with such attempts to influence or pressure them; and

6.1.3 to make recommendations flowing from its conclusions, for actions to be taken by organs of state, including prosecutions to be instituted against persons found to have acted unlawfully in:

(a) attempting to influence or pressure members of the National Prosecuting Authority and/or the South African Police Service to stop investigating and/or prosecuting the TRC cases, and/or

(b) colluding with or succumbing to such attempts;

6.2 to make the provisions of the Commissions Act 8 of 1947 applicable to the abovementioned commission of inquiry in the aforesaid proclamation in the Government Gazette.

7 In respect of prayers 1 to 3 of this application, the respondents, and any other party who opposes this relief, are ordered to pay the applicants' costs.

8 In respect of prayers 4 to 6 of this application, the second respondent and any other party who opposes this relief, are ordered to pay the applicants' costs.

9 Further and/or alternative relief.

Postponement/ stay application

[6] Save for the postponement/ stay of the main application, the first and second respondents pray for the reinstatement of the notices of intention to oppose delivered and subsequently withdrawn by all the respondents in the main application. The reinstatement only pertains to the relief claimed in prayers 1, 2, 3 and 7 in the notice of motion. The relief is not opposed by the applicants, and an order in terms of prayer 1 of the notice of motion is granted.

First and second respondents' case

[7] On or about the end of May 2025, the President appointed a Commission of Inquiry to investigate allegations of whether efforts or attempts were made to stop the investigation and prosecution of the Truth and Reconciliation cases. The terms of reference of the Commission are broad and are set in the Schedule to the Proclamation, to wit:

- “1. The Commission must, in relation to the period since 2003, inquire into, make findings, report on and make recommendations concerning the following, guided by the Constitution, relevant legislation, policies and guidelines-
- 1.1. whether, why, and to what extent and by whom, efforts or attempts were made to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases;
- 1.2. whether any members of the South African Police Service or the National Prosecuting Authority improperly colluded with such attempts to influence or pressure them; and
- 1.3. whether any action should be taken by any organ of State, including possible further investigation to be conducted or prosecutions to be instituted, where appropriate, of persons who may have acted unlawfully by-
 - 1.3.1 attempting to influence or pressure members of the South African Police Service or the National Prosecuting Authority to stop investigating or prosecuting TRC cases; or
 - 1.3.2 members of the South African Police Service or the National Prosecuting Authority colluded with or succumbed to attempts to influence or pressure such members to stop investigating or prosecuting TRC cases; and
- 1.4. whether, in terms of law and fairness, the payment of any amount of constitutional damages to any person is appropriate.”

[8] The first and second respondents submit that the appointment of the Commission of Inquiry addresses the relief claimed in prayers 4, 5 and 6 of the notice of motion and delivers the relief sought in those prayers.

[9] According to the first and second respondents, the broad scope of the Commission's inquiry will also address the relief claimed in prayers 1, 2 and 3 of the notice of motion. The first and second respondents advanced various reasons in support of their stance, to wit:

9.1 the Commission will hear and consider evidence on interference and collusion, and a conclusion of the unlawfulness of the interference and collusion can only properly be made thereafter;

9.2 the Commission will also hear and consider evidence from all potential parties relevant to damages and on the appropriate form/s that damage should take form.

[10] The first and second respondents contend that the relevant facts on interference and collusion in the applicants' TRC cases are not set out in the founding affidavit and cannot be established on the papers in motion proceedings.

[11] The respondents are, furthermore, unable, at this stage, to respond meaningfully to the allegations contained in the founding affidavit without the facts relevant to interference and collusion.

[12] Insofar as a postponement, alternatively, a stay of proceedings as a remedy is concerned, Mr Bruinders SC, counsel for the first and second respondents, readily agreed that a stay of proceedings is, in the circumstances, the more appropriate remedy. The first and second respondents submit that the interest of justice favors a stay, because, *inter alia*;

12.1 To run two parallel processes in different forums, would be:

12.1.1 inconvenient and unfair to the parties and to the public interest that favors certainty and clarity over ambiguity and contradiction;

12.1.2 expensive and result in a duplication of costs.

12.2 our law avoids multiple proceedings to determine the same facts, because findings by two forums on the same facts are undesirable;

12.3 where one forum is the motion court, and the other a Commission with full powers to investigate and inquire into the facts, it would be even more undesirable for both to make findings on the same facts; and

12.4 it would be sensible and practical to stay the application to allow the Commission to complete its investigation and inquiry into interference, collusion and the appropriateness and fairness of constitutional damages, before the High Court is asked to make findings of unlawfulness or to award constitutional damages.

Applicants' case

[13] The applicants oppose the relief and maintain that they have a right under law and the Constitution to have their application for a declarator and their claim for constitutional damages determined by a court.

[14] The applicants pointed out that the Commission will only have the power to make recommendations to the second respondent, the President, which recommendations will only be made at the end of the inquiry. Although, in terms of the proclamation, the Commission's proceedings are supposed to run for six months, past practice has shown that similar proceedings run much longer than the time contained in the proclamation and are likely to take much longer to complete.

[15] The recommendations of the Commission will not be binding and may be rejected or ignored by the President. Should the Commission recommend payment of damages, and the recommendation is accepted by the President, the President has no power to direct payment of constitutional damages of the sort claimed in the application absent legislation authorizing him to do so or an order of court directing him to do so.

[16] Parliament has the power to enact a Bill authorizing the payment of constitutional damages of the sort claimed herein. Parliament may not agree to such a Bill and if it agrees, it is extremely unlikely that the introduction of the Bill into Parliament will be completed within a year. Even if, and when a Bill is enacted, the applicants may still not be satisfied with the arrangements enacted by Parliament. In the result, a stay of this matter to achieve the aforesaid would, without any justification, amount to a needless delay in finalizing the matter and will not be in the interests of justice.

[17] Irrespective of the findings and recommendations of the Commission, the court will have to determine the dispute between the applicants and respondents on the evidence contained in the applicants' papers and on the law. Furthermore, it will be improper of the Court not to consider the present dispute independently based on the evidence properly before court. In any event, factual decisions, findings or conclusions of a court, or other body such as the Commission, are not binding on another court, nor are they admissible in its proceedings.

[18] Insofar as the first and second respondents contend that the applicants' have not made out a case for the violation of constitutional rights, it is for the court, having considered the evidence and applying the law, to reach such a conclusion.

Legal Framework and submissions

[19] In terms of section 173 of the Constitution, a court has the power to regulate its own proceedings. In exercising this power, a court may order a stay of proceedings if it is in the interests of justice to do so.¹ Whether it is in the interests of justice to order a stay of proceedings depends on the facts of each case. It is, however, informative to have regard to authorities dealing with the stay of proceedings.

[20] The first and second respondents relied on two authorities in support of their submission that a stay of the proceedings will be in the interests of justice. In *Caesarstone Sdot-Yam Ltd v The World of Marble & Granite 2000 CC and Others*,² the appellant instituted an action in Israel against the respondents for breach of an

¹ See: *Mokone v Tassos Properties CC and Another* 2017 (5) SA 456 (CC) ("Mokone").

² 2013 (6) SA 499 (SCA).

agency agreement. Some months later, the respondents instituted a similar action against the appellant in Cape Town, and the appellant raised a plea of *lis pendens*, praying that the action be stayed pending the determination of its action in Israel. The parties in the different actions differed, and the court could only uphold the *lis pendens* plea in respect of some of the parties.

[21] In respect of the other parties, the court stayed the proceedings on the following basis:

“[49] The only sensible way in which to address the problem is for the court also to stay the proceedings as against the remaining members of the Sachs family, not on the basis of *lis pendens*, but in the exercise of its inherent powers to regulate its own procedures. Once the Israeli proceedings are complete and a final judgment has been given it will be open to them, together with WOMAG and Mr Oren Sachs, to resume the Western Cape action. Whether any question of *res judicata* or abuse of process will then arise will depend on the outcome of the Israeli action. It may then be necessary to resolve the interesting question raised, but not decided, in para [43] above. In addition, if any party to that action seeks to relitigate issues already dealt with in Israel the court will no doubt be called upon to decide whether that constitutes an abuse of process in accordance with the cases mentioned by Milne J and discussed in paras [46] and [47]”.

[22] The action was stayed on the basis that it was vexatious and frivolous, and an abuse of process to seek to relitigate a matter that had already been determined in another action.

[23] In *casu*, there are no parallel court proceedings. The risk that some or all of the issues will be relitigated simply does not exist.

[24] In *Mokone*, the dispute centred around a right of pre-emption that was contained in a lease agreement between Ms Mokone, as lessee, and Tassos, as lessor. During the subsistence of the lease agreement, Tassos sold the leased property to Blue Canyon. Ms Mokone brought an application in the High Court seeking a declarator that Tassos was in breach of the right of pre-emption, cancellation of the sale and reversal of the transfer of the leased premises.

[25] The issues in dispute were separated in the High Court, and the court only had to determine whether the right of pre-emption had been extended when the lease was extended. The remainder of the issues were postponed indefinitely. The High Court held against Ms Mokone and, later, the Supreme Court of Appeal refused leave to appeal. The matter proceeded to the Constitutional Court. In the meantime, Blue Canyon obtained an eviction order against Ms Mokone in the Magistrates' court. Special leave to appeal being refused by the Supreme Court of Appeal, the matter similarly proceeded to the Constitutional Court.

[26] In respect of the question whether the eviction proceedings should be stayed pending the finalisation of the High Court action, the court held as follows:

“[70] In the litigation pending before the High Court, Ms Mokone has pleaded that the purchaser, Blue Canyon, knew of the existence of the right of pre-emption before it took transfer of the leased premises. If that is indeed so, the purchaser's ownership obtained upon transfer to it may well be assailable. It seems unjust to require Ms Mokone to be uprooted and her business brought to a halt or destroyed in circumstances where the purchaser might not have been an innocent player when it purchased or took transfer of the leased premises. The interests of justice dictate that the eviction proceedings be held in abeyance pending finalisation of the action in which Ms Mokone is seeking to enforce the right of pre-emption.” (footnotes omitted)

[27] In the result, pending litigation was put on halt because an issue in dispute in the application still had to be finally determined in a pending action. In *casu*, the issues to be decided in this application do not depend on any finding or recommendation made by the Commission of Inquiry.

[28] The applicants', in turn, referred to two types of cases in which an order to stay proceedings has been granted by our courts, to wit:

28.1 a request for a stay of proceedings pending finalisation of another set of court or arbitration proceedings (local or foreign), the outcome of which will affect the outcome of the proceedings sought to be stayed;³ and

³ See, *inter alia*: *SA Human Rights Commission v Standard Bank of SA Ltd* 2023 (3) SA 36 (CC) at para 29.

28.2 a request for a stay of proceedings pending finalisation of an administrative decision, the outcome of which will affect the outcome of the proceedings sought to be stayed.⁴

Discussion

[29] In terms of section 34 of the Constitution, the applicants have a right to have their dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum. The applicants have exercised their constitutional rights by launching the main application, requesting the court to resolve their dispute with the respondents by application of the law.

[30] A stay of these proceedings will delay the finalisation of the litigation in this court. The authorities referred to above held, in general, that a stay of proceedings in one action will be justified if the same issue/s will be finally determined in an action in another court, by arbitration or by an administrative decision that is binding.

[31] In *casu*, the findings and recommendations by the Commission of Inquiry will not be binding on the court and will not be dispositive of any of the disputes between the parties in the main application. In the result, the authorities relied upon by the first and second respondents to justify the stay of proceedings are not applicable, and do not justify a stay of the main application.

[32] The question then arises whether there is another basis on which the interests of justice will be served if the main application is stayed. The applicants are entitled and have a right to have their dispute finally determined. The applicants have been denied this right for more than twenty years. It is understandable that the applicants, some of whom are elderly, are eager to find closure and to put the matter to rest. It is rather ironic that the Government, who is the sole cause for the delay, wants this court to sanction yet a further indefinite delay without being able to point to any tangible benefit that will be achieved by the delay.

⁴ See, *inter alia*: *Ftek Consultants CC and Others v Shoprite Checkers Ltd* 2004 (2) SA 504 (T).

[33] I am of the view that the interests of justice will not be served by the granting of a stay of proceedings, and the application stands to be dismissed.

Costs

[34] Costs should follow the result, which cost order will include the costs of two counsel. I am satisfied that the matter is of sufficient complexity to warrant the costs of counsel on scale C.

1. The application is dismissed.
2. The first and second respondents are ordered to pay the costs, which costs include the costs of two counsel on scale C.


N JANSE VAN NIEUWENHUIZEN
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date heard: 6 August 2025

Date delivered: 3 October 2025

APPEARANCES:

For the Applicants:

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Adv H Vamey

Adv M Musandiwa

Adv L Brighton

Instructed by:

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