

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

Case Number: SS25/2024

(1)	REPORTABLE: NO
(2)	OF INTEREST TO OTHER JUDGES: NO
(3)	REVISED: NO
03/12/2025	
DATE	SIGNATURE

In the matter between:

THE STATE

APPLICANT

and

TREVOR MATHENJWA

RESPONDENT

JUDGMENT

PJ DU PLESSIS AJ

- [1] This is a motion application brought by the State as Applicant in criminal proceedings for the re-opening of their case. This criminal case stems from a corruption prosecution instituted on the recommendations of the Zondo Commission of inquiry into allegations of State Capture, Corruption, and Fraud in

the Public Sector including Organs of State. The late Me Dudu Myeni was supposed to be accused one and the Respondent accused two.

- [2] The Respondent (accused-Mr Mathenjwa) was the Managing Director of Sondolo IT. The charges, main and alternative against him in count 3, are both under the Prevention and Combating of Corrupt Activities Act 12 of 2004.
- [3] The Main Count, Section 10(b), is the specific offence covering corruption in employment relationships, criminalising the act of giving or offering an unauthorised gratification to a person who is party to an employment relationship for an act or omission within the scope of their employment
- [4] The Alternative Count, Section 3(b), is the general corruption offence, which broadly criminalises the act of giving or offering any gratification to another person (public officer) to induce them to act dishonestly, illegally, or in an unauthorised or biased manner, resulting in an unjustified outcome, thereby constituting a fundamental breach of trust or legal duty.
- [5] At onset of the trial just after the charges were put by the Applicant, Respondents legal representative Mr Mthembu of Legal Aid South Africa, specifically, before offering Respondents pleas of not guilty to the Main and Alternative counts, asked from the State on record where Gavin Watson, Angelo Agrizzi and BOSASA¹ were as co-accused.
- [6] The Applicant replied that Mr Watson is deceased, BOSASA was liquidated and no longer exist, and Mr Agrizzi was facing his own criminal charges in multiple cases. The Respondent asked this question before plea "to determine where the common purpose lie". This answer seems to have satisfied their question as the trial then proceeded.
- [7] The Respondent allege in his opposition to the re-opening of the state case that the Applicant also indicated that Mr Agrizzi will not be called. It is clear from the Applicants explanation that the evidence it sought to lead from Mr. Agrizzi was unavailable to them due to the finalisation of his own criminal matter. This finalisation was only achieved during the course of the present trial, making the

¹ A word from the Northern Sotho Language meaning "the future"

evidence available only after the State's case was closed, which constitutes a *bona fide* and satisfactory explanation for the initial non-tender and the currently requested late tender of the evidence.

- [8] The trial commenced on 6 November 2025 with the evidence of Mr Richard le Roux the Regional Technical Co-ordinator of Sondolo. His evidence was followed by Lt Col Charles Neven a member of the investigating team into this and other BOSASA cases, Mr Christiaan Joshua de Beer the Regional District Sales Manager of Regal Distributors and finally Mr Donald Selota a Senior Financial Investigator with the Investigating Directorate Against Corruption (IDAC). There were also various exhibits (A-H) submitted by the time the Applicants case was closed on 11 November 2025.
- [9] The Applicants case asserts that the accused is guilty of corruption because he acted as a key operational implementer in a scheme driven by a common purpose to offer gratification. According to the State, the evidence of Mr. Le Roux, establishes that the accused personally conveyed the instruction for the unlawful act: specifically, ordering the trip to Richards Bay and the subsequent urgent installation, which they contend was the mechanism for offering gratification to the late Ms. Myeni.
- [10] The State views the accused's role as pivotal, arguing that by delivering the instruction to the person who carried it out, he fundamentally established his participation in the scheme alongside co-conspirators like Mr. Agrizzi and Mr. Watson.
- [11] The Respondents version, presented during cross-examination, amounts to a full denial of guilt by claiming limited authority and operational control over the alleged corrupt act. He asserts he was merely a subordinate functionary implementing instructions, contending that Mr le Roux did not report directly to him and that the critical authorization for installation was required from Mr. Angelo Agrizzi. Thereby placing the decision-making power with his superiors, distancing himself from the common purpose, squarely placing the command and ultimate authority, in the hands of the most senior figures in the BOSASA hierarchy.

- [12] At the closure of the Applicants case the Respondent asked for a discharge in terms of Section 174 Act 51 of 1977. Permission was granted for the filing of Heads of Argument (HOA) by 12 November 2025 and the judgment to follow on 13 November 2025. Whilst writing the judgment on the discharge application, this motion application under consideration was received from the Applicant requesting the re-opening of their case.
- [13] This application was supported by an affidavit from Peet du Plessis, a Senior Criminal Investigator with IDAC, who had been directly involved in the investigation against Mr. Angelo Agrizzi. According to Du Plessis's affidavit, Mr. Agrizzi had pleaded guilty and was sentenced in terms of Section 105A of Act 51 of 1977 around the time the current trial commenced, with a key part of his sentencing agreement being that he would testify against other senior officials within BOSASA. This information was apparently only made available to the current Prosecutors after they had closed their case in this matter.
- [14] The Respondent on 13 November opposed the re-opening application of the State and indicated their discharge application was first. They argued the court must pronounce on it, and then hear the Applicants re-opening application.
- [15] The court ruled that since a judgment carries the potential for finality, logic dictated that the Applicants motion to re-open its case should be heard first, as the outcome thereof, would determine the subsequent direction of the trial.
- [16] The court's hearing of the Application was delayed because the State failed to comply with the timeframe directives issued by the court (for which they were admonished). This disregard prevented the Respondent from having sufficient time to prepare its opposing documentation. Consequently, the matter had to be rolled from November 25th to December 1st, 2025, at which point new directives were issued, supplementary Heads of Argument (HOA) were filed, and oral arguments were finally heard.
- [17] The Applicants submissions, both written and oral, centre on the argument that the court must exercise its judicial discretion to allow the re-opening of the case in the interests of justice to ensure the totality of evidence is considered.

- [18] Their written submissions focused on the technical requirements, asserting that they never possessed Mr. Agrizzi's statement before the trial began as his Section 204 statement only materialized due to the finalisation of his own plea and sentencing agreement. The statement was only made available to them after their case was closed. They contended that his evidence is highly material and crucial to establishing the corrupt relationship and common purpose, arguing that granting the application would avoid bringing the administration of justice into disrepute, and further submitting that the Respondents fair trial rights remain protected through his guaranteed right to challenge his evidence in cross-examination.
- [19] In oral arguments, the Applicant maintained these core points. They reiterated that the new evidence is relevant. They stressed their position as *dominus litis* and asserted that the identity and role of Mr. Agrizzi were known throughout the proceedings so there can be no ambush. Ultimately, they submitted this court is bound by the Appellate authority, in *S v Ndweni*², arguing that the three basic requirements for re-opening are met, and the court is legally required to grant the application in the interests of justice.
- [20] The Respondent's arguments, both written and oral, vehemently oppose the Applicant's re-opening application, primarily on grounds of unfair trial procedures and the insufficiency of their foundational explanation. The Respondent heavily criticises the Applicant for its initial conscious decision not to call Mr. Agrizzi despite knowing of his Zondo Commission allegations, arguing that the subsequent application is a prejudicial effort to "relieve the pinch of the shoe" by "shaping" new evidence to plug a perceived, fatal gap in the State's case on common purpose.
- [21] Orally, the Respondent labelled the Applicants explanation for the delay a "fallacy," arguing that the Applicant was aware of Agrizzi's involvement when drafting the charge sheet and that both he and Mr le Roux had already testified on related matters at the Zondo Commission, thus concluding that the Applicant has failed to satisfy the primary requirement of offering a "reasonably sufficient

² *S v Ndweni* (2018 (2) SACR 607 (SCA))

explanation" for why the material evidence available from the Zondo Commission was not led timeously.

- [22] They strongly contested the prima facie likelihood of the truth of Mr Agrizzi's evidence, directly challenging his credibility and motive due to allegations that he displayed severe racial bias (including the use of a racial slur and equating the accused to his pet monkey). This alleged prejudice was submitted as a violation of the accused's human dignity and his right to a fair trial, making it highly unreliable.
- [23] Finally, the Respondent invoked the finality principle, stressing that the proceedings are at a very late stage with a judgment on a potential Section 174 discharge pending. They asserted that re-opening the case now amounts to a "trial by ambush," which violates the Respondents constitutional rights, and undermines the judicial principle that issues of fact, once investigated, should "not lightly be reopened," which weighs heavily against the re-opening application.
- [24] The power to re-open a case to hear further evidence is considered an exceptional power to be exercised only in rare circumstances, as it runs "contrary to the interests of justice" to lightly re-open issues of fact that have already been judicially determined.³
- [25] To successfully apply for the remittal and re-opening of a case, an applicant must satisfy three fundamental requirements, which were summarized in *De Jager's* case.⁴ Firstly, there must be a "reasonably sufficient explanation" why the evidence was not presented at the original trial. Secondly, there must be a "prima facie likelihood of the truth of the evidence" sought to be led. Finally, the evidence must be "materially relevant to the outcome of the trial." A court holds a limited power to "relax strict compliance" with the requirement of a reasonably sufficient explanation, but this leniency is strictly reserved for "rare instances" (*S v Njaba*)⁵ as cited in *S v N*.

³ *S v N* 1988 (3) SA 450 (A) at 458 E – 459 A

⁴ *S v De Jager* 1965 (2) SA 612 (A) at 613B-D

⁵ *S v Njaba* 1966 (3) SA 140 (A) at 143H

- [26] The decision to re-open any case ultimately resides within the judicial discretion of a court, meaning that a court must carefully weigh the specific facts of each application.
- [27] This discretion is guided by several considerations derived from cases like *S v Felthun*⁶. The court also takes cognisance of the authorities relied upon by the defence, including *S v Ndweni*⁷, which similarly holds that the discretion to re-open a case must be exercised judicially and always with a view to achieving substantial justice, outweighing the general principle of finality.
- [28] *Felthun* clearly states the guidelines given are flexible rules, not rigid conditions, designed to balance the pursuit of justice with the need for legal finality. The factors include the reason why the evidence was not led timeously and the degree of materiality of the proposed evidence. The court must also specifically guard against the possibility that the new evidence has been "shaped" after the initial trial to address weaknesses ("to relieve the 'pinch of the shoe'").
- [29] Crucial to the court's exercise of discretion are the principles of fairness and finality. The court must assess the potential prejudice to the opposing side, considering factors such as whether witnesses who could offer rebuttal testimony are no longer available.
- [30] Furthermore, the court must consider the stage which the proceedings have reached, as the general need for finality in litigation becomes a progressively stronger counterweight against re-opening the case the further the proceedings have advanced (e.g., if the matter has progressed to conviction or appeal).
- [31] The overall aim of the court when applying the guidelines for re-opening a case, as particularly emphasized in *Felthun*, is to strike a proper balance between the imperative of achieving substantial justice for the parties and the necessity of maintaining legal certainty and finality in judicial proceedings.
- [32] The Applicant has successfully provided a "reasonably sufficient explanation" for the delay in presenting crucial evidence. This evidence of Mr Agrizzi seems to

⁶ *S v Felthun* 1999 (1) SACR 481 (SCA)

⁷ *S v Ndweni* (2018 (2) SACR 607 (SCA)

be highly material and was unobtainable until his own criminal trial completion. This scenario aligns with the authoritative requirements set out in *S v N* and the concept of exceptional circumstances contemplated in *S v Njaba*, confirming the necessity of evidence that speaks directly to the core allegation of common purpose.

- [33] In applying the judicial discretion mandated by *S v Felthun*, the imperative of achieving substantial justice is found to outweigh the principle of finality, as we are only at the stage of a Section 174 application consideration. A key factor guiding this court's decision, is that the Respondents' fair trial rights, specifically the right to challenge evidence under Section 35(3)(i) of the Constitution, are fully preserved by the guaranteed opportunity to cross-examine Mr Agrizzi. Granting the re-opening ensures the court considers the totality of the State's available evidence, before ruling on the merits of any other applications that may follow.
- [34] The Zondo Commission, which investigated State Capture, Corruption, and Fraud, has received substantial public attention, and its recommendations are now culminating in prosecutions. Given the high level of public scrutiny and the imperative of ensuring public sector accountability, disallowing the presentation of Mr. Agrizzi's evidence would not be in the interest of justice. Excluding this testimony would compromise the truth-finding function of the trial court and risk bringing the administration of justice into disrepute, as the evidence supposedly addresses the serious allegations of corruption the courts are called upon to fairly adjudicate.
- [35] In the papers before the court it is indicated that Mr Agrizzi suffers from various morbidities and that he requires extensive medical care and is on oxygen permanently. He is therefore unable to travel and attend court to give evidence. He can also according to the information only concentrate for between one and two hours at a time. It would therefore be necessary, in order to get finality in this matter, to allow his evidence be given by means of closed-circuit television or similar electronic media as contemplated by Section 158 (2)(a) Act 51 of 1977.
- [36] Therefore, the following order is made

1. The Applicant is allowed to re-open its case and present the evidence of Mr Agrizzi in terms of section 158(2)(a), Act 51 of 1977.

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PJ DU PLESSIS
ACTING JUDGE OF THE HIGH COURT
JOHANNESBURG

This judgment was handed down in court and electronically by circulation to the parties representatives via e-mail, by being uploaded to CaseLines and by release to SAFLII. The date and time for hand-down is deemed to be 10h00 on 03 December 2025

For the Applicant:

Adv B Matsuele and
Adv S Nkula-Nyoni

For the Respondent:

Adv Mthembu

Application heard:

01 December 2025

Judgment:

03 December 2025