



**IN THE HIGH COURT OF SOUTH AFRICA
KWAZULU-NATAL LOCAL DIVISION, DURBAN**

CASE NO: CCD38/2023

In the matter between:

THE STATE

and

MTHOKOZISI PIUS DUZE	ACCUSED 1
BABONGILE MNYANDU	ACCUSED 2
SILAS ZWELAKHE HLOPHE	ACCUSED 3
MHLANGA INCORPORATED	ACCUSED 4
SITHEMBELO RALPH MHLANGA	ACCUSED 5
SIYANDA BASIL NGONGOMA	ACCUSED 6
THABISO WESLEY KHUMALO	ACCUSED 7
ANDILE MCINEKA	ACCUSED 8
NCD INVESTMENTS (PTY) LTD	ACCUSED 9
NOFEZILE CHARON MHLANGA	ACCUSED 10
NONHLANHLA OMIC MKHIZE	ACCUSED 11
SIPHIWE MOSES MABASO	ACCUSED 12

ORDER

In the premises the following order is made:

1. The application for the case to be struck off the roll is dismissed.
2. The rule nisi that was issued by Henriques J on 9 October 2025 is confirmed.

3. The dates of 23 February 2026 to 27 March 2026 and 13 April 2026 to 15 May 2026 are no longer reserved for trial of this matter.
4. The case is to be enrolled to the pre-trial roll.
5. There is no order as to costs.

JUDGMENT

Mathenjwa J

[1] This is an application brought by all the accused in terms of s 342A of the Criminal Procedure Act 51 of 1977 (the CPA)¹ seeking an order that the case against them be struck off the roll and the prosecution not to be resumed or instituted de novo without the written authority of the Director of Public Prosecutions. The State is opposing the application. Also, the matter come before me as response to a rule nisi issued by Henriques J on 9 October 2025 for the parties to show cause why the reserved trial dates of 23 February 2026 to 27 March 2026 and 13 April 2026 to 15 May 2026 should remain reserved.

Background

[2] The accused are arraigned on various counts of corruption, contravening the Prevention and Combating of Corrupt Activities Act 12 of 2004, fraud, money laundering, theft, extortion and conspiracy to commit robbery stemming from the award of tenders for legal services at Mhlathuze Water. Accused 1 and 2 were employed as the Chief Executive Officer and Chief Financial Officer of Mhlathuze Water respectively. Accused 3 was the Deputy Chairperson of the Board of Mhlathuze Water, accused 4 was the law firm that was appointed to the legal panel of Mthathuze Water and accused 5 is the attorney and director of accused 4.

¹ Section 342A (1) of the CPA provides that: 'A court before which criminal proceedings are pending shall investigate any delays in the completion of proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused or his or her legal adviser, the State or a witness...'

[3] Accused 1, 2, 5 and 7 were arrested on 29 August 2022, accused 8 was arrested on 30 November 2022, accused 6 was arrested on 16 February 2023, and accused 3 was arrested on 23 June 2023. When accused 1,2,5 and 7 appeared in court on 30 August 2022 the investigating officer had deposed to an affidavit in which he stated that the investigation was about 90% complete and that the State required a period of three months to finalise the investigation. On 6 December 2022 the matter served before the Specialised Crimes Court, Durban where the State requested a seven-month adjournment for further investigation. The court refused the seven-month adjournment and adjourned the matter to 6 April 2023 to allow the State to complete its investigation.

[4] On 6 April 2023 the investigation was still not complete. Counsel for the State made an undertaking that an indictment would be provided, and discovery would be made within three months. The matter would then be ready to be transferred to the High Court. The court adjourned the matter to 29 June 2023. On 29 June 2023 the State provided an indictment to the defence but did not make discovery of the docket as undertaken. The matter was subsequently transferred to the Durban High Court on 6 November 2023 on assurance by the State that discovery would be completed by 6 November 2023.

[5] On 6 November 2023 the matter came before Radebe J in the High Court. Discovery had not been made by the State as per its undertaking and Radebe J placed the State on terms to complete discovery no later than 23 November 2023. The matter was adjourned to 28 November 2023. Discovery was only made on 28 November 2023 when the accused appeared before court.

[6] The matter was set down for a pre-trial conference on 25 July 2024, where the matter was further adjourned to 7 November 2024 for determination of trial readiness. On 7 November 2024 the matter came before Judge President Poyo-Dlwati who reserved the period of 23 February 2026 to 27 March 2026 and 13 April 2026 to 15 May 2026 for trial. On 23 January 2025 the matter came before Henriques J for a pre-trial conference. The State indicated that the trial could proceed as per the pre-arranged trial dates. Henriques J adjourned the matter to 24

July 2025 with the proviso that the State had to file the amended indictment by 28 March 2025 and make delivery by 20 June 2025.

[7] On 24 July 2025 when the matter came before Henriques J the State advised that the indictment, which was not signed by the Director of Public Prosecutions, was served electronically on 28 March 2025. Further, discovery was made on 21 July 2025 to those accused who had provided external hard drives to the State as per its request to the accused to provide the State with hard drives to enable it to discover the documents using the hard drive. Henriques J directed the State to prepare a pre-trial minute to be signed by all parties confirming that the matter is trial ready. The matter was adjourned to 9 October 2025 for a pre-trial to be held.

[8] On 5 September 2025 the State's counsel informed the defence counsel by email that further discovery was being made and requested that the State be provided with 2TB hard drives by no later than 9 September 2025. On 18 September 2025 the State made further discovery consisting of another hard drive containing:

- (a) 183 new documents totalling 118 876 pages;
- (b) a folder marked "cell phones" containing 370 839 items consisting inter alia of photographs, WhatsApp messages, media files, videos and music;
- (c) a folder marked "USB DUZE" containing 1 123 items consisting inter alia of photographs and media files;
- (d) a folder marked "Richards Bay CAS 324/07/2022" containing 1 36 443 items; and
- (e) a supplementary witness list extending the number of State witnesses from 47 to 131.

[9] On 3 October 2025 the State convened a video conference with legal representatives of the accused with a view to declaring the matter trial ready. All legal representatives for the accused were unanimous that the matter would not be ready for trial on the reserved dates due to the extent of further discovery. On 9 October 2025 Henriques J asked the State counsel why the State was non-compliant with the order that a pre-trial minute be filed declaring the matter trial ready. Counsel for the State informed the court that the investigation was 99% complete. Henriques

J ordered the parties to file affidavits setting out the facts pertinent to the delay and adjourned the matter to 26 November 2025. On 23 October 2025 the accused launched the present application.

Parties contentions

[10] An affidavit resisting the application on behalf of the State was deposed to by Advocate Bulelwa Vimbani-Shuma who is employed by the National Prosecuting Authority, occupying the position and title of Deputy Director of Public Prosecutions and Regional Head, Specialised Commercial Crimes Unit in KwaZulu-Natal. She denies that the State is solely responsible for the delay but contends that the accused also contributed to the delay in the prosecuting of the matter. The State contends that on receipt of the results from Digital Forensic Laboratory on imaging of the devices on 1 December 2022 it recognised the importance of obtaining mutual legal assistance in the United States to facilitate collaboration in the investigation and prosecution of crimes. Furthermore, the State contends that following the finalisation of the draft flow of funds report concerning the bank statements of the accused, it was essential to add additional charges against them. Further arrests of additional suspects were made on 23 June 2023.

[11] On 16 February 2024, the State received a request for further particulars from the erstwhile accused 3. This necessitated that the State review the request, consult with witnesses, gather more information, and prepare a response. Again, on 5 April 2024 the State received a request for further particulars from accused 4, 5, 7, 8, 9 and 10 which request the defence conceded was out of time. Accused 11 had filed an application for separation of trial when the matter appeared before Radebe J on 24 April 2024 and the State was directed to file its answering affidavit to the application for separation of trial by not later than 23 July 2024.

[12] On 27 May 2024 the State received further requests for further particulars from accused 2 and 6. On the same date the State received representations from the erstwhile accused 3. On 18 June 2024 the State further received representations from the erstwhile accused 1. On 22 July 2024 the State received representations from accused 3 accompanied by recordings of minutes of meetings. On 13

September 2024 accused 11's application for separation of trial was argued before Olsen J, where judgment was reserved and ultimately delivered on 9 December 2024. Accused 11's application for separation of trial was dismissed. After considering representations from the accused, the State decided to withdraw charges against erstwhile accused 1, 3, 5 and 9. The withdrawal of charges necessitated an amendment of the indictment. Further, on 13 May 2025 the State received supplementary representations from accused 3.

[13] When the State started with the process of drafting admissions in terms of s 220 of CPA it discovered that the files in some of the digital folders were empty which necessitated procurement of those files from uMngeni-uThukela Water. On 18 June 2025 after the State had obtained further information which it required, it sent an email to the defence requesting them to provide it with USBs on which this information was to be loaded. Whilst some of the legal representatives for the accused responded by providing USB's as from 1 July 2025 onwards others did not respond to the State's request.

[14] During the year 2024/2025 a dispute arose between the Legal Affairs Division of the NPA and IFS legal representatives. This caused the State counsel to involve the Financial Intelligence Centre Forensic Services (FIC) to deal with aspects of cash flow analysis already done by IFS to prevent any harm and cause delay to the trial. The report completed by the FIC was discovered to the defence in September 2025.

[15] The State further contends that the complexity of the case together with voluminous documents and the fact that the investigating team involved in this case was the same team involved in another complex matter of *S v Gumede* pending in this Division contributed to the delay of this matter.

[16] The defence contends that Advocate Vimbani-Shuma's affidavit regarding the discussion at the pre-trial video conference on 3 October 2025 is hearsay because she was not in attendance at the meeting. Furthermore, it was contended on behalf of the accused that since the affidavit was commissioned by the investigating officer in this case, there was conflict with the regulation governing the administering of an

oath because the investigating officer has an interest in the matter, therefore the answering affidavit was inadmissible. The defence argued that the State made misrepresentations to Poyo-Dlwati JP that the matter was ready for trial on 7 November 2024 which resulted in the JP reserving the trial dates.

[17] The defence contends that the arrest of the accused was premature and the investigation of this case continues unabated more than three years after the arrest of the accused. The defence submitted that the delay has prejudiced the accused because they have been under severe constraints having been admitted to bail under onerous conditions. Their freedom of movement and liberty has been severely restricted. Further, they have been forced to retain their respective legal teams for three years at substantial costs.

Analysis and applicable legal principles

[18] The admissibility of the affidavit deposed to on behalf of the State is central to the States' version in that if such evidence is not admissible there would be no version for the State before this court. It is instructive to determine the admissibility of such evidence in the context of the nature of s 342A proceedings. It is trite that s 342A(3) does not specifically require that a 'formal' enquiry be held, but for at least an enquiry, on the basis of which a finding must be made.² It is not in dispute that some of the facts stated in the affidavit relate to issues which do not fall within the personal knowledge of the deponent to the affidavit and that the relevant individual who participated in the pre-trial proceedings did not submit confirmatory affidavits. Although the enquiry need not be formal, a finding on the cause of the delay should be made based on reliable facts. The veracity of the State's evidence on what occurred in the pre-trial conference cannot be properly determined if the deponent to the affidavit was not present at the conference and the personnel who attended the conference have not deposed to confirmatory affidavits confirming the correctness of the facts. The reason being that the probative value of such evidence depends upon the credibility of a person other than the deponent to the affidavit. For that reason, only those parts of the affidavit which contain hearsay information will not be

² *S v Ramabele and Others* [2020] ZACC 22; 2020 (2) SACR 604 (CC) para 62; *S v Ndibe* [2012] ZAWCHC 245 para 6.

considered for purposes of this judgment. It must be noted that the administering of an oath by a commissioner of oaths who is part of the investigating team, is undesirable. However, for purposes of this enquiry I am not convinced that that would render the affidavit inadmissible.

[19] This then brings me to the issue of the delay. It is instructive that s 342A of the CPA aims to recognise the rights contained in s 35(d) of the Constitution which guarantees every accused person the right to a fair trial, which includes the right to have their trial begin and conclude without unreasonable delay. Section 342A obliges the court to investigate a delay which is unreasonable, and could cause substantial prejudice either to the State, defence, legal representatives or witnesses. Therefore, the starting point is to establish whether the delay is unreasonable. In determining the reasonableness of the delay, the court is directed to consider the following factors as set out in s 342A (2) of the CPA:

- ‘(a) The duration of the delay;
- (b) the reasons advanced for the delay;
- (c) whether any person can be blamed for the delay;
- (d) the effect of the delay on the personal circumstances of the accused and witnesses;
- (e) the seriousness, extent or complexity of the charge or charges;
- (f) actual or potential prejudice caused to the State or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost;
- (g) the effect of the delay on the administration of justice;
- (h) the adverse effect on the interests of the public or the victims in the event of the prosecution being stopped or discontinued;
- (i) any other factor which in the opinion of the court ought to be taken into account.’

[20] The evidence shows that both the State and defence have been kept busy through interlocutory applications and other related requests since the accused first appeared in the regional court on 30 August 2022. The defence had requested

further particulars in a staggered manner on 16 February 2024, 5 April 2024 and 27 May 2024. Whilst the accused are entitled to request further particulars, the time spent on consultation and compiling responses to the requests is relevant in assessing the reasonableness of the delay. Furthermore, the accused made representations to the State in a staggered manner on 18 June 2024, 22 July 2024 and 13 May 2025. The State spent time working on the representations. Consequently, cases were withdrawn against some of the erstwhile accused because of the representations made. It is not in dispute that accused 11 applied for separation of trial, the State filled opposing papers, and the application was argued before court on 13 September 2024. All these interlocutory matters consumed time and contributed to delay in prosecuting the matter.

[21] The State does not dispute that it continued investigating the matter after the accused were arrested. However, it explained the circumstances that warranted further investigation. On receipt of the results from Digital Forensic Laboratory on imaging of devices on 1 December 2022 it came to the knowledge of the State that it needed mutual legal assistance in this matter. The introduction of FIC to render financial intelligence services instead of IFS which was previously rendering the same services, was also explained by the State, in that the change was necessitated by a dispute that had arisen between the NPA and the IFS. Therefore, the involvement of FIC was to prevent further delay in completion of the investigation. It is trite that in determining a delay in the completion of the investigation, the nature and circumstances of each case should be considered as some cases may appear simple but are complex and require specialised analysis of documents which justify delay.³

[22] The relevance of systematic delay was considered in *Sanderson v Attorney-General, Eastern Cape*, where the Constitutional Court held that although systemic factors are probably more excusable than cases of individual dereliction of duty, they should not be regarded as exculpatory.⁴ While in principle the court accepted that in certain circumstances systemic factors may justify delay, they can only justify delay

³ *Sanderson v Attorney-General, Eastern Cape* 1998 (1) SACR 22 (CC) para 34.

⁴ *Ibid* para 35.

for a certain period.⁵ It is instructive to note that a massive scourge of corruption has surfaced in our country which requires specialised and expert investigative skills. There is no doubt that the large number of arrests and prosecution of people of all walks of life in all three arms of government that is Parliament, Executive and the Judiciary has overstretched the capacity of expert investigation teams. However, that should not give the State carte blanche powers to arrest people before proper investigation and subject them to a prolonged judicial trial. However, in the present matter the involvement of the same investigation team in another high-profile matter is but one of the various factors that contributed to the delay in the prosecution of this matter.

[23] It is also clear that when the State made representations to Poyo-Dlwati JP that the matter was ready for trial on 7 November 2024 which resulted in the JP reserving dates for trial, such representations were not correct because up to now the State has not discovered all documents to the defence. When the court enquired from the State at the hearing of this matter whether it had discovered all documents to the defence the State counsel advised that there were still two further documents that it will discover to the defence, that is the mapping of all cell phones and forensic results for a handwriting specimen. The State indicated that the remaining documents were prepared for discovery and committed to discovering those documents in the afternoon on the same day.

[24] The defence argued that the circumstance of this matter is in all fours with *Van Heerden and Another v National Director of Public Prosecutions*⁶ where the Supreme Court of Appeal granted permanent stay from prosecution. In my view, the present case is distinguishable from *Van Heerden*. In *Van Heerden* the accused were charged for theft of hundreds of boxes of cigarettes which were valued at R3 470 000. The case had been struck off the roll twice on account of the State's conduct. In the present matter the accused are facing a multiplicity of charges including theft, fraud, corruption, money laundering, extortion, conspiracy to commit

⁵ Ibid.

⁶ *Van Heerden and Another v National Director of Public Prosecutions and Others* [2017] ZASCA 105; 2017 (2) SACR 696 SCA).

robbery, robbery, intimidation and defeating the ends of justice which involve an amount of more than R37 million.

[25] The numerous documents consisting of millions of pages which had been discovered by the State to the defence shows that a lengthy time was required to conduct this investigation. At the hearing of the matter the defence indicated that they would certainly request further particulars to the recent discovery by the State. The State's case has progressed to such an extent that to strike the matter from the roll would further delay completion of this matter, since the ongoing process of discovery, request for further particulars and response to the request for further particulars would cease.

[26] On a conspectus of the facts I am of the view that the State could have done better in expediting the matter and alleviate further delay in prosecuting of the matter. However, considering the complexity of the matter, the interlocutory applications, numerous representations to the State, numerous requests for further particulars, new arrests made and discovery of further information which required further investigation, I cannot find that the delay in prosecuting the matter was unreasonable.

[27] It would be in the interests of the State, the accused and the administration of justice if the trial starts and is completed soon, rather than strike the matter from the roll and recharge the accused. The State indicated that it was ready for trial on the reserved dates. However, considering late discovery, the volume of documents discovered and the two set of documents that would still be discovered, the defence would suffer trial related prejudice if the trial were to commence on the reserved dates.

[28] For these reasons the dates that were reserved should no longer be reserved for trial, and the matter should be enrolled to the pre-trial roll for further attention. Regarding the issue of costs, although the court found that the delay was not unreasonable, it also found that the matter will not be trial ready on the reserved dates. Therefore, there will be no order as to costs.

Order

[29] In the premises the following order is made:

1. The application for the case to be struck off the roll is dismissed.
2. The rule nisi that was issued by Henriques J on 9 October 2025, is confirmed.
3. The dates of 23 February 2026 to 27 March 2026 and 13 April 2026 to 15 May 2026 are no longer reserved for trial of this matter.
4. The case is to be enrolled to the pre-trial roll.
5. There is no order as to costs.

Mathenjwa J

Case information

Date of hearing: 26 November 2025

Date of judgment: 9 December 2025

Appearances:

The State: Mr Mnyani and Ms R Ramouthar

Instructed by: The Director of Public Prosecutions:
Specialised Commercial Crimes Unit

1st Accused: Mr J Howse SC

Instructed by: Garlicke & Bousfield Inc
Durban

2nd and 6th Accused: Mr Naidoo SC

Instructed by: Sasha Pillay Attorneys
Umhlanga

3rd and 11th Accused: Ms P S Mdlalose

Instructed by: Gumede & Jona Inc.
Durban

4th, 5th, 7th, 8th, 9th, and 10th Accused: Mr P Jorgensen

Instructed by: Deena Moodley & Associates
Umhlanga

