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IN THE HIGH COURT OF SOUTH AFRICA

NORTH GAUTENG DIVISION, PRETORIA

CASE NO: CC08/2022

DATE: 26-02-2026

DELETE WHICHEVER IS NOT APPLICABLE
(1) REPORTABLE: YES / **NO**
(2) OF INTEREST TO OTHER JUDGES : YES / **NO**
(3) REVISED

10 In the matter between

TSAKANI CHARLOTTE NGOBENI

Applicant

And

THE STATE

Respondent

J U D G M E N T

MATLAPENG, AJ:

1. This is an application by the applicant on the following terms:

20 (i) That the State did not conduct criminal proceedings and/or that the State unlawfully authorised Prudential Authority to conduct criminal investigations against her and that a

trial-within-a-trial should be conducted to determine if the evidence was unconstitutionally obtained or not;

- (ii) That the State relied on false information to unlawfully seek a search and seizure warrant, which was granted on 14 February 2019 on the premises of Werksmans Attorneys in Sandton;
- (iii) That the Prudential Authority is conflicted because it is the complainant and the investigating officer at the same time;
- (iv) That the case against her is manipulated by *mala fides*, and avers that she will not receive a fair trial;
- (v) That this Court lacks jurisdiction to adjudicate her matter in terms of section 106(1)(f) of the Criminal Procedure Act 51 of 1977, and that she should be acquitted in terms of section 106(1)(4) of the Criminal Procedure Act.

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2. The issues raised by the applicant are interrelated and/or intertwined. Her argument is principally that this Court does not have jurisdiction to entertain her matter.

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3. A brief synopsis of what transpired before the present application is necessary.

4. It is of utmost importance to know that the case

against the applicant was trial ready ever since October 2022. Ever since then to date hereof it has been set down for trial, but did not proceed because the applicant kept on changing legal representatives.

5. Adv Meyer for the State informed the Court that this matter was previously set for trial on five different occasions, and that it did not proceed. Adv Mhlanga for the applicant on the other hand informed the Court that he is the sixth legal representative to appear for the applicant, that there were five legal representatives who previously appeared for the applicant. He was briefed on 21 May 2024, and received docket disclosure few days thereafter. To be exact, he received disclosure on 26 May 2024.
6. Adv Mhlanga filed an application compelling the State to disclose Part B and C of the docket. This application was dismissed by Johnson, AJ on 25 May 2025, and on that day the matter was postponed until 2 February 2026 for trial.
7. On 28 January 2026, exactly three working days before the trial date, the applicant filed the present application. She contends, amongst others, that this Court lacks jurisdiction to entertain her matter. She argues further that the Court should acquit her on all the charges preferred against her. It is of cardinal

importance to know that the defence waited for a period of nine months. They filed the present application just a mere three days before the trial date.

8. On 2 February 2026 the State requested a postponement, and justifiably so, in order to respond to the special plea. The matter was then postponed until 17 February 2026. On the latter date, the State put charges to the accused (now the applicant). After
10 the charges were read in English, the interpreter, Mr Masenya, placed it on record that it has been agreed by Adv Mhlanga for the applicant. as well as the accused (now the applicant) that it will not be necessary for him to interpret the charges to the accused, and that he will only start to interpret to her when the trial starts, or when the State will be calling its first state witness, and immediately thereafter, the Court enquired from the applicant what her plea is to the charges preferred against her. Surprisingly, she
20 changed her tune and said that she now needs a Tsonga interpreter, who was not available at the time. The matter had to be postponed until the following day, 18 February 2026, for a Tsonga interpreter.
9. It is evident that the applicant is using monkey tricks to delay the continuation of this trial.

10. One of the rights in the Bill of Rights is the right to a speedy trial, as stipulated in section 35(3)(d) of the Constitution, and it provides, I quote:

“Every person has the right to a fair trial, which includes the right, (d), to have the right to begin and conclude without unreasonable delay.”

11. One of the predominant cases in South Africa, and an example of delay in criminal matters in the criminal justice system, is the arms deal case.

12. In 2007 Mr Jacob Zuma was charged with corruption, money laundering and fraud. Charges were later withdrawn and seven years later the high court in Pretoria ruled that the charges should be reinstated.

13. Since 2018, Jacob Zuma's legal team have postponed the matter on many instances. They brought a number of interlocutory applications, consequently causing a delay in the trial.

14. In April 2020 Jacob Zuma changed his legal team, and in 2021 he insisted that the prosecutor, Mr Billy Downer, should be removed from the case. It is unheard of that the applicant would engage the services of six different legal representatives in a space of two years, from October 2022 until 21 May 2024, when Adv Mhlanga was briefed in this

matter.

15. This hire and fire policy of legal representatives by the applicant in this matter will not be tolerated because it delays the continuation of the trial.
16. The above exposition demonstrates in clear and unequivocal terms that the applicant in this matter is dilly-dallying deliberately. She does not want this matter to proceed, and this is unacceptable.
- 10 17. Once an accused or an applicant frustrate the judicial process in order to delay the trial, this is called Stalingrad [spelt], Stalingrad strategy. It refers to a legal defence strategy designed to delay, obstruct, and wear down an opponent by relentlessly challenging every aspect of the trial.
18. Once enough time has passed, the defence team may raise a defence that the accused's trial, her right to a fair trial is being violated, and might ask that a permanent stay of prosecution be granted.
- 20 19. Speedy trial rights ensure that an accused person is brought to trial within a reasonable time, preventing indefinite detention if he is in custody, and protecting against prolonged anxiety, expenses, and memory degradation of witnesses.
20. I am concerned about cases that take a long time to be finalised. It is a known fact that human beings in

this planet earth do not live forever and ever, they die. If not, they forget after a lapse of time, and an accused person will get acquitted simply because their matter took a long time to be finalised.

21. It is evident that the applicant in this matter is using all the tricks in the book to frustrate the continuation of this trial. This is condemned in the strongest possible terms.

10 22. A legal representative must understand the facts, analyse the law, and advise client on his or her options, risks, and the best course of action. A legal representative must, amongst others, also advise client about the provisions of section 342A of the Criminal Procedure Act 51 of 1977, which deals with unreasonable delay in a trial, and the consequences thereof.

20 23. The applicant cannot file an application after an application, like in the arms deal matter. The question that forcefully comes to the fore is, why does the applicant file her applications, in a piecemeal fashion. This is, in my view, a clear indication that the applicant is embarking on a fishing expedition or is buying time. This is unacceptable and must stop here and now.

24. I now turn to the issues raised by the applicant in this

matter. The departure point is that it is of cardinal importance to note how paragraph 2 of her special plea is phrased. It reads, I quote:

“I confirm that I plead not guilty to all the charges put to me and provide the following special plea explanation in terms of section 106 of the Criminal Procedure Act 51 of 1977.”

25. Section 106 of the Criminal Procedure Act 51 of 1977:

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“Pleas:

1. When accused pleads to a charge, he may plead:

(a) That he is guilty of the offence charged or of any offence of which he may be convicted on the charge; or

(b) That he is not guilty; or

(c) That he has already been convicted of the offence with which he is charged; or

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(d) That he has already been convicted of the offence with which he is charged; or

(e) That he has received a free pardon under section 372(6) from

the State President for the offence charged; or

(f) That the Court has no jurisdiction to try an offence; or

(g) That he has been discharged under the provisions of section 204 from prosecution for the offence charged; or

(h) That the prosecutor has no title to prosecute; or

(i) That the prosecution may not be resumed or instituted owing to an order or a court under section 342A(3)(c);

2. Two or more pleas may be pleaded together, except that a plea of guilt may not be pleaded with any other plea to the same charge.

3. An accused shall give reasonable notice to the prosecution of his intention to plead or plea other than the plea of guilty or not guilty, and shall, in such notice, state the ground on which he bases his plea, provided that the requirement of such notice may

be waived by the attorney general or the prosecutor, as the case may be, and the Court may on good cause shown dispense with such notice, or adjourn the trial to enable such notice to be given.

- 10 4. An accused who pleads to a charge other than a plea that the Court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is sent out by the Court, shall, save as is otherwise expressly provided by this act or any other law, be entitled to demand that he be acquitted or he be convicted.”
26. Section 106 of the Criminal Procedure Act details specific pleas, including a plea to the jurisdiction of the Court. The section is clear and specific. It does not provide for a special plea explanation, as stated
- 20 in paragraph 2 of the special plea mentioned *supra* by the applicant.
27. A plea explanation is governed by section 115(1) of the Criminal Procedure Act 51 of 1977, and provides as follows, I quote:

“Where an accused at a summary trial

pleads not guilty to the offence charged, the presiding judge, regional magistrate, or magistrate, as the case may be, may ask him whether he wishes to make a statement indicating the basis of his defence.”

28. Paragraph 2 above of the applicant's special plea is vague and embarrassing. It is difficult to fathom the nature of the plea tendered, and is not in conformity with the provisions of section 106 of the Criminal Procedure Act.

29. Paragraph 26 of the applicant's special plea compounds the problem. It states, I quote:

“In the event that my plea in terms of section 106(1)(f) and/or 106(4) of the Criminal Procedure Act 51 of 1977, is successful, I am entitled to be acquitted in terms of section 106(1)(f) and/or 106(4) on the basis that no fair trial may be conducted under the circumstances set out in the special plea.”

30. Paragraph 26 of the applicant's special plea is not in harmony with the provisions of section 106(4) of the Criminal Procedure Act, which reads as follows, I quote:

“An accused who pleads to the charge other than that a plea that the Court has no jurisdiction to try the offence, or an accused on behalf of whom a plea of not guilty is entered by the Court, shall, save as is otherwise expressly provided by this act or any other law, be entitled to demand that he be acquitted or be convicted.”

- 10 31. The provisions of section 104(4) of the Criminal Procedure Act are clear, specific and unambiguous. An accused who raises a plea that the Court does not have jurisdiction to try an offence is not entitled to demand that he or she be acquitted on the offence preferred against him or her.
32. It stands to reason therefore that the submission by the applicant that she be acquitted in terms of section 106(4) is misplaced. It is baseless, without merit and bound to be rejected.
- 20 33. I now turn to the argument raised by the applicant in her special plea that the State did not conduct a criminal investigation and/or unlawfully authorised the Prudential Authority to conduct criminal investigations against her. Paragraph 12 of her notice of special plea reads as follows, I quote:

“As alluded to above, on 15 February 2019 the DPCI unlawfully mandated, or alternatively delegated its authority to PA to conduct a criminal investigation against me.”

34. The applicant states further at paragraph 14, I quote:

10 “On 14 February 2019 and prior to the filing of the complaint by the Momoniat. the DPCI was granted a search and seizure warrant to seize all evidence that was obtained and relied upon by the investigators of the PA, which resulted in a report by Adv Terry Motau SC dated 30 September 2018. I attach hereto a copy of the abovementioned search and seizure warrant marked NG02.”

20 35. In the case of *S v Botha en Andere*, 1995 (2) SACR 598 (W), a substantial portion of the investigation was done by Eskom Investigation Service. The latter obtained statement of witnesses and in some instances travelled as far afield as England to interview a suspect. Members of the SAPS were in possession and/or in custody of the docket, but the investigation was done by Eskom Investigation Service. After the closure of the State case,

accused 3 applied for his acquittal in terms of section 174 of the Criminal Procedure Act. He argued that his right to a fair trial had been violated. He argued further that the South African Police Service is the only entity which was entrusted with the function of investigating crimes.

36. Section 205(3) of the South African Constitution provides that, I quote:

10 “The object of the police service are to prevent, combat and investigate crime, to maintain public order, to protect and secure the inhabitants of the Republic and their property, and to uphold and enforce the law.”

37. The Court in *Botha en Andere’s* case (*supra*) held that the Constitution does not prohibit persons who are not members of the police service to investigate crime. The Court acknowledged that modern society is specialised and that the police service cannot on
20 its own investigate and prevent all forms of crime. The Court further acknowledged that private entities now and then conduct investigations in matters affecting their own interests, the results of which are handed over to the South African Police Service.

38. The Court found on the facts that it cannot be said

that Eskom committed any irregularity during the course of the investigations, nor could any inference be drawn that Eskom Investigation Service had acted with prejudice.

39. Finally, the Court held that the accused's right to a fair trial had not been infringed. The application for a discharge in terms of section 174 of the Criminal Procedure Act was refused.

10 40. I am in agreement with Adv Meyer for the State that the enquiry as to whether the investigation was conducted by the State or by the Prudential Authority does not in law constitute a jurisdictional issue. The question to be determined by this Court is whether any evidence obtained during the investigation was acquired unlawfully or irregularly. Closely akin thereto is whether the accused's constitutional right to a fair trial has been violated.

20 41. I am also in agreement with counsel for the State that this Court will only be in a position to make a determination regarding the constitutionality of the evidence obtained once all the relevant facts has been placed before Court.

42. I find on the basis of *Botha en Andere (supra)* that it cannot be said that Prudential Authority committed any irregularity during the course of the investigation,

nor could any inference be drawn that Prudential Authority had acted with prejudice.

43. In the case of *National Director of Public Prosecutions v King* 2020 (2) SACR 146 (SCA) 4, the Court held that irregularities do not necessarily lead to a failure of justice.

44. It is my considered view that even if there may have been irregularities during the investigations, that does not necessarily lead to a conclusion that there was a failure of justice.

45. In the case of *S v Jaipal* [spelt], 2005 (4) SA 581 (CC) the Constitutional Court is record as having said the following, I quote:

“The right of an accused to a fair trial requires fairness to the accused, as well as fairness to the public as represented by the State. It has to instil confidence in the criminal justice system with the public, including those close to the accused, as well as those distressed by the audacity and horror of crime.”

46. The applicant implies that the investigation was done in an unlawful manner and that the investigators had no mandate to carry out the investigations. The Court in the case of *King (supra)* warned of this

strategy when it held that, I quote:

10 “The fair trial right does not mean a predilection for technical niceties and ingenious legal stratagems, or to encourage preliminary litigation, a perverse feature of white-collar crimes cases in this country. To the contrary, courts should within the confines of fairness actively discourage preliminary litigation. Courts should further be aware that persons facing serious charges, and especially minimum sentences, have little inclination to cooperate in a process that may lead to their conviction and any new procedure can offer opportunities capable of exploitation to obstruct and delay. One can add the tendency of such an accused, instead of confronting the charge, of attacking the prosecution.”

20 48. I find on the facts therefore that the applicant’s assertion that the State did not conduct criminal investigation in this matter and unlawfully authorised Prudential Authority to do so, is without basis and it displays her lack of knowledge of investigations of cases of this magnitude.

49. The applicant argues further that the State relied on false information to unlawfully seek and be granted a search and seizure warrant on 14 February 2019, as well as any and all further search and seizure warrants granted to the DPCI. It is not in dispute that a search and seizure was done at the premises of Werksmans Attorneys in Sandton on 14 February. The indictment reflects that the applicant is residing at [...] P[...] Street, Makhado. The Court takes
10 judicial notice of the fact that Sandton is situated in Gauteng province and Makhado is situated in the Limpopo province, and both these two places are miles apart.
50. It is of great significance to note that the search and seizure operation did not occur at the accused's place of residence or business. As a result, the search and seizure operation did not implicate or infringe upon the accused's right to privacy. It is also not contended that the documents or some of the
20 items seized at Werksmans Attorneys constituted privileged communication pertaining to the applicant.
51. I find on the facts therefore that the assertion by the applicant that the State relied on false information to unlawfully seek a search and seizure warrant, which was granted on 14 February 2019, is baseless,

without merit and bound to be rejected.

52. The applicant argues further that the Prudential Authority is both the complainant and the investigator in this matter, therefore the Prudential Authority is conflicted in providing information or statements pursuant to the criminal justice system.

53. The question is whether the Prudential Authority conducted itself, in an unlawful or irregular manner. There is no evidence before me to make a
10 determination on this issue. It is of cardinal importance to mention that this issue raised by the applicant does not constitute an attack on the jurisdiction of the Court. These assertions by the applicant are to be determined after the evidence has been tendered, bearing in mind the principles laid down in *Botha en Andere (supra)*.

54. It is my considered view that there is nothing prohibiting the South African Police Service from seeking experts to assist in the investigations of
20 cases of this nature.

55. The applicant argues further that the case against her was manipulated, with *mala fides*, and she is not offered a fair trial.

56. Fair trial rights enshrined in section 35(3) of the Constitution, South African Constitutes, guarantees

that every accused person has the right to a fair public hearing before an impartial tribunal.

57. In the case of *S v Zuma and others*, 1995 (2) SA 642 (CC) the Constitutional Court held that the right to a fair trial is not limited to the specific rights in section 35 of the Constitution, but that it is a broader substantive right that requires courts to act as guardians of fundamental fairness.

58. In the case of *S v Dzuduka [spelt] and others, S v Tshilo [spelt]* 2000 (4) SA 1078 (CC) the Constitutional Court emphasised that a trial must be fair to both the accused and the public interest.

59. No evidence has been tendered. The allegation by the applicant that the case against her was manipulated, that she is not offered a fair trial, is baseless and without merit. This assertion by the applicant has absolutely no bearing on the issue of jurisdiction. It relates to the aspect whether the evidence was unconstitutionally obtained or not, and whether such evidence is admissible or not.

60. In the case of *Savoi [spelt] & Others v The National Prosecuting Authority*, case number 5867/2013, judgment delivered on 29 January 2021, Steyn, J, with whom Kruger, J and Henriques, J concurred, stated at paragraph 53, and I quote:

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“In a criminal matter jurisdiction is determined by the area in which the offences have been committed (territorial jurisdiction), the nature of the offence (substantive jurisdiction), and also the nature of the penalty that should be imposed (punitive jurisdiction). Of course jurisdiction may also be obtained in terms of a consolidation of multiple offences committed in various provinces if the National Director of Public Prosecutions issues a certificate to have all of the offences be heard in one province.”

See also section 111 of the Criminal Procedure Act 51 of 1977, and section 22(3) of the National Prosecuting Authority Act 32 of 1998.

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61. In conclusion, and at the risk of repetition, the applicant argues that this Court lacks jurisdiction to entertain this matter, and that a trial-within-a-trial should be conducted to determine if the evidence obtained was constitutionally obtained or not.

62. According to the case of *S v Zikhali* (CC15/2023) [2023] ZAGPPHC 1751, a trial-within-a-trial is a procedure or a mini trial conducted to determine the

admissibility of disputed evidence, such as a confession or evidence obtained via a search, separate from the main trial's merits. It ensures evidence is voluntary, lawful and constitutional before being admitted.

63. It is unclear and difficult to fathom on what basis does the applicant aver that this Court lacks jurisdiction to entertain this matter. I find on the facts therefore that the assertion by the applicant that this Court lacks jurisdiction and that a trial-within-a-trial be conducted to determine the admissibility of the evidence is misplaced, without merit, baseless and bound to be rejected.

64. Having carefully considered the application, I am not persuaded that the applicant has made out a special case that this Court lacks jurisdiction to entertain this matter. It follows that the application be dismissed.

65. In the results, I make the following order:
The application is dismissed.

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MATLAPENG, AJ

JUDGE OF THE HIGH COURT

DATE: 26/02/2026

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that **so far as it is audible to me**, the foregoing is a true and correct transcript of the proceedings recorded by means of a digital recorder in the matter between:

TSAKANI CHARLOTTE NGOBENI // THE STATE

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