



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

Case no: CCD30/2018

In the matter between:

THE STATE

and

JACOB GEDLEYIHLEKISA ZUMA

THALES SOUTH AFRICA (PTY) LTD

(Registration No.: 1996/006180/07)

FIRST ACCUSED

SECOND ACCUSED

ORDER

The following order is granted:

1. It is directed that the trial is to proceed irrespective of any interlocutory applications, either by the State or the defence.
2. The parties are directed to approach the registrar for a suitable trial dates.

JUDGMENT

Delivered on. 14 May 2026

Chili J:



[1] Simultaneously with the applications for leave to appeal against the judgment and order of this court dismissing Mr Zuma's and Thales South Africa (Pty) Ltd's applications to quash the charges in accordance with s 6 of the Criminal Procedure Act 51 of 1977 (the CPA), the State, represented by Mr *Trengove* SC, brought its own application, seeking the court's intervention in what it termed a Stalingrad tactic that has prevented the commencement of the trial in this matter for decades.

[2] In the main, the State sought an order in the following terms:

'1. That the hearing of evidence and the merits of the state's case against the accused [persons] must commence on the soonest possible date determined by the Registrar after consultation with the parties' legal representatives.

2. That it be declared that the dismissal order will not be suspended by any appeal or application for leave to appeal against it.'

[3] In the alternative, the State sought an order that it be declared, in terms of s 18 of the Superior Courts Act 10 of 2013 (the SC Act), that the dismissal order will not be suspended by any appeal or application for leave to appeal against it.

[4] The State's case is supported by the founding and replying affidavits of Mr Downer. Attached to the founding affidavit is a document, annexure 'WJD1', setting out in detail every pre-trial and related litigation, including representations made to the Public Protector on 30 October 2003, through to 2018, when Mr Zuma and Thales South Africa (Pty) Ltd (Thales) made their first appearance in court under the present case number CCD30/2018, and beyond that. Given the nature of the application, I consider it pertinent to mention certain pre-trial applications.

[5] On 15 November 2018, Mr Zuma and Thales launched permanent stay applications, which subsequently served before the full court per Mnguni, Steyn and Poyo Dlwati JJ. These applications were dismissed on 11 October 2019.¹ All attempts at overturning the full court's decision failed.

¹ *S v Zuma and Another and a related matter* 2020 (2) BCLR 153 (KZD).

[6] On 21 May 2021, Mr Zuma entered a special plea, seeking the removal of Mr Downer as the public prosecutor. The matter was argued before Koen J on 21 and 22 September 2021. On 26 October 2021, Koen J dismissed the special plea and directed the trial to proceed on 11 April 2022.² That order was followed by a series of unsuccessful applications for leave to appeal, including a reconsideration application to the President of the Supreme Court of Appeal and two applications for leave to appeal to the Constitutional Court.

[7] On 5 September 2022, Mr Zuma launched private prosecution proceedings of Mr Downer and Ms Maughan. On 21 and 27 September 2022, Ms Maughan and Mr Downer, respectively, approached the court on an urgent basis seeking orders interdicting their prosecution by Mr Zuma. The applications (jointly considered) subsequently served before Kruger, Henriques and Masipa JJ. On 7 June 2023, the full court granted an interdict in favour of both Ms Maughan and Mr Downer.³ Parallel applications followed thereafter: Mr Zuma's application for leave to appeal the granting of the interdict and Ms Maughan's and Mr Downer's applications for the enforcement of an interdict despite applications for leave to appeal, in accordance with s 18(3) of the SC Act. The full court granted the enforcement order and later dismissed Mr Zuma's application for leave to appeal. An appeal against the enforcement order was subsequently dismissed by the Supreme Court of Appeal.⁴ A subsequent application for leave to appeal to the Constitutional Court failed. An application for leave to appeal against the interdict was dismissed by the Supreme Court of Appeal. So was the application for reconsideration by the President of the Supreme Court of Appeal.

[8] On 9 April 2024, this court removed the private prosecution proceedings of Mr Downer and Ms Maughan from the roll.

[9] Two applications then served before this court: an application by Mr Zuma for the removal of Mr Downer as the public prosecutor (second application) and the application by Thales, supported by Mr Zuma, for the quashing of charges in terms of

² *S v Zuma and Another* [2022] 1 All SA 533 (KZP).

³ *Maughan v Zuma (Campaign for Free Expression and others as amici curiae) and a related matter* [2023] 3 All SA 484 (KZP)

⁴ *Zuma v Downer and Another* [2023] ZASCA 132; [2023] 4 All SA 644 (SCA).

s 6 of the CPA. Both applications were dismissed and so were subsequent applications for leave to appeal. The application for leave to appeal in respect of the removal of Mr Downer as a public prosecutor has since been dismissed by the Supreme Court of Appeal per Zondi DP and Mocumie JA. I am not certain as to what the position is regarding an application for leave to appeal against this court's refusal to quash the charges against Thales and Mr Zuma.

[10] Given the nature of the application, I do not consider it necessary to traverse the content of annexure 'WJD2', captioned 'History of Stalingrad Tactic'.

[11] In reply, Mr Zuma and Thales relied on answering affidavits deposed to by their respective attorneys, Messrs Thusini and Dunston-Smith. Mr Zuma raised three points in limine. Firstly, he submitted that the Stalingrad defence on which the present application is anchored should be disregarded, it having been decided and rejected both by this court and Koen J. He further submitted that it is not open to this court to revisit these binding decisions, unless they are shown to have been clearly wrong. Secondly, he submitted that s 18 of the SC Act does not find application in the present case, in that the appeals are sought in terms of s 316 of the CPA, and not s 17 of the SC Act. Thirdly, he submitted that the application is 'incomplete and therefore superfluous' in that, inasmuch as it relates to both accused persons, the content of the founding affidavit makes it plain that the allegations of a Stalingrad defence strategy are directed only at accused no 1, Mr Zuma. I deal with these points in limine in turn.

[12] The contention that this court and Koen J made a factual finding that Mr Zuma has not implemented a Stalingrad litigation strategy is without merit. No such finding was made either by this court or Koen J. Neither the judgment of this court nor Koen J's judgment contains a factual finding that Mr Zuma has not implemented a Stalingrad litigation strategy. All this court did in its judgment was to observe that there had been a lengthy delay in the prosecution of Mr Zuma and Thales. The mere fact that it decided not to attribute blame to anyone cannot be said to amount to a factual finding that Mr Zuma has not implemented a Stalingrad litigation strategy. In his judgment, Koen J made an observation that:⁵

⁵ Koen J's judgment in respect of an application for postponement, handed down on 11 April 2022.

'Mr Zuma has challenged many decisions adverse to him in the past, usually invoking the entire appeal process to the highest court in the land, and in many instances has been unsuccessful which resulted in inevitable delays. He is on record through previous counsel representing him, that he will continue exercising all rights available to him.'

Koen J proceeded:

'...but the exercise of those rights as much as they may be viewed with suspicion and distrust from certain quarters as resulting only in delays which only favour him, do not per se amount to an abuse of those rights. A finding of mala fides will require more and clear proof by the state which I cannot make on the allegations in the present papers alone.'

[13] There is nothing in the observation made by Koen J that suggests that he found, as a fact, that Mr Zuma has not implemented a Stalingrad litigation strategy. Instead, he appears to have made a conscious decision not to make a finding of mala fides based on the information at his disposal.

[14] What is clear though, is that the full court of this division (Kruger, Henriques and Masipa JJ) on 7 June 2023 (the interdict against the private prosecution proceedings) and 3 August 2023 (the enforcement order) and the Supreme Courts of Appeal on 13 October 2023, found as a fact that Mr Zuma had implemented a Stalingrad litigation strategy. This point in limine must therefore fail.

[15] The second point in limine that the State only focused its attention on Mr Zuma and not Thales is without merit. The State, in its founding affidavit, has accused both Mr Zuma and Thales of having implemented a Stalingrad strategy, albeit to a lesser extent in respect of Thales.⁶ Again, this point in limine must fail.

[16] Regarding the third point in limine, the State only relied on s 18 of the SC Act as a default position. Its case does not hinge on s 18. In actual fact, it was argued on behalf of the State that s 18 does not apply in the present proceedings. The State's application is premised on interlocutory applications brought in criminal proceedings, which are precluded by the definition of appeal under s 1 of the SC Act, which provides:

⁶ See the State's allegation in paras 19-21 and 34, at pages 14-18 and 21-22 of the record.

“appeal” in Chapter 5, does not include an appeal in a matter regulated in terms of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), or in terms of any other criminal procedural law.’

The position taken by the State was that if it were found that s 18 does apply, then the State would rely on s 18(2) which provides:

‘Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.’

The application brought by Thales, supported by Mr Zuma, for the quashing of charges is no doubt interlocutory in nature. That settles the points raised in limine. I now turn to the merits of the State’s case.

[17] It was submitted on behalf of the State that the application is not intended to curtail Thales’ and Mr Zuma’s right to bring whatever application they wish to bring to court. It is indeed correct that the court has no authority or power to do that. Section 35(3)(o) of the Constitution grants an accused person the right of appeal to or review by a higher court. That right is also regulated by s 316 of the CPA, which describes the timing and the manner in which the right enshrined in s 35(3)(o) is to be exercised.

[18] What this court has been called upon to do is to exercise its inherent power under s 173 of the Constitution to protect and regulate its own process, and to develop the common law, taking into account the interests of justice. There has, no doubt, been an inordinate delay in the prosecution of Mr Zuma and Thales. It seems to me that, without this court’s intervention, there is a likelihood of grave injustice or the administration of justice being brought into disrepute.

[19] Mr *Roux* argued that the danger in granting the relief sought by the State is that it is final in nature. If the Supreme Court of Appeal were to find, so he argued, that Thales’ right to a fair trial will be violated by the continued prosecution, then that will be the end of the trial against Thales. The question that follows therefore, so the argument goes, is whether it is in the interests of justice to disregard the effect of the

relief sought and carry on with the trial. Regarding interlocutory applications brought in criminal cases, Makgoka JA in *Luphondo v S* stated the following:⁷

'In *Wahlhaus v Additional Magistrate, Johannesburg (Wahlhaus)*,⁸ this Court enunciated the following principles in this regard: by virtue of its inherent power to restrain illegalities in the lower courts, appellate courts may, in a proper case, grant relief - by way of review, interdict, or mandamus - against the decision of a lower court given before conviction. *This power must be exercised sparingly, depending on the circumstances of a given case.* The court will intervene only in rare cases where grave injustice might otherwise result or where justice might not be attained by other means. *In general, however, it will hesitate to intervene*, especially having regard to the effect of such a procedure upon the continuity of proceedings in the court below, and to the fact that redress by means of review or appeal will ordinarily be available.' (My emphasis and footnote omitted.)

Ogilvie Thompson JA in *Wahlhaus* proceeded to say:⁹

'... the prejudice, inherent in an accused's being obliged to proceed to trial, and possible conviction, in a magistrate's court before he is accorded an opportunity of testing in the Supreme Court the correctness of the magistrate's decision overruling a preliminary, and perhaps fundamental, contention raised by the accused, does not *per se* necessarily justify the Supreme Court in granting relief before conviction...'

[20] *Wahlhaus* was later applied and affirmed in *Ismail and Others v Additional Magistrate, Wynberg and Another*.¹⁰ The principle set out in the two pre-constitution judgments of *Wahlhaus* and *Ismail* was recently affirmed by the Supreme Court of Appeal in *Mathebula v The State and Another*¹¹ and by the Constitutional Court in *Director of Public Prosecutions, Johannesburg and Another v Schultz and Others; Director of Public Prosecutions, Bloemfontein v Cholota*.¹² In both cases, the courts considered applications to halt criminal proceedings. In *Cholota*, the Constitutional Court drew an important distinction between two categories of the State's conduct when considering applications to halt proceedings. Makgoka JA, in *Luphondo*,¹³ describes these categories as follows:

⁷ *Luphondo v S* [2026] ZASCA 24 (*Luphondo*) para 91.

⁸ *Wahlhaus and Others v Additional Magistrate, Johannesburg and Another* 1959 (3) SA 113 (A) (*Wahlhaus*) at 119H-120C.

⁹ *Wahlhaus* at 120C-E.

¹⁰ *Ismail and Others v Additional Magistrate, Wynberg and Another* 1963 (1) SA 1 (A) (*Ismail*).

¹¹ *Mathebula v The State and Another* [2025] ZASCA 189; 2026 (1) SACR 337 (SCA).

¹² *Director of Public Prosecutions, Johannesburg and Another v Schultz and Others; Director of Public Prosecutions, Bloemfontein v Cholota* [2026] ZACC 3; 2026 (3) BCLR 175 (CC) (*Cholota*).

¹³ *Luphondo* para 96.

'The first category concerns cases in which the criminal prosecution is preceded and tainted by illegal and egregious State conduct. The second concerns cases where unlawfulness or irregularity arises from a bona fide error in the process. Criminal proceedings will be halted only in the former category because it would amount to "an affront to the public conscience" or "would be contrary to the public interest in the integrity of the criminal justice system" for a criminal trial to proceed in such circumstances.'

[21] The Supreme Court of Appeal in *Luphondo*¹⁴ stated that the Constitutional Court in *Cholota* 'emphasised the need to strike an appropriate balance between upholding the rule of law and combating impunity'. As aforesaid, a factual finding has been made, several times, not only by the full court of this division and the Gauteng Division,¹⁵ but also by the Supreme Court of Appeal, that Mr Zuma is implementing Stalingrad defence tactics to delay the commencement of the trial. That finding stands until it is set aside by a court of competent jurisdiction.¹⁶ In the words of Wallis JA in *Moyo and Another v Minister of Justice and Constitutional Development and Others*:¹⁷ 'The term "Stalingrad defence" has become a term of art in the armoury of criminal defence lawyers. By allowing criminal trials to be postponed pending approaches to the civil courts, justice is delayed and the speedy trials for which the Constitution provides do not take place. I need hardly add that this is of particular benefit to those who are well resourced and able to secure the services of the best lawyers.'

[22] In my view, the interests of justice demand that an order be made directing the commencement of the trial, regardless of the order dismissing Thales' and Mr Zuma's applications for leave to appeal this court's dismissal of their applications to have charges against them quashed. Without this court's intervention, it is my view that there is a likelihood of grave injustice or the administration of justice being brought into disrepute. It is not only the interests of Mr Zuma and Thales that the court has to take into account when considering the State's application, but also the interests of the society.¹⁸ A court has an obligation to guarantee public confidence in the judicial

¹⁴ Ibid.

¹⁵ *Democratic Alliance v President of the Republic of South Africa and others and a related matter* [2019] 1 All SA 681 (GP).

¹⁶ See *Dengetenge Holdings (Pty) Ltd v Southern Sphere Mining and Development Company Limited and Others* [2013] ZASCA 5; [2013] 2 All SA 251 (SCA) para 17.

¹⁷ *Moyo and Another v Minister of Justice and Constitutional Development and Others* [2018] ZASCA 100; 2018 (2) SACR 313 (SCA) para 169.

¹⁸ *Bothma v Els And Others* [2009] ZACC 27; 2010 (2) SA 622 (CC) para 40.

authority and the administration of justice. This court owes the public a duty to facilitate the expeditious commencement and management of the criminal trial.

[23] The prosecution of a crime is a matter of some constitutional importance.¹⁹ Failure by the court to intervene in circumstances where it has sufficiently been established that the strategy implemented by the defence is designed to delay the commencement of the trial will no doubt compromise the integrity of the court and the administration of justice. Concerns are likely to arise among reasonable members of the public if the trial is halted without Mr Zuma and Thales facing the charges levelled against them. I am unable to point to any cognisable harm or grave injustice that might result if the trial proceeds, regardless of pending interlocutory applications. Mr Zuma and Thales are not without redress. Their right of appeal is protected under s 316 of the CPA read with s 35(3)(o) of the Constitution.

[24] For the above reasons I make the following order:

1. It is directed that the trial is to proceed irrespective of any interlocutory applications, either by the State or the defence.
2. The parties are directed to approach the registrar for suitable trial dates.



CHILI J

¹⁹ *S v Basson* [2005] ZACC 10; 2007 (1) SACR 566 (CC) para 144.