



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MAKHANDA)**

CASE (Court a Quo): CCC1/15/2021

APPEAL CASE NO.: CA 53/2025

Reportable	Yes
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In the matter between:

NONTUTHUZELO PORTIA SIZANI

Appellant

and

THE STATE

Respondent

ORDER

The following order shall issue:

1. The appeal is dismissed.
2. There shall be no order as to costs.

JUDGMENT: APPEAL

NOTYESI AJ

Introduction

[1] The Appellant is charged with 14 counts of fraud and 13 counts of contravening section 4(1)(a) of the Prevention of Organised Crime Act 121 of 1998. The criminal proceedings are untermiated before the Regional Court of the Eastern Cape sitting as the Specialised Commercial Crimes Court, Gqeberha. The Appellant applied for and received further particulars. Thereafter, she applied for an order compelling the State to furnish her with additional further particulars, namely the curricula vitae of 14 Grade R practitioners (the curricula vitae) and a closed list of witnesses intended to be called by the State (the or a closed list).

[2] In response, the State alleged that it was unable to provide the curricula vitae because they could not be located as they had been removed from the relevant files. The State further alleged that it had furnished the Appellant with a list of 41 witnesses who it might call and that it was not necessary to provide a closed list.

[3] The magistrate dismissed the Appellant's application after finding that the requested particulars were not necessary for the Appellant to plead; that the Appellant had already been furnished with the police docket; and that the State was not in possession of the curricula vitae sought by the Appellant. This appeal is directed against that ruling.

[4] The appeal is predicated mainly on the grounds that the magistrate erred in dismissing the application by failing to appreciate the spirit of fairness and justice underpinning section 87(1)¹ of the Criminal Procedure Act 51 of 1977, as amended ("the Criminal Procedure Act"). The Appellant contends that the section not only permits the request for further particulars, but also emphasises the right of an accused person properly to understand the charges brought against her to formulate a defence.

[5] The Appellant had contended that the magistrate ought to have found that the State was deliberately withholding information to ambush her during the criminal trial.

¹ Section 87(1) provides as follows: 'An accused may at any stage before any evidence in respect of any particular charge has been led, in writing request the prosecution to furnish particulars or further particulars of any matter alleged in that charge, and the court before which a charge is pending may at any time before any evidence in respect of that charge has been led, direct that particulars or further particulars be delivered to the accused of any matter alleged in the charge, and may, if necessary, adjourn the proceedings in order that such particulars may be delivered. Provided that the provisions of this subsection shall not apply at the stage when an accused is required in terms of section 119 or 122A to plead to a charge in the magistrate's court.'

[6] The Appellant also contended that the magistrate failed to ensure the protection of her right to a fair trial when she refused to order the State to produce both the closed list and the curricula vitae. The Appellant submitted that the magistrate incorrectly exercised her discretion under section 87(1) of the Criminal Procedure Act and ought to have directed the State to furnish the additional particulars sought.

[7] On the contrary, the State submitted that the magistrate had properly exercised her discretion in a manner consistent with the limits of section 87(1) of the Criminal Procedure Act.

Issue before this Court

[8] The main issue before this Court is whether the magistrate had correctly exercised her discretion under section 87(1) when she refused the application to produce both the closed list and the curricula vitae.

Background Facts

[9] The criminal proceedings involving the Appellant have a protracted history. The case was initially enrolled on 13 December 2012. The trial commenced on 18 August 2014.

[10] The State closed its case on 23 February 2016, whereafter the Appellant applied for a discharge in terms of section 174 of the Criminal Procedure Act. The State conceded that the Appellant should be discharged on certain charges. On 29 July 2016, the Appellant was discharged on some charges. The application for discharge was refused in respect of 16 charges.

[11] The defence commenced with its case on 14 August 2018. The Appellant testified and was thereafter cross-examined until 17 August 2018. Following her cross-examination, the Appellant refused to close her case, contending that she required the curricula vitae to determine how to proceed with her defence. She maintained that the curricula vitae were in the possession of the State. The State, however, indicated that it was not in possession of the curricula vitae. At some stage, the magistrate ordered the State to produce further documentation, which it did. Those documents, however, did not include the curricula vitae. The Appellant remained dissatisfied and applied from the bar to produce those documents. The magistrate refused that application. Thereafter, the Appellant refused to either proceed with her defence or to close her case. The magistrate invoked section 342A (3) (d) of the Criminal Procedure Act and deemed the defence case to be closed. On 19 November 2018, the parties presented their respective oral submissions. On 29 March 2019, the Appellant was convicted on some of the charges. She subsequently launched a review application on 26

September 2019. In his judgment, which was delivered on 18 August 2020, Lowe J granted the Appellant the relief sought in the review application.

[12] Following the review judgment, the matter was referred to the Director of Public Prosecutions, Eastern Cape, for a decision on whether the Appellant should be re-arraigned, together with a directive that any retrial should proceed before a different magistrate. The Appellant was indeed re-arraigned on 25 October 2021 on the present charges consisting of 14 counts.

[13] The Appellant caused a request for further particulars to be served upon the State. In the request, the Appellant sought for:

- ‘1. All Curriculum Vitae of the particulars as part of the documents that resulted in the appointment by the Department of Education and/or a detailed explanation from the Department on how possible it is to result in the appointment by the accused or any other person; and
2. The list of witnesses currently to be called in this matter.’

[14] The State replied to the Appellant’s request for further particulars. The response was:

‘AD PARAGRAPH 1

1. The evidence is that most of the grade R practitioners handed over their respective curriculum vitae to the Accused. The said curriculum vitae of the various grade R practitioners were removed from the personnel files at the Department of

Education. After a thorough search for the various curriculum vitae none could be found. It is uncertain who removed the said documents.

2. The usual process for the appointment of Grade R practitioners is regulated by the Guidelines for Management of Grade R classes, Circular no. 7 of 2008, dated 30 May 2008. This was however not strictly followed.
3. ECD practitioners are usually appointed by the School Governing Bodies of the various schools who enter into one year contracts with the ECD practitioner and/or Grade R practitioner. The Department subsidises the practitioner for the services rendered to the school by way of the payment of a monthly stipend.
4. The correct and prescribed process for the appointment of Grade R practitioners entails the following:
 - 4.1 Upon identifying the need for a Grade R practitioner, a school must apply to the Department for the funding of a Grade R class by completing the prescribed application form, signed by the chairperson of the School Governing Body (SGB) and the principal.
 - 4.2 The ECD co-ordinator will then take the applications to the Provincial ECD Committee.
 - 4.3 The committee will then make recommendations to the Provincial Head Office where posts will be created. The ECD co-ordinator notifies the school of the creation of the post. The appointment will then be activated through the Human Resources Department.
 - 4.4 After receiving approval of their application, the school would invite applications from candidate practitioners for the recruitment process. After receipt of the curriculum vitae documents the principal and SGB screen the applications to inter alia ensure that the applicants met the minimum required qualification for

appointment in the post. After they interview the applicants the SGB and principal make an appointment and submit the documentation to the District Office. The ECD co-ordinator must screen the applications and submit it to the District Director of the Department for his signature.

4.5 On assumption of duty by the ECD practitioner an “Assumption of Duty” form is signed by the principal of the school and the District Director as proof that the ECD practitioner has commenced duties.

4.6 All these documents are then sent to the HR department for processing.

4.7 The practitioner’s personal and bank details are then entered on the PERSAL system where after the ECD practitioner is paid a monthly stipend by the Department.

5. It sometimes happened that the principal of a school would approach the ECD coordinator and ask for assistance to fill a vacancy. However, the principal would always be aware of the request.
6. The evidence is that whilst the curriculum vitae were required for the completion of the appointment process, the main focus was the assumption of duty forms as that document indicated that the grade R practitioner had taken up a post. The officials then proceeded to place the grade R practitioners on the system based on the assumption of duty forms.

AD PARAGRAPH 2

The witnesses the State intends to call are the following witnesses but this is not a numerous clausus. [A list of 41 names was provided].’

[15] The Appellant was dissatisfied with the further particulars and consequently launched an application by way of notice of motion for further particulars. The relief sought in the notice of motion is in the following terms:

- '1. That the court make an order compelling the state to furnish the Defence with the correct further particular in respect of the First and Second Request; and
2. That the State provide section B and C of the police docket.'

[16] In the founding affidavit, the Appellant made the following averments:

- '8. I submit that the first request as per the request relating to "ANNEXURE PROS1" was not answered correctly and or sufficiently in that I am not provided with the Curriculum Vitaes and or, in the alternative, I am not provided with a detailed explanation from the Department of Education on how possible it is to result in the appointment by the myself (sic) or any other person (who is that person?).
9. I submit that the request for further particulars relating to request 1 (one) is in line with my constitutional rights to a fair trial.'

[17] In relation to the closed list, the Appellant further averred in her founding affidavit:

- '22. That although the list of witnesses and or the information provided is not compelling on the State to follow it, whatever information and or list of witnesses they intend on calling ought to be made available to me from the onset or at such time that I ask for such further particulars relating thereto in order to allow me a proper opportunity to prepare for my defence.

...

25. The State must be ordered to provide a full list of their witnesses so as to avoid to trial me by ambush, and that this submission as well as the above if the court grants an order compelling the State, will allow me to have sufficient information to answer the allegations made against me.'

[18] In relation to the request for part B and C of the police docket, the Appellant averred in her founding affidavit that, because she intended challenging certain aspects of the investigation, she required the contents of sections B and C of the police docket. She also averred that her matter was complex and 'that the above request will allow me to prepare sufficiently for the trial.'

[19] Although the State did not deliver an answering affidavit, the application was opposed. It was contended on behalf of the State that the charge sheet contains a detailed preamble consisting of 106 paragraphs, which was further supplemented by the response to the request for further particulars. The State further contended that the Appellant had been supplied with an electronic copy of the police docket, the charge sheet, as well as additional documents. The State maintained that, whilst it was under an obligation to provide particulars of the material facts it intended to prove, it was under no obligation to disclose the evidence which it will use to prove those facts. According to the State, the preamble to the charge sheet, read with the further particulars furnished,

sufficiently set out how the various practitioners were appointed and that there was accordingly no need for the curricula vitae. The State maintained that it was not in possession of the curricula vitae. According to the State, the Appellant had been furnished with adequate information to prepare her defence and her right to a fair trial had therefore not been infringed or will not be infringed. The State further contended that a list of witnesses had already been furnished and that it was under no duty to confirm that the list constituted a closed list. In respect of section B and C of the docket, the State submitted that the entire docket was furnished to the Appellant.

The magistrate's findings

[20] The magistrate accepted that the State was not in possession of the curricula vitae. She further accepted that a diligent search for the curricula vitae had been conducted and that they were no longer in the Department's files. The magistrate concluded that "compelling the State under the circumstances to provide further particulars that it does not have may amount to ordering the State to inform the Appellant of the evidence it will likely lead to proving the charges against her". She accordingly concluded that the State could not be compelled to provide what it did not have.

[21] In relation to the Appellant's request to be furnished with a closed list, the magistrate found that it was unnecessary for the State to respond to what had

already been sufficiently stated in the preamble to the charge sheet and in the further particulars already supplied. She concluded that the Appellant had been furnished with the contents of the docket, which contained statements of State witnesses, and that the Appellant had, in addition, been furnished with a list of the witnesses the State intended calling to prove its case. The magistrate further found that the Appellant's request was not made for purposes of preparing her defence, but rather constituted a fishing expedition aimed at ascertaining which witnesses were available to the State to prove its case. The magistrate was therefore satisfied that the information provided by the State by way of further particulars was sufficient to ensure that the Appellant could not complain that she would not receive a fair trial. The magistrate found that the Appellant was well informed of the charges against her and that she knew which witnesses the State intended calling to prove its case.

Legal framework

[22] In *S v Cooper & Others*², the court, dealing with the provisions of the Criminal Procedure Act 56 of 1955, which was repealed by the present Criminal Procedure Act, stated:

‘These applications must be considered in the light of the pertinent provisions of the Criminal Procedure Act, 56 of 1955, and the principles laid down in the decided cases. In terms of sec. 315 a description of the offence in the words of the statutory

² *S v Cooper & Others* 1976 (2) SA 875 (T) 885G - 885H.

enactment is sufficient, but the charge must at the same time set forth the offence in such a manner as may be reasonably sufficient to inform the accused of the nature of the charge; see also *R v Alexander and Others*, 1936 A.D. 445 at p. 457; *R v Moyage and Others*, 1958 (3) S.A. 400 (A.D.) at p. 413. If it does not, he may apply for further particulars under the provisions of sec. 179, and the charge is to be regarded as amended in conformity with the further particulars furnished. The object of asking for further particulars is to enable the accused to know the case which is proposed to be made against him and thus to enable him to prepare his defence; *R v Mokgoetsi*, 1943 A.D. 622 at p. 627. The prosecution must therefore furnish particulars of the relevant or material facts which it proposes to prove but is under no obligation to disclose its evidence by which it proposes to prove the facts; *R v Heyne and Others* (1), 1958 (1) S.A. 607 (W) at p. 609. Care must therefore be exercised not to confuse particulars which may be essential to inform the accused fairly and reasonably of the case he has to meet with the evidence which may be tendered to prove the commission of the offence.’

[23] Section 87 of the Criminal Procedure Act is akin to those provisions found in the 1955 Criminal Procedure Act. The section forms part of the procedural framework regulating the conduct of criminal trials and, in particular, the exchange of information necessary to ensure a fair trial under section 35(3) of the Constitution. Its purpose is closely linked to the accused’s constitutional right to be informed of the charge with sufficient detail to answer it adequately.³

³ Commentary on the Criminal Procedure Act by du Toit et al, under section 87.

[24] In *R v Adams & Others*⁴ the court stated:

‘It is a well-known principle in our law that an accused person is entitled to such particulars as he properly requires for the purpose of preparing his case before he is called upon to plead and enter upon his defence, and he is entitled to such particulars even if it entails a disclosure of Crown evidence.’

[25] This is the test that has consistently been applied by the courts in considering requests for further particulars. Several formulations have been developed to determine whether the charge gives the accused sufficient information regarding what the State intends to allege, so as to enable the accused to prepare a defence.

[26] In *Jaca v Minister of Justice & Others*,⁵ it is stated:

‘The whole question of further particulars in the relevant context is discussed in great detail in Hiemstra’s Criminal Procedure, Lexis Nexis, at 14-21. It is stated that the purpose of further particulars is to inform accused persons of the case which is to be brought against them, so that they can prepare their defence. When considering whether particulars should be given, the question is whether the charge gives the accused sufficient information about what the State is going to allege. This depends obviously on the nature of the offence and, in the case of a statutory offence, on the wording of the section of the particular legislation. Several tests have been fashioned throughout the decades, such as whether i) a refusal would prejudice the accused; ii)

⁴ *R v Adams & Others* 1959 (1) SA 646 at 656F-G.

⁵ *Jaca v Minister of Justice & Others* (unreported, GNP case no: A405/13, 11 November 2013 at [4] – [5]).

the giving of the particulars is in the interest of justice; and iii) it is pertinent to the points in issue. Ultimately, the question is whether the accused reasonably needed the information. On appeal, the Court will only investigate whether a refusal of particulars prejudice the accused.’

[27] An accused’s right to be properly informed of the case that the State intends to prove against him must be strictly observed, to the extent that, if the charge contains particulars that are meaningless or confusing, rather than explanatory in nature, the accused may be acquitted on appeal owing to the prejudice caused by such particulars.⁶

[28] Section 87 of the Criminal Procedure Act confers a judicial discretion upon the trial court to order that the accused be furnished with further particulars or refuse a request for further particulars. The court exercises a true or narrow discretion, which must be exercised judicially upon a consideration of all the relevant facts and circumstances of the particular case. The purpose of the discretion is to balance the competing considerations of: (a) the accused’s constitutional and procedural right to be informed of the case against him or her with sufficient particularity to prepare a proper defence; and (b) the State’s interest in avoiding unnecessary disclosure of its evidence, trial strategy, or information that goes beyond what is required for a fair trial.

⁶ See *Jaca* supra.

[29] In *Mystic River Investments 45 (Pty) Ltd & Another v Zayeed Paruk Incorporated & Others*⁷ it was held that the extent of an appellate court's power to interfere with the exercise of a discretion by the court a quo depends on the nature of the discretion concerned. In *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another*⁸ Khampepe J held that:

‘In order to decipher the standard of interference that an appellate court is justified in applying, a distinction between two types of discretion emerged in our case law. That distinction is now deeply rooted in the law governing the relationship between appeal courts and courts of first instance. Therefore, the proper approach on appeal is for an appellate court to ascertain whether the discretion exercised by the lower court was a discretion in the true sense or whether it was a discretion in the loose sense. The importance of the distinction is that either type of discretion will dictate the standard of interference that an appellate court must apply.’

[30] Turning to the present case, the proper approach is to accept that, at a procedural level, the State is required to inform the Appellant of all the essential averments, and that a charge sheet should contain all the essential allegations to be proved by the prosecution in order to secure a conviction against the Appellant. The position is well set out in *S v Sewela*.⁹

⁷ *Mystic River Investments 45 (Pty) Ltd & Another v Zayeed Paruk Incorporated & Others* (Case No: 432/2022) [2023] ZASCA 54 (19 April 2023).

⁸ *Trencon Construction (Pty) Ltd v Industrial Development Corporation of South Africa Ltd and Another* [2015] ZACC 22; 2015 (5) SA 245 (CC); 2015 (10) BCLR 1199 (CC) para 83.

⁹ *S v Sewela* 2007 (1) SACR 123 (W).

[31] In *S v Thobejane*,¹⁰ the court dealt with the requirement that sufficient information be provided to the accused as follows:

‘At common law the accused, according to the principles of a fair trial, is entitled to sufficient information to:

- (a) Enable him to understand what the charge against him is and what conduct on his part is alleged to constitute an offence, and
- (b) Sufficient information to enable him to instruct his legal adviser and to prepare his defence (which in practice would largely overlap with (a) above), and
- (c) Insofar as the charge sheet and summary of facts supplied by the State is inadequate for the above purposes to such further disclosure or information that may be required to achieve such purposes.’ (Emphasis added)

[32] It is against these principles that I will consider the contentions advanced by the parties in this appeal.

Contentions of the parties before this Court

[33] The Appellant contended that she could not formulate a proper defence in response to the State’s case without the *curricula vitae*. Counsel for the Appellant submitted that this Court should reject the State’s assertion that a diligent search had been conducted for the *curricula vitae* and that they had been removed from the Department’s files. Counsel went so far as to submit that this

¹⁰ *S v Thobejane* 1995 (1) SACR 329 (T) at 334.

Court should find that the State was misleading the Appellant and this Court. He pointed out that there was no affidavit from the Department in this regard.

[34] Counsel further contended that the State should be compelled to produce an updated or closed list of the witnesses it intended calling during the trial. The basis of this submission was that the matter had been ongoing for more than a decade and that there was a strong possibility that some witnesses had lost interest in the matter, while others may have passed away due to events such as the COVID-19 pandemic.

[35] Counsel also submitted that, in those circumstances, the list of 41 witnesses furnished by the State may well have been reduced and that the State could therefore not rely on that list. Counsel argued that the State was required to specify, in a definite or closed list, the names of the witnesses it intended calling, together with the nature of the evidence to be led by each witness. In support of his submissions, counsel relied on the judgment of Lowe J¹¹ in the review application and referred to *Shabalala & Others v Attorney General of the Transvaal & Another*¹². *Shabalala* is no authority for the proposition that the State should produce the list as further particulars. The Appellant's reliance on *Shabalala* in support of a closed list, as further particulars, is misplaced.

¹¹ *NP Sizani v Mr Mpofu N.O & Another* Case No: 2804/2019 delivered in the Eastern Cape Division of the High Court, Makhanda on 18 August 2020.

¹² *Shabalala & Others v Attorney General of the Transvaal & Another* CCT 23/94 [1995] Page 12, 1995 (12) BCLR 1593, 1996 (1) SA 725 (CC).

[36] On the other hand, the State submitted that the magistrate's ruling was interlocutory in nature and, consequently, did not constitute a final judgment. Counsel for the State cautioned against the readily interference by appellate courts with interlocutory decisions and against entertainment of piecemeal appeals. Relying on *Zweni v Minister of Law and Order*¹³, the State submitted that an interlocutory order is appealable only if it has a final and definitive effect on the rights of the parties or disposes of a substantial portion of the relief claimed. Counsel submitted that this was not such a case. The State further contended that the Appellant had failed to demonstrate that the interests of justice warranted this Court hearing or determining the appeal.

[37] As I understand the State's submissions, the contention is that the Appellant failed to identify the grave injustice that may result from the magistrate's ruling or to explain the manner in which she had been materially prejudiced thereby. The State's contention was that the curricula vitae were never central to its case and were therefore unnecessary for purposes of the Appellant's plea. The State maintained that it was not in possession of the curricula vitae. In relation to the closed list, the State submitted that a witness list is not "particulars" contemplated in section 87 of the Criminal Procedure Act and that there is no authority compelling the disclosure of a closed list.

¹³ *Zweni v Minister of Law and Order* 1993 (1) SA 523 (A).

[38] In essence, the State submitted that the Appellant had failed to demonstrate that the refusal by the magistrate to order the production of the curricula vitae or a closed list had resulted, or would result, in irreparable prejudice to her or a miscarriage of justice.

Evaluation and Analysis

[39] The contention of the State is that the Appellant's reliance on appeal proceedings to challenge procedural rulings before the completion of the trial is misplaced and contrary to established principles of criminal procedure. I disagree. In *D Behrman v Regional Magistrate, Southern Transvaal and Another*¹⁴, it was stated:

‘The principle to be applied is that the Court will make an order if the applicant is likely to be prejudiced by the refusal, in the court below, to order the particulars; the question is whether such prejudice has been shown. It seems to me that prejudice has been shown. It is true that the charges which I have read, both the main charge and the alternative charge, set out an offence. Neither of these charges could be excepted to. But when the question of particulars is considered what has to be considered is whether the charge sufficiently informs the accused person of what the case is that he has to meet. It seems to me that this charge, both on the main count and on the alternative count is lacking in particularity.’

¹⁴ *D Behrman v Regional Magistrate, Southern Transvaal and Another* 1956 (1) SA 318 (T) at 319-20.

[40] Similarly, in *Weber & Another v Regional Magistrate, Windhoek*¹⁵ the court held:

‘Among the ‘rare case’ in which the Supreme Court has on occasion thought fit to intervene in uncompleted proceedings in magistrates’ courts are cases where the accused complained that the charge against him lacked sufficient particularity. An accused person is entitled to such particulars of the offence with which he is charged as will sufficiently inform him of the case he has to meet and enable him to prepare and present his defence. If the charge is deficient in this respect, and the magistrate refuses to direct that the State furnish such particulars as are necessarily required for the purpose aforesaid, the accused need not abide by the magistrate’s ruling but can apply to the Supreme Court for its intervention in the proceedings of the lower court. It is, however, clear from what I have stated with reference to the cases of *Wahlhaus* and *Ismail and Others* that the Supreme Court will intervene only if it is satisfied that, in the circumstances of the particular case, a grave injustice might result if the accused were expected to proceed with his defence without the necessary particulars having been furnished.

Cases in which the Supreme Court did so intervene are the following: *Behrman v Regional Magistrate, Southern Transvaal and Another*, 1956 (1) SA 318 (T); *Essop v Regional Magistrate, Western Transvaal and Another*, 1963 (1) PH. H16.’

[41] The above cases dealt with the requests for further particulars under the 1955 Criminal Procedure Act. That was long before the present constitutional dispensation. In view of the accused’s fair trial rights entrenched in section

¹⁵ *Weber & Another v Regional Magistrate, Windhoek* 1969 (4) SA 394 (SWA) at 397.

35(3) of the Constitution, courts would intervene in circumstances where the accused complains of a defective charge that fails sufficiently to inform him or her of the allegations against him or her. I agree that, generally, it is most unusual for an appeal court to interfere in proceedings of a lower court that have not yet been finalised. The court should, therefore, be reminded of the principles stated in *Gardiner & Lansdown, South African Criminal Law and Procedure*, Vol 1 at p 750, where it is stated:

‘While a Superior Court having jurisdiction in review or appeal will be slow to exercise any power, whether by mandamus or otherwise, upon the unterminated course of proceedings in a court below, it certainly has the power to do so, and will do so in rare cases where grave injustice might otherwise result or where justice might not by other means be attained. See *Wessels v General Court Martial and Another*, 1954 (1) SA 220 (E) and p.4. 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.’

[42] I conclude that this Court is entitled to hear the appeal and therefore rejects the State’s submission insofar as it objects to the hearing of the appeal.

[43] The reasons advanced by the Appellant in the main in seeking this Court’s intervention are that: (1) she needs to be furnished with the *curricula vitae*; and (2) she requires the State to provide a closed list. The State had

responded to the request in writing. The magistrate accepted the State's explanation that it does not have the *curricula vitae* and could therefore not provide them to the Appellant.

[44] In *S v Alexander and Others*,¹⁶ it was stated:

‘The first ground of exception taken by the defence seems almost a contradiction in terms. If the State does not know how many meetings were held at certain places charged, it obviously cannot inform or be compelled to inform the accused. It can merely be expected to do what in fact it has tried to do here, and that is to inform the accused of what it does know and upon what it is going to rely. At this stage of the proceedings, I repeat that it is not for me to comment on what sort of case the State is making, as was posed by Mr Gordon, if the State does not know and cannot give the particulars asked for.’

[45] Counsel for the Appellant placed considerable reliance on the review judgment of Lowe J. He submitted that Lowe J had directed the State to provide the *curricula vitae* to the Appellant. There is no merit in this submission. What is apparent from the judgment of Lowe J is that, at some stage, the magistrate had ordered the State to produce further documentation. In response to that order, the State delivered additional documents consisting of 3 669 pages. The 16 disputed *curricula vitae* were not part of the additional documents. It was the Appellant who contended that the documents were being withheld to the

¹⁶ *S v Alexander and Others* 1964 (1) SA 249 (C) at 252.

prejudice of the defence. Nothing further is stated in the judgment of Lowe J regarding the *curricula vitae*. Lowe J did not find that the *curricula vitae* were being withheld by the State. Instead, Lowe J concluded that:

‘It is clear from the record that, whilst Applicant’s Counsel invited the Court’s and prosecution’s attention to Section 342A of the CPA, neither Applicant nor the prosecution gave notice of intention to apply for the order contemplated in Section 342A(3)(d). As the magistrate could not do so *mero motu*, his ruling constitutes a technical gross irregularity.

The Magistrate’s additional reasons for the ruling do not cure this clear irregularity.’

[46] In relation to the Appellant’s access to the 16 *curricula vitae*, Lowe J stated only the following:

‘The answer is clear as the refusal of Applicant’s request for access to the 16 CV’s as referred to, if they existed, and this supported in fact by the prosecution, precluded further potential consideration by the Defence of the need to utilise same in Applicant’s defence and very potentially led to the exclusion of material evidence – a failure of justice in the sense required clearly resulted. This discloses sufficient prejudice, at this stage, such as to justify the review being heard *in medias res*.’

[47] Self-evidently, Lowe J did not conclude that the *curricula vitae* were in existence. He remained doubtful regarding the existence of the *curricula vitae*. It is therefore incorrect for the Appellant’s counsel to submit, as a fact, that Lowe J had confirmed the existence of the *curricula vitae*. The uncontroverted version of the State is that the *curricula vitae* could not be found in the relevant files and

that the State is not in possession thereof. The State also indicated that it does not rely on the curricula vitae to prove its case. The allegations set out in the preamble to the charge sheet, together with the additional further particulars, sufficiently inform the Appellant of the case against her and the allegations that the State intends proving at trial. I therefore conclude, on this aspect, that the Appellant's right to be informed of the charges against her has not been violated. The magistrate's finding, that the State does not possess the curricula vitae and cannot be ordered to furnish the appellant with them, is correct and must be confirmed.

[48] The second request pertains to a closed list of witnesses whom the State intends calling to prove its case. There is no merit in this request. The Appellant has been provided with the full police docket and witness statements. She is therefore aware of the evidence that each witness in the police docket may give against her. Counsel could not produce any authority requiring the State to provide a definitive list of State witnesses. I have already found that the Appellant's reliance on *Shabalala* as authority for the proposition is misplaced.

[49] The Appellant was furnished with a list of 41 witnesses. It appears to this Court that the Appellant seeks disclosure of the State's trial strategy in conducting its case. This is borne out by the demand for a closed list based on allegations that some witnesses may have 'lost interest' or may have 'died' due

to events such as Covid-19. These submissions were speculative and lacked substance or persuasive weight. The duty rests upon the State to prove its case through the leading of evidence.

[50] In this Court's view, it is sufficient for the Appellant to be furnished with the police docket, the charge sheet and witness statements. The witness list is supplementary in nature and not a legal requirement. I agree with the magistrate that the Appellant is engaged in a fishing expedition or is seeking to delay the commencement of the trial.

[51] In my view, the magistrate carefully considered the nature of the particulars requested by the Appellant and correctly exercised her discretion. I agree with the magistrate's findings that, in the circumstances of this case, the Appellant is not entitled to an order that she be furnished with the curricula vitae or a closed list. The appeal should accordingly be dismissed.

[52] This Court is concerned about the excessive delay in the commencement and conclusion of the criminal trial. Delays, such as this, serve only to defeat the speedy resolution of criminal cases. That is contrary to section 35(3)(d) of the Constitution. The public interest and the interests of justice demand that cases such as this should be resolved speedily, in accordance with the right to a

fair trial. The court should caution against the use of the so-called “Stalingrad approach” in our criminal justice system.

[53] This Court may only hope that the outcome of this appeal shall pave the way for the trial to resume and to be concluded speedily and without further delay.

Conclusion

[58] In the premises, the appeal against the ruling of the magistrate should be dismissed. Regarding costs, in my view, the Appellant was exercising her constitutional right. In such circumstances, this Court would make no order as to costs. This Court must caution that in appropriately pleaded cases, it would not hesitate to make a costs order if it finds that its procedures were abused.

[59] In the result, I would issue the following order:

1. The appeal is dismissed.
2. There shall be no order as to costs.

M NOTYESI
ACTING JUDGE OF THE HIGH COURT

I agree:

G H BLOEM
JUDGE OF THE HIGH COURT

APPEARANCES:

Counsel for the Appellant : *Adv Madukuda*

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Instructed by : Director of Public Prosecutions
Makhanda

Heard on : 17 April 2026

Judgment Delivered on : 2 June 2026