



**IN THE HIGH COURT OF SOUTH AFRICA
NORTH WEST DIVISION, MAHIKENG**

Reportable:	YES / <u>NO</u>
Circulate Judges:	YES / <u>NO</u>
Circulate to Magistrates:	YES / <u>NO</u>
Circulate to Regional Magistrates:	YES / <u>NO</u>

CASE NO: 942/2019

In the matter between:

MABAZO Z B

PLAINTIFF

And

MINISTER OF POLICE

FIRST DEFENDANT

RUSTENBURG LOCAL MUNICIPALITY

SECOND DEFENDANT

**DEPARTMENT OF SAFETY AND TRANSPORT
MANAGEMENT**

THIRD DEFENDANT

Date considered: 27 OCTOBER 2025

Delivered: This judgment was handed down electronically by circulation to the parties' representatives via email. The date and time for hand-down of the judgment is deemed to be 10:00 on 07 July 2026.

JUDGEMENT ON RECUSAL

TSAUTSE AJ

INTRODUCTION

[1] This is an application by the second defendant for the recusal of the presiding judicial officer from further adjudicating the ongoing civil trial between the parties.

[2] The application is founded upon allegations that certain evidentiary rulings, exchanges between the court and counsel, and the general conduct of proceedings have given rise to a reasonable apprehension of bias in the mind of a reasonable, informed litigant.

[3] The plaintiff opposes the application, contending that it is vexatious, without legal foundation, and constitutes an abuse of process.

[4] It is common cause that the application was brought without the benefit of a complete transcribed record of proceedings. Both parties rely primarily on their recollection of events, augmented by such contemporaneous notes as may exist. I must therefore proceed with caution, mindful that the test for recusal is applied to the correct facts and not to conjecture or partisan reconstruction.

THE APPLICABLE LEGAL PRINCIPLES

[5] The point of departure is the constitutional framework. Section 34 of the Constitution of the Republic of South Africa, 1996 states:

*“Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.”*¹

¹ Section 34 of the Act.

[6] It guarantees to everyone the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.

[7] Section 165(2) of the Constitution ² states that:

“The courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice.”

This section affirms that the courts are independent and subject only to the Constitution and the law, which they must apply impartially and without fear, favour or prejudice. Judicial impartiality is therefore both a structural feature of our constitutional order and a concrete right of litigants.

[8] The common-law principles of recusal have been restated and developed in the constitutional era. In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*³ 1999 (4) SA 147 (CC); 1999 (7) BCLR 725 (CC) (“SARFU”), at para 41 the Constitutional Court formulated the test as whether a reasonable, objective and informed person would, on the correct facts, reasonably apprehend that the judge has not brought, or will not bring, an impartial mind to bear on the adjudication of the case.

[9] The test is known as the “double reasonableness” test. It requires that the apprehension of bias must be that of a reasonable person in the position of the litigant, and that the apprehension itself must be objectively reasonable. An unreasonable or purely subjective apprehension, even if genuinely held, cannot ground recusal.

[10] Judges are presumed to be impartial. This presumption constitutes a formidable threshold hurdle for any applicant seeking recusal, reflecting both the judicial oath of office and the institutional integrity of the judiciary. In *South African Commercial Catering and Allied Workers Union and Others v Irvin & Johnson Ltd (Seafoods Division Fish Processing)*⁴, the Court clarified that the test for recusal is a “double-reasonableness” requirement: both the person apprehending the bias and the

² Section 165 of the Act.

³ *President of the Republic of South Africa and others op cit fn3* Para 41.

⁴ 2000 (3) SA 705 (CC); 2000 (8) BCLR 886 (CC) (SACCAWU) para 17.

apprehension itself must be reasonable. While this hurdle is formidable, it is not insuperable where the links between the judge and a party are sufficiently direct.

[11] In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*⁵, the Court emphasised that judicial officers have a concurrent duty to sit in matters in which they are not disqualified. Approving the observations of Mason J in the High Court of Australia, the Court stated:

"Although it is important that justice must be seen to be done, it is equally important that judicial officers discharge their duty to sit and do not, by acceding too readily to suggestions of appearance of bias, encourage parties to believe that by seeking the disqualification of a Judge, they will have their case tried by someone thought to be more likely to decide the case in their favour."

[12] The Constitutional Court further endorsed the principle that the ground for recusal is a reasonable apprehension that the judicial officer will not decide the matter impartially or without prejudice, rather than a mere apprehension that the judge may decide the matter adversely to a particular party.

[13] Subsequent authority has reaffirmed these principles. In *S v Basson*⁶, the Court held that the presumption of impartiality is not easily displaced and that assertions of bias must be supported by cogent and convincing evidence. In *S v Rall*⁷, it was emphasised that while judges must not descend into the arena, firmness in controlling proceedings does not, without more, establish bias.

[14] Article 13 of the Code of Judicial Conduct, issued under the Judicial Service Commission Act 9 of 1994⁸, codifies these principles by providing .

'Recusal

(1) A judge recuses him or herself from a case if there is a real or reasonably perceived conflict of interest or if there is a reasonable suspicion of bias based upon objective facts.

(2) A judge does not recuse him or herself on insubstantial grounds'

⁵ 1999 (4) SA 147 (CC) (*SARFU*) para 46.

⁶ 2007 (3) SA 582 (CC) para 29.

⁷ 1982 (1) SA 828 (A) 834H–835B.

⁸ Article 13 of the Code of Judicial Conduct, Judicial Service Commission Act 9 of 1994.

[15] The distinction between judicial bias and appealable error has long been recognised in our law. A recusal application is not a substitute for an appeal or review. In *President of the Republic of South Africa and Others v South African Rugby Football Union and Others*⁹, the Constitutional Court reaffirmed the presumption of judicial impartiality and emphasised the duty of judicial officers to sit in matters in which they are not disqualified. Similarly, in *Take and Save Trading CC v Standard Bank of SA Ltd*¹⁰, the Supreme Court of Appeal recognised the legitimacy of robust judicial case management and intervention directed at ensuring the orderly conduct of proceedings. In *S v Bam*¹¹, the Court drew a distinction between conduct that may constitute an appealable irregularity and conduct giving rise to a reasonable apprehension of bias warranting recusal. Accordingly, adverse rulings, firm case management, or procedural interventions do not, without more, establish a reasonable apprehension of bias.

[16] It is therefore critical to distinguish carefully between an appealable error of law or fact and manifest judicial bias, as a recusal application cannot serve as a surrogate appeal. An adverse ruling, even if arguably incorrect or open to challenge, does not *per se* constitute evidence of partiality; our courts consistently maintain a clear demarcation between robust judicial management of proceedings and actionable bias.

[17] It is against this established constitutional and jurisprudential framework that I turn to evaluate the specific grounds advanced by the applicant in support of the relief sought.

THE GROUNDS ADVANCED

[18] The Second Defendant advances essentially four categories of complaint:

- a) That the Court permitted evidence allegedly relating to quantum despite the matter proceeding on the merits only;
- b) That the Court limited cross-examination and ruled without full submissions;

⁹ 1999 (4) SA 147 (CC) para 46.

¹⁰ 2004 (4) SA 1 (SCA) para 12.

¹¹ 1972 (4) SA 41 (E) at 43H–44A.

c) That the Court permitted the use of discovered documents in cross-examination;

d) That the Court displayed hostility toward counsel and entered the arena.

It is convenient to address each complaint in turn and then to consider their cumulative effect.

ALLEGED LEADING OF EVIDENCE ON QUANTUM

[19] The second defendant contends that the court improperly allowed the plaintiff to lead evidence on quantum and thereafter restricted cross-examination in that regard, thereby favouring the plaintiff.

[20] The plaintiff's version, which is supported by the objective features of the record that are available, is that she testified to the emotional and financial impact of her arrest and detention, including that she paid R3 000 for her first court appearance. Such evidence goes to patrimonial and non-patrimonial loss in a general sense, which may be relevant even at the merits stage in actions for unlawful arrest and detention.

[21] The dispute arose when counsel for the first defendant sought to question the plaintiff on an estimated global amount pleaded as damages, notwithstanding an agreement that the trial would proceed on the merits only, with quantum standing over.

[22] The court ruled that questioning on the amount actually testified to which is the deposit that the Plaintiff testified on in her evidence in chief which is the amount of R3 000 was permissible, but the questions that were directed at estimated figures contained only in the pleadings were not, given the separation of issues allowed. That ruling confined cross-examination to the evidence actually led, while respecting the parties' agreement and the separation order.

[23] Such a ruling fall squarely within the ordinary exercise of judicial discretion in managing the scope of evidence and cross-examination. In *S v Msimango and Another*¹², Moshidi J addressed the fundamental nature of cross-examination by

¹² (187/2005) [2009] ZAGPJHC 34; 2010 (1) SACR 544 (GSJ) at para 5.

quoting John Henry Wigmore's seminal treatise, *Wigmore on Evidence*¹³, where the learned author states:

"Not even the abuses, the mishandlings, and the puerilities which are so often found associated with cross-examination have availed to nullify its value. It may be that in more than one sense it takes the place in our system which torture occupied in the mediaeval system of the civilians. Nevertheless, it is beyond any doubt the greatest legal engine ever invented for the discovering of truth."

While confirming that cross-examination is a vital "legal engine for discovering the truth", the Court emphasized that this procedural mechanism is not limitless. The presiding judge maintains an inherent power and a fundamental duty to active circumscribe questioning to ensure it remains relevant to the issues properly before the court, thereby restricting inquiries that stray into irrelevant issues or are aimed solely at badgering and harassing a witness.

[24] Our courts have repeatedly held that an adverse or restrictive evidentiary ruling does not, without more, ground a reasonable apprehension of bias. As the Supreme Court of Appeal clarified in *Take & Save Coffee Lounge CC v Standard Bank of SA Ltd*¹⁴, a judge's standard procedural and management rulings—even if incorrect or sharply worded—cannot be weaponized to demand a recusal. The proper mechanism to challenge an incorrect procedural or evidentiary ruling is to raise it as a ground of appeal after the final judgment has been delivered, rather than attempting to escalate ordinary courtroom management into a claim of judicial bias mid-trial.

[25] A reasonable, informed observer, apprised of the correct facts, would understand the ruling as directed at preserving the merits-only character of the proceedings, rather than as favouring one party. It does not sustain an inference that the court has predetermined any issue or harbours animus toward the second defendant.

[26] The ruling was directed at counsel for the first defendant, who sought to traverse matters beyond the evidence already adduced and beyond the agreed merits-only ambit of the trial. It did not curtail any line of questioning pursued by the second

¹³ (3rd ed, Vol V, para 1367).

¹⁴ [2004] 2 All SA 523 (SCA) para 5.

defendant, nor did it impose any procedural disadvantage peculiar to that party. A reasonable, objective and informed litigant in the position of the second defendant would therefore not apprehend that the court was biased against it by reason of a case-management ruling aimed at another party's overreach.

REQUEST FOR ADJOURNMENT AND CONSULTATION WITH THE DEPUTY JUDGE PRESIDENT

[27] The second defendant further contends that this Court's indication that it would consult with the Acting Deputy Judge President concerning the conduct of the proceedings demonstrates a hidden unwillingness to continue presiding over the trial and serves as evidence of a predisposition against the second defendant.

[28] As the plaintiff's answering affidavit correctly indicates, this issue arose directly out of heated exchanges between the Court and counsel, during which boardroom decorum, adherence to practice directives, and ordinary procedural compliance became contentious.

[29] Judicial officers bear the primary responsibility for maintaining the order, dignity, and efficiency of court proceedings within their courtrooms. In the High Court structure, this operational duty is subject to the overall case-flow management, administrative oversight, and statutory leadership of the Head of Court and the Deputy Judge President.

[30] An indication by a presiding judge that they propose to temporarily adjourn to consult the Acting Deputy Judge President on matters of case management, or to determine how best to regulate proceedings in an environment of escalating courtroom tension, is, objectively viewed, the very antithesis of bias. Far from demonstrating a closed mind, such a course of action manifests professional prudence, judicial restraint, and structural institutional accountability.

[31] There is no evidence on the record to suggest that this Court communicated any pre-judgment on the merits of the case or harboured an animus toward the second defendant. Nor is there any suggestion that the leadership of this Division sought to issue, or did issue, any directives concerning the substantive outcome of the trial. On

the facts presented, a reasonable, objective, and informed observer would not apprehend bias merely because a presiding judge sought administrative guidance on case management to de-escalate tension and preserve the integrity of the forum.

USE OF DISCOVERED DOCUMENTS

[32] It is trite that the purpose of discovery is to eliminate surprise, to narrow the issues, and to enable parties properly to prepare for trial and to test each other's evidence. Once a document has been timeously discovered, and a witness acknowledges authorship of it or sufficient familiarity with its contents, it may ordinarily be used in cross-examination to challenge that witness's credibility, recollection, or consistency.

[33] This accords with the classic statement of principle in *Durbach v Fairway Hotel Ltd*¹⁵, which has been consistently followed in our courts to emphasize that discovery exists to prevent trial by ambush, as well as Uniform Rule 35, which regulates the discovery process to facilitate the fair and efficient ventilation of disputes as articulated also *Airports Company South Africa Soc Ltd v ISO Lesedi (Pty) Ltd*¹⁶.

[34] This Court's ruling that

(a) the documents could be used in cross-examination once properly identified, and
(b) their ultimate admissibility and weight would be determined in due course,
reflects established evidentiary practice. It respects the fundamental distinction between using a document for the limited purpose of testing a witness's credibility and admitting it as substantive proof of the truth of its contents.

[35] Even if this ruling were incorrect, a conclusion that I do not support, it is a clear principle of our law that an erroneous judicial ruling does not, without more, equate to bias. As the Constitutional Court observed in *S v Jaipal*¹⁷, litigants are entitled to an impartial judge, not a perfect one. Mistakes made by a judicial officer in the good-faith exercise of courtroom management are matters to be corrected on appeal, not grounds for recusal.

¹⁵ 1949 (3) SA 1081 (SR).

¹⁶ 2023 (4) SA 541 (GJ) para 22.

¹⁷ 2005 (4) SA 581 (CC) para 29.

ALLEGED HOSTILITY AND ENTERING THE FRAY

[36] The second defendant's final cluster of complaints is that this Court displayed hostility toward counsel, described counsel as uncivil, and impermissibly "entered the arena" by making reference to having read the discovered documents.

[37] It is well established that a presiding judge is entitled, and indeed obliged, to control the proceedings, to insist on courtroom decorum, and to intervene where counsel's conduct threatens the orderly dispatch of the court's business. Firmness, or even a measure of sharpness in rebuking perceived discourtesy or obstruction, does not without more evince hostility or partiality. As the Supreme Court of Appeal clarified in *Take & Save Coffee Lounge CC v Standard Bank of SA Ltd*¹⁸, a judge is entitled to adopt a robust attitude in managing a trial and responding to inappropriate litigation tactics. Courtroom management, even when expressed forcefully to preserve the efficiency and dignity of the forum, cannot be weaponized to demand a recusal.

[38] In the *locus classicus* of *S v Rall*¹⁹, the Appellate Division cautioned that a judicial officer must refrain from descending into the arena in a manner that gives rise to an appearance of partisanship. At the same time, the Court acknowledged that measured intervention is often both necessary and proper to clarify issues, prevent confusion, and ensure the efficient conduct of proceedings. The critical distinction lies between legitimate trial management and the impermissible assumption of an advocate's role. Such intervention only becomes objectionable where it crosses the line into actively promoting a particular version of events or advancing one party's case at the expense of the other.

[39] Following this approach, the Constitutional Court in *S v Basson*²⁰ addressed allegations of trial courts displaying frustration or interrupting lines of questioning. The Court clarified that judges are human beings, not *automata*, and that repeated interventions or an irregular/impatient tone, while open to criticism, do not automatically cross the threshold into a reasonable apprehension of bias. For an

¹⁸ All SA 523 (SCA) para 5.

¹⁹ 1982 (1) SA 828 (A) 831 para A–B.

²⁰ 2005 (12) BCLR 1192 (CC) para 23–24.

intervention or an expression of irritation to ground a recusal, it must display a structural one-sidedness or a mind that is permanently closed to the evidence.

CUMULATIVE EFFECT

[40] The second defendant submits that even if each incident, taken in isolation, might be explicable, their cumulative effect creates a reasonable apprehension of bias.

[41] The law recognises that a series of events, each individually innocuous, may cumulatively give rise to a reasonable apprehension of bias. Courts therefore, examine the totality of the circumstances rather than treating each complaint in strict isolation.

[42] I have accordingly considered the incidents cumulatively. Viewed holistically, they amount to nothing more than dissatisfaction with procedural and evidentiary rulings, and with this Court's firm management of proceedings in a heavily contested and emotionally charged trial.

[43] What is conspicuously absent from the application is any objectively established fact, such as a personal interest, an extraneous association, an explicit expression of partiality, or a pattern of structural, one-sided intervention, that would cause a reasonable, well-informed observer to apprehend that the presiding Judge has not brought, or will not bring, an impartial mind to bear on the merits of the case.

[44] The presumption of judicial impartiality therefore remains intact; the formidable legal hurdle required to displace it has not been cleared.

[45] The high threshold articulated in *President of the Republic of South Africa v South African Rugby Football Union*²¹ and developed in later decisions such as *S v Basson*²² has simply not been met on the facts presented.

²¹ 1999 (4) SA 147 (CC).

²² 2007 (3) SA 582 (CC).

ABUSE OF PROCESS AND THE ROLE OF RECUSAL

[46] Recusal is a serious step. It protects both the rights of litigants and public confidence in the administration of justice by ensuring that justice is manifestly seen to be done. The appearance of strict judicial impartiality is indispensable to the rule of law.

[47] At the same time, recusal applications must not be weaponised as tactical tools to avoid unfavourable rulings, to delay proceedings, or to secure the replacement of a judge perceived as unsympathetic. Such strategic misuse undermines judicial independence and erodes public confidence in the judiciary as an institution.

[48] On the material placed before me, this application comes perilously close to such misuse. It is founded on highly contested recollections in the absence of a verified transcript, directly targets rulings falling squarely within the trial court's judicial discretion, and advances generalised assertions of hostility rather than concrete, cogent evidence of bias.

[49] While I am prepared, in deference to the seriousness of any allegation impugning a judge's impartiality, to treat this application as misguided rather than *mala fide*, it nevertheless lacks any legal or factual merit and has occasioned unnecessary costs and delays in the finalization of the main trial.

COSTS

[50] The remaining issue that I need to deal with is the issue of costs. The general rule is that costs follow the result, and there is no reason to depart from that principle in favour of the unsuccessful applicant.

[51] The Plaintiff seeks a punitive order, contending that the application is vexatious and constitutes an abuse of process. Punitive costs are reserved for conduct that the Court wishes to mark as reproachable, for example, where litigation is reckless, malicious, or pursued in wilful disregard of established principles.

[52] Although this application is ill-conceived and devoid of substantive merit, I am not persuaded that it crosses the threshold warranting an order on the scale as

between attorney and client. It is preferable that litigants who harbour genuine (*albeit* unfounded) concerns about impartiality should not be deterred from approaching the Court by fear of punitive costs, provided their complaints are advanced respectfully and not as a stratagem.

[53] Ordinary costs on the party-and-party scale will adequately compensate the Plaintiff for the expense of opposing the application and signal the Court's disapproval of unmeritorious recusal attempts.

ORDER

In the result, I make the following order:

1. The application for the recusal of the presiding judge is dismissed.
2. The plaintiff is to approach the Registrar to have the matter enrolled as a part-heard matter.
3. The second defendant is ordered to pay the costs of this application on the ordinary party-and-party scale.

A handwritten signature in black ink, appearing to be 'T. Tsautse', is written over a black rectangular redaction box.

T. TSAUTSE
ACTING JUDGE OF THE HIGH COURT
NORTH WEST DIVISION, MAHIKEG

Appearances:

Counsel for the Plaintiff:	Adv R V Mudau
Instructed by:	Geldenhuys Malatji Inc.
c/o:	Labuschagne Attorneys Mahikeng
Counsel for First Plaintiff:	Mr Letsoalo
Instructed by:	State Attorneys
	Mahikeng
Counsel for Second Defendant:	Adv O K Chwaro
Instructed by:	M Mere & Associates Inc
c/o:	ME Tlou Attorneys & Associates Mahikeng