

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, PRETORIA

Case Number: CC11/2021

(1)	REPORTABLE: YES/NO
(2)	OF INTEREST TO OTHER JUDGES: YES/NO
(3)	REVISED: YES/NO
10/09/26	[Redacted Signature]
DATE	SIGNATURE

In the matter between:

MULIMISI SOLOMON MAPOSA

Applicant

and

**THE DIRECTOR OF PUBLIC PROSECUTIONS
GAUTENG DIVISION**

First Respondent

KABELO JOHN MATSEPE

Second Respondent

MAMPHE DANIEL MSIZA

Third Respondent

ANDILE MALUSI ATTWELL RAMAVHUNGA

Fourth Respondent

PHOPHI LONDOLANI MUKHODOBWANE

Fifth Respondent

NHLANHLA KELVIN SIPHO MALABA

Sixth Respondent

PHALAPHALA AVHASHONI RAMIKOSI

Seventh Respondent

THIFHELIBILU ERNEST NESANE

Eighth Respondent

PAUL MAGULA

Ninth Respondent

MMBULAHENI ROBERT MADZONGA

Tenth Respondent

RALLION RAZWINANE

Eleventh Respondent

TAKUNDA EDGAR MUCHEKE

Twelfth Respondent

TSHIANEO MADADZHE

Thirtieth Respondent

**MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT**

Fourteenth Respondent

**NATIONAL DIRECTOR OF PUBLIC
PROSECUTIONS**

Fifteenth Respondent

This judgment has been delivered by uploading it to the Court online digital database of the Gauteng Division, Pretoria and by email to the attorneys of record of the parties. The date of the delivery of the judgment is deemed to be 10 September 2026

JUDGMENT

MAKHOPA, J

[1] The Applicant is accused number three in *S v Ramavhunga and 12 Others*¹. This matter is currently in one of the criminal courts here in the Gauteng Division, Pretoria. The matter is a large-scale prosecution involving allegations of racketeering, theft, corruption and money-laundering, stemming from a severe liquidity crisis that prevailed at VBS Mutual Bank ("VBS").

[2] The First Respondent is the Director of Public Prosecutions, Gauteng Province, and the Fifteenth Respondent is the National Director of Public Prosecutions. Both Respondents oppose the application.

¹ Case number CC11/2021.

[3] The prosecution against all the accused was authorised on 12 June 2020. Later, additional evidence allowed for the indictment to be expanded. The NDPP approved the expanded racketeering case on 9 March 2021. The new accused persons, including the applicant, were arrested on 11 March 2021 and made their first appearance on 12 March 2021. The case was then transferred to the Gauteng Division, Pretoria on 26 March 2021.

[4] The matter has been beset by legal representation issues, requests for further particulars, separation applications, review proceedings, additional disclosure, the unavailability of a Judge, and, later, litigation arising from the Criminal Procedure Act's² section 319 process.

[5] The Applicant was arrested in March 2021, and the matter was transferred to the High Court on 26 March 2021 under section 75(1) of the CPA. Two erstwhile co-accused, Phillip Truter and Tshifhiwa Matodzi, pleaded guilty under section 105A of the CPA and were separated under section 157.

[6] Mosopa J refused Daniel Mamphe Msiza's separation application on 1 December 2021. In *Msiza v S*,³ leave to appeal that refusal was also refused. The court held that an order refusing separation is interlocutory and not appealable at that stage.

[7] The court later granted separation in respect of the accused Kabelo Matsepe, in *Matsepe and Another v Director of Public Prosecutions and Others*.⁴

[8] The State's attempt to reserve questions of law under section 319 CPA arising from that separation was dismissed as interlocutory, and the State's application for leave to appeal to the Supreme Court of Appeal was referred for oral argument under section 17(2)(d) of the Superior Courts Act. The trial has been postponed to 15 September 2026 pending that process.

² Act 51 of 1977.

³ [2022] ZAGPPHC 216 at para 25.1.

⁴ [2024] ZAGPPHC 893.

[9] The State concedes on the papers that there is no indication that the applicant personally caused or contributed to any delay, while contending that this does not, of itself, justify the relief sought.

[10] The relief sought as per the notice of motion may be summarised as follows:

- a. That the criminal trial against the applicant be held in abeyance, and/or permanently stayed against the applicant.
- b. Alternatively, the trial be transferred to Limpopo Province.
- c. Alternatively, the charges be withdrawn against the applicant.
- d. Alternatively, the administrative decisions of the first and fifteenth respondents be reviewed and/or set aside.
- e. Alternatively, the Court must find that in terms of section 342A there is unreasonable delay and strike the matter in respect of the applicant off the roll and the prosecution not to be resumed without the written instructions of the fifteenth respondent.
- f. The applicant must be exempted from the requirement of first exhausting any internal remedy before bringing the review application.

Points in limine

[11] The Respondents raised the following points *in limine*:

- a. The applicant e-mailed the application to Adv Van Der Merwe and Adv Veenemans while they were not authorised to accept service on behalf of the first and fifteenth respondents.
- b. In regard to prayers 2, 4 and 6 (Review of first and fifteenth respondent's decisions), the respondents' *point in limine* is that this Court has no authority in terms of the CPA to review the decision of the Director of Public Prosecutions and the National Director of Public Prosecutions.
- c. On prayers 1 and 2, the points in limine raised by the respondents are that the trial is already in abeyance pending the SCA proceedings. The criminal trial is provisionally postponed to 15 September 2026, pending the outcome of the SCA proceedings.

- d. Whether proceedings should be permanently stayed is for the criminal court seized with the trial to determine.
- e. On prayer 4, the respondents submit that separation and transfer of cases to another province are judicial functions and that a formal application must be made in a court.
- f. On prayers 5 and 6, the respondents submit that section 6 of the CPA vests the power to withdraw charges or to stop a prosecution in a prosecution.
- g. On prayer 8, the respondents' point *in limine* is that the applicant's reliance on the Promotion of Administrative Justice Act⁵ ("PAJA") is incompetent.

[12] Counsel for the respondents argued that the question of the separation of trials lies with the trial court in terms of section 157 of the CPA. The prosecuting authority does not have the power to grant or refuse separation.

[13] Counsel for the respondents contended that PAJA does not apply to prosecutorial decisions and that it applies only to administrative action as defined in PAJA.

[14] It was contended further that decisions to institute or decline to withdraw a prosecution do not constitute administrative action for the purposes of PAJA; such decisions are therefore not reviewable under PAJA.

[15] Furthermore, it is submitted on behalf of the respondents that the present proceedings are not part of the criminal trial itself but constitute a collateral motion application brought in the civil jurisdiction of this court, in which the applicant seeks wide-ranging relief against the prosecution authority, including review, declaratory, and coercive orders. In such proceedings, the ordinary civil principle applies, namely that costs follow the result, subject to the court's discretion.

Separation of trials

⁵ Act 3 of 2000.

[16] The provisions of legal documents, whether contracts or legislation, must be interpreted in accordance with the well-established principles of interpretation.

[17] In *Natal Joint Municipal Pension Fund v Endumeni Municipality*,⁶ the current state of our law in regard to the interpretation of documents was summarised as follows:

"The present state of the law can be expressed as follows. Interpretation is the process of attributing meaning to the words used in a document, be it legislation, some other statutory instrument, or contract, having regard to the context provided by reading the particular provision or provisions in the light of the document as a whole and the circumstances attendant upon its coming into existence. Whatever the nature of the document, consideration must be given to the language used in the light of the ordinary rules of grammar and syntax; the context in which the provision appears; the apparent purpose to which it is directed and the material known to those responsible for its production. Where more than one meaning is possible each possibility must be weighed in the light of all these factors. The process is objective not subjective. A sensible meaning is to be preferred to one that leads to insensible or unbusinesslike results or undermines the apparent purpose of the document. Judges must be alert to, and guard against, the temptation to substitute what they regard as reasonable, sensible or businesslike for the words actually used. To do so in regard to a statute or statutory instrument is to cross the divide between interpretation and legislation. In a contractual context it is to make a contract for the parties other than the one they in fact made. The 'inevitable point of departure is the language of the provision itself', read in context and having regard to the purpose of the provision and the background to the preparation and production of the document."

[18] The above judgment applies to both contractual and statutory interpretation.

[19] Whilst the starting point remains the words of the contract or statutory instrument, the process of interpretation does not stop at a perceived literal meaning of those words but considers them in the light of all relevant and admissible context, including the circumstances in which the contract or statutory instrument came into being.

⁶ 2012 (4) SA 593 (SCA) at para 18.

[20] The Constitutional Court in *University of Johannesburg v Auckland Park Theological Seminary & Another*⁷ is relevant to the question under consideration. On this point, the Constitutional Court held as follows:

"This approach to interpretation requires that 'from the outset one considers the context and the language together, with neither predominating over the other'. In *Chisuse*, although speaking in the context of statutory interpretation, this Court held that this 'now settled' approach to interpretation, is a 'unitary' exercise. This means that interpretation is to be approached holistically; simultaneously considering the text, context and purpose."

[21] Section 157(2) of the CPA provides that, on the application of the prosecution or any of the accused, the court may, at any stage of the proceedings, direct that the trial of any one or more of the accused be separated from the trial of the other accused.

[22] The section reads "at any time during the trial". Following the guidance on interpretation in *Endumeni*, in my view, such an application can only be brought before a court where the trial is pending, namely the criminal court.

Section 342A

[23] Section 342A(1)⁸ obliges "a court before which criminal proceedings are pending" to investigate any delay in the completion of proceedings that appears to the court to be unreasonable and could cause substantial prejudice to the prosecution, the accused, a witness, or the public interest. Section 342A(2) sets out the factors for the reasonableness inquiry, including the duration and causes of the delay, the effect on the accused and witnesses, the seriousness, extent, or complexity of the charge, actual or potential prejudice to the parties, and the adverse effect on the interests of the public or victims. Only upon a finding of unreasonable delay may the court issue a remedial order under section 342A(3), which includes refusing further postponement, granting a final postponement, or, where the accused has not yet pleaded, striking the

⁷ 2021 (6) SA 1 (CC) at para 65.

⁸ Section 342A(1) reads as follows: "a court before which criminal proceedings are pending shall investigate any delay in the completion of the proceedings which appears to the court to be unreasonable."

matter from the roll, in which event "the prosecution shall not be resumed or instituted *de novo* without the written instruction of the attorney-general [now the DPP]".

[24] The literal interpretation of section 342A of the CPA in my view is that the application in terms of this section must be brought before the trial court, not an opposed motion court. This court, in my view, is not a criminal court before which the criminal proceedings are pending.

Permanent stay

[25] In my view, for the court to grant a permanent stay of prosecution, the applicant must appear before the trial court in which the trial is pending unless there are exceptional circumstances why he cannot appear before that court.

Transfer to another division

[26] The centralisation of the VBS prosecution in the Gauteng Division was effected under section 111(2) of the CPA read with section 22(3) of the National Prosecuting Authority Act, in terms of which the National Director of Public Prosecutions may, in consultation with the relevant Director of Public Prosecutions, direct that criminal proceedings be instituted in a specified jurisdiction; once instituted, that court has jurisdiction. The corollary is that "reversal" of centralisation is likewise a function of the National Director of Public Prosecutions.

[27] Section 75(2) of the CPA provides: "If an accused appears in a court which does not have jurisdiction to try the case, the accused shall at the request of the prosecutor be referred to a court having jurisdiction".

[28] In my opinion, a court cannot transfer a pending High Court criminal trial to another division at the request of an accused person. Only the prosecutor can initiate such a transfer.

[29] Furthermore, there is no provision in the CPA that confers on this court the power to transfer a matter to another division on the application of the accused person.

Section 27 of the Superior Courts Act (removal of proceedings between divisions) is confined to civil proceedings.

[30] In *S v Porritt and Another*,⁹ the application to transfer the criminal matter was made to the court in which the trial is pending. The court observed that the issue before it was not simply whether the National Director of Public Prosecutions' section 111 directive was valid, but whether the applicant could, at that stage, contend that their right to a fair trial had been compromised if the proceedings were to continue in Gauteng; and, if so, whether their rights had been infringed.

[31] In assessing whether the accused had demonstrated trial prejudice, the court considered allegations substantially similar to those advanced by the applicant, including the costs of travelling to the trial venue, accommodation expenses, the location of documentary evidence, inconvenience arising from the duration of the trial, and the logistical difficulties associated with preparing a defence away from their place of residence. Although the court accepted that these factors created inconvenience and financial burdens, it concluded they did not violate the accused's fair trial rights. The court held that the accused had adequate time to prepare their defence and that any prejudice arising during the trial could be addressed through procedural mechanisms, including adjournments where necessary.

[32] Therefore, in my view, the applicant in this matter must appear in person before the trial court and bring this application.

[33] Sections 6(a) and (b) of the CPA empower a Director of Public Prosecutions or a prosecutor acting on instructions to withdraw a charge before a plea or stop a prosecution after a plea with the Director of Public Prosecutions' consent.

[34] In my view, I do not have the power to direct the prosecuting authority on how to exercise its discretion. The proper course is to remit the matter to prosecution authority for a fresh decision on whether to withdraw the case against the appellant or not.

⁹ 2016 (2) SACR 700 (GJ).

[35] It is trite that courts must not usurp discretionary powers entrusted to other branches and must be conscious of the limits of the judicial function.

[36] In *Nzuza v National Director of Public Prosecutions*,¹⁰ the court held that review of prosecutorial decisions is confined to legality and that courts do not sit as appellate bodies over the NPA's discretionary judgments.

[37] This Court cannot therefore order withdrawal of charges against the applicant.

[38] Finally, in my view, the relief sought in the notice of motion is procedurally incompetent in a motion court. It is trite that criminal proceedings must be held in the presence of the accused person. It is not desirable to hold criminal proceedings in a motion court in the absence of the accused person.

[39] Again, it is my view that co-accused are entitled to indicate whether they oppose any application brought by the state or by a co-accused. They cannot do so in a motion court, where they are expected to file papers.

[40] In conclusion I must repeat, the relief sought by the applicant is incompetent in the motion court and must be brought before the trial court in the presence of all accused persons. In addition, it is my view that the applicant failed to make a case for the relief sought in the notice of motion.

[41] The application must be dismissed on all prayers in the notice of motion and the alternatives.

Order

[42] I make the following order:

42.1. The application is dismissed.

42.2. The Applicant is ordered to pay the costs of this application including the costs of senior counsel where so employed on scale C.

¹⁰ [2024] ZAGPPHC 372.



D. MAKHOB
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Date of hearing: 25 August 2026

Date of Judgment: 10 September 2026

For the Applicant: Adv AD Ramagalela
Instructed by: Shemaya Vengesa Attorneys

For the First, Fourteenth
and Fifteenth Respondents: Adv P Hemraj SC
Adv HM Barnardt
Instructed by: State Attorney, Pretoria