**THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

**JUDGMENT**

**Reportable**

Case No: 145/2017

In the matter between:

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| **PIENAAR VAN HEERDEN** | **FIRST APPELLANT** |
| **ANTHEA LYNETTE VAN HEERDEN** | **SECOND APPELLANT** |

and

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| **THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS** | **FIRST RESPONDENT** |
| **ANDRE CHARL VAN HEERDEN** | **SECOND RESPONDENT** |
| **BRITISH AMERICAN TOBACCO PLC** | **THIRD RESPONDENT** |
| **BRITISH AMERICAN TOBACCO RETIREMENT FUND** | **FOURTH RESPONDENT** |

**Neutral Citation:** *Van Heerden & another v NDPP & others* (145/2017) [2017] ZASCA 105 (11 September 2017)

**Coram:** Navsa ADP, Bosielo JA, Lamont, Molemela and Fourie AJJA

**Heard:** 15 August 2017

**Delivered:** 11 September 2017

**Summary:** Application for permanent stay of prosecution – extraordinary remedy – complaint that the right to have trial begin and conclude without reasonable delay infringed – many years of postponements and delays – material and substantial part of delays due to the State – dishonest conduct by the State – appropriate remedy for infringement of Constitutional right.

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**ORDER**

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**On appeal from**: Western Cape Division of the High Court, Cape Town (Weinkove AJ sitting as court of first instance):

1 The appeal is upheld and the first respondent is ordered to pay the appellants' costs including the costs of two counsel.
2 The order of the court below is set aside and replaced with the following:
'1 The prosecution against the first and second applicants instituted under the office of the Western Cape Director of Public Prosecutions with reference no. 9/2/17(1)-139/12 and encompassing the dockets under or together with the police reference Milnerton CAS 820/02/2010 is permanently stayed.
2 All the restraint orders (under case no. 16910/2011) related to the applicants' assets are set aside.
3 The second respondent is ordered to release to the applicants all the assets of the applicants in his control together with any interest accrued thereto.
4 The first respondent is ordered to pay the applicants' costs including the costs of two counsel.'

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**JUDGMENT**

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Navsa ADP (Bosielo JA, Lamont, Molemela and Fourie AJJA concurring)

[1] This appeal is directed against a judgment of the Western Cape Division of the High Court, dismissing with costs, an application by the appellants, Mr Pienaar Van Heerden and his wife Ms Anthea Lynette Van Heerden, for orders, inter alia, in the following terms:

(a) setting aside earlier restraint orders granted against them by that court on 18 August 2011 and 5 October 2011,under The Prevention of Organised Crime Act 121 of 1998 (POCA );

(b) directing the second respondent, Mr Andre Charl Van Heerden, appointed as a curator bonis in terms of the provisions of POCA, to release all their assets under his control together with any interest accrued thereto;

(c) permanently staying the prosecution against them, instituted under direction of the Office of the Western Cape Director of Public Prosecutions under case no 9/2/17(1)-139/12 and encompassing the dockets under or together with police reference Milnerton CAS 820/02/2010.

[2] The primary question in this appeal, which is before us with the leave of the court below, is whether the appellants are entitled to what they themselves acknowledge is the 'extraordinary relief of an order permanently staying a criminal prosecution', instituted against them by the first respondent, the National Director of Public Prosecutions (the NDPP). The associated question relates to their assets as foreshadowed in the order set out in (a) and (b) above.

[3] The detailed background against which the present appeal is to be adjudicated is set out hereafter. The timeline and the reasons for delays and postponements are of particular importance.

[4] Until their dismissal in March 2010, the period relevant to the present appeal, the appellants were both employed by the third respondent, British American Tobacco South Africa (Pty) Ltd (BATSA), a company that manufactures and sells cigarettes. They were both initially employed during the 1980s by BATSA at its Paarl factory, with Mr Van Heerden working in the quality control section and Ms Van Heerden as a secretary. They were subsequently transferred to BATSA's Heidelberg factory during 2007/8, which is where they were employed at the time of the events that are central to their prosecution.

[5] In 2008 Mr Van Heerden was appointed as head of quality control at the company's Heidelberg factory. His duties included, inter alia, dealing with and resolving market complaints, despatching cigarettes to be tested at the BATSA laboratory in Stellenbosch, the distribution and control of sampling runs of new cigarettes, including the forwarding of new branded products to the said laboratory. Ms Van Heerden worked in the Human Resources department.

[6] After the appellants returned from holiday in January 2010, Mr Van Heerden was accused by BATSA of the theft of cigarettes. He was summarily suspended and subjected to disciplinary proceedings by BATSA after which his services were terminated. During March 2010 the second appellant's services were also terminated.

[7] On 18 August 2011 the NDPP, in anticipation of criminal charges to be preferred against the appellants, applied for and obtained a provisional restraint order in terms of the provisions of s 25(1)(b) of POCA.[1] The provisional restraint order was made final on 5 October 2011. The restraint order prevented the appellants from dealing in any manner with virtually all their property. The property under attachment consisted of cash in an amount of R2 106 922.86 as at 11 May 2015.

[1] Section 25(1)*(b)* provides that a high court may exercise the powers conferred on it by s 26(1) of POCA, namely, prohibiting a person specified in the order from dealing in any manner with any property to which the order relates. Such an order may be granted when the court is satisfied that a person is to be charged with an offence and it appears to the court that there are reasonable ground for believing that a confiscation order may be made against such person.

[8] The appellants appeared in the Magistrates' Court, Cape Town on 29 August 2011, where they were charged with the theft of hundreds of boxes of cigarettes which the State alleged were valued at R5 million. In its answering affidavit in the court below, the State had reduced that value to R3 470 000. On the same day the appellants applied for and obtained bail. Prior to obtaining bail, they had been incarcerated for three days.

[9] In September 2011 five more accused were charged together with the appellants. On 25 November 2011, the magistrates' court was informed that the investigation was incomplete and that the State required a postponement for three months. It appears from the brief notes made by the magistrate that the State intended to obtain an instruction from the NDPP.[2] This was probably in relation to charges to be preferred in terms of the provisions of POCA, which would include the racketeering[3] and money laundering[4] charges which the appellants were ultimately presented with. The matter was postponed until 2 March 2012 with a note indicating that the postponement was 'final'.

[10] On 2 March 2012, six months after the appellants' first appearance in court, the court noted that the matter had been postponed to enable a decision by the NDPP and to finalise investigations. The investigations had not been finalised and there was no decision by the NDPP in relation to the POCA charges, which the State

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[2] Section 2(4) of POCA states that a person shall only be charged with offences relating to racketeering charges as contemplated in subsection 2(1)*(f)* if such a prosecution is authorised by the National Director.

[3] '**Pattern of racketeering activity'** in terms of s 1 of POCA 'means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1'. Section 2 of POCA sets out offences relating to racketeering activities. It provides, amongst others, that any person who receives or retains any property derived, directly or indirectly from a pattern of racketeering activity, and knows or reasonably ought to have known that such property is so derived, shall be guilty of an offence.

[4] Section 4 of POCA bears the title 'Money laundering'. It provides, inter alia:

'Any person who know or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and –

*(a)* enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

*(b)* performs any other act in connection with such property, whether it is performed independently or in concert with any other person. . .'

intended to include in the charge sheet. The magistrate's notes recorded the following:

'it seems that the State did not do much more since the last appearance. . .'

The court recorded that it was an 'unacceptable situation'. The magistrate's handwritten notes state the following:

'It is unheard of that the court must make an order . . . to compel [defence] to assist state in their investigation. Matter on roll finally for [further investigation] [and] NDPP decision. State is not finished with their investigation [and] no decision is available.

Court is of opinion that State had enough time to finalize their investigation [and] [request] for remand is denied.'

The State required a further postponement. Shortly thereafter the prosecutor informed the court that the State was not in a position to complete the charge sheet and after enquiry he was instructed by his seniors to proceed only with the theft charge. He would not require the approval of the NDPP to proceed on the POCA charges and on that basis requested the matter to be transferred to the Khayelitsha Regional Court (Priority Court)[5]. Counsel for the accused noted no objection and all appeared to have been of the view that a charge sheet on the more restricted basis would be provided. The matter was transferred with the court stating the following:

'State is instructed to provide defence with a charge sheet on or before the end of the court day (16h00) on 19/03/2012.'

[11] The appellants appeared for the first time on 23 March 2012 with their co-accused in the Khayelitsha Regional Court, to which the matter had been transferred, before magistrate Venter, ostensibly to enable the State to proceed with the prosecution on the theft charge as a matter of priority. On that day and immediately, the court was informed that the State intended to include racketeering charges in terms of s 2 of POCA. To that end the matter was postponed to 4 May 2012. The events and the State's conduct referred to in this and the preceding paragraph are significant and are aspects to which I shall revert in due course.

[12] On 4 May 2012 magistrate Venter recorded that the matter was being postponed to 6 July 2012 for racketeering charges to be added. On that day the magistrate was informed that authorisation had been obtained from the NDPP for the

[5] Given the delays and the conduct that followed the reference to a 'priority court' is ironic.

inclusion of racketeering charges. The matter was then postponed to 27 September 2012. One of the appellants' co-accused (accused 4) had engaged a new legal representative who sought time to acquaint himself with the matter which required a postponement to 19 November 2012.

[13] Accused 6's legal representative informed the court on 19 November 2012 that he had made representations pertaining to a possible Plea and Sentence agreement and was awaiting the outcome. The matter was postponed by magistrate Venter to 8 and 9 April 2013. On the first of the scheduled trial dates, the prosecutor was indisposed and the trial could not proceed. The case was then postponed to 19 and 20 August 2013 for trial. On 19 August 2013 the matter did not proceed. No reason is indicated in the magistrate's notes. A further postponement ensued until 11 September 2013. On that day the court was informed that accused 3 had switched legal practitioners. The matter was once again postponed for trial which was scheduled to run from 10 to 14 February 2014.

[14] In the interim, on 6 February 2014, accused 6 concluded a Plea and Sentence agreement with the State, in terms of s 105A of the Criminal Procedure Act 51 of 1977 (CPA)[6] in relation to a charge of a contravention of s 2(1)*(e)* of POCA, 21 counts in relation to s 4 of POCA and one count of theft and undertook to testify against his co-accused, including the appellants.

[15] During February 2014, shortly before the trial was due to commence, the appellants served a lengthy and comprehensive document requesting further particulars and documentary evidence and gave written notice of an intention to object to the charge sheet, relying on a judgment delivered in the KwaZulu Natal Division of the High Court, Durban, namely, *Savoi & others v National Director of Public Prosecutions & another* (8006/12) [2013] ZAKZPHC 19; [2013] 3 All SA 548 (KZP). In the notice the appellant indicated that the judgment was on appeal to the Constitutional Court and that judgment by the Constitutional Court was pending.

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[6] Section 105A(1)*(a)*(i) reads as follows:
'(1)*(a)* A prosecutor authorised thereto in writing by the National Director of Public Prosecutions and an accused who is legally represented may, before the accused pleads to the charge brought against him or her, negotiate and enter into an agreement in respect of –
(i) A plea of guilty by the accused to the offence charged or to an offence of which he or she may be convicted on the charge. . .'

[16] It was thus inevitable that the trial would not commence as scheduled. On 10 February 2014 the matter was postponed to 14 April 2014, awaiting the judgment in the Constitutional Court. On 20 March 2014 the Constitutional Court delivered judgment in *Savoi & others v National Director of Public Prosecutions & another* 2014 (1) SACR 545 (CC), confirming the constitutionality of the provisions of s 2(1) of POCA.

[17] The State responded to the appellants' request for further particulars on 11 April 2014. On 14 April 2014 the appellants requested a postponement to consider the State's reply to their request for particulars and documentation. The matter was postponed to 4 November 2014 with trial dates set during that month. On 17 October 2014, three weeks before the scheduled trial date, the appellants served a notice in terms of s 85 of the CPA[7] objecting to the charges.

[18] On the day on which the trial was scheduled to start, the appellants submitted written submissions concerning the State's response to the request for further particulars, which it was alleged was wholly unsatisfactory and formed the basis for the contention that the charges against the appellants should be quashed. I pause to record that in the response to the appellant's request for further particulars dated 11 April 2014, the following appears:

'The State has requested BATSA to indicate if they are able to supply the defence with the documents requested. BATSA has provided the documentation as attached.'

It is common cause that no documentation was in fact attached to the response. Nothing appears to have come of the State's request to BATSA to provide the required documentation. The State required a postponement in order to reply to the appellants' written submissions. The matter was postponed to 17 November 2014. On that day the parties presented their arguments, with the State submitting that the objections were not valid and, in the alternative, that should the court hold to the contrary, the State should be afforded an opportunity in terms of s 84(2)(a) and/or s 87(1)(a) of the CPA to deal with identified defects in the charge sheet.

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[7] Section 85 of the CPA provides that an accused may, before pleading to charges, object to the charges on the grounds set out therein which includes that the charges do not comply with the provisions of the Act relating to the essentials of a charge, that they do not disclose offences and that they do not contain sufficient particulars.

[19] Without adjudicating on the objection to the charge sheet and dealing with the respective submissions of the parties, magistrate Venter refused a 'postponement' and struck the matter from the roll without indicating why. At this stage, as is evident from what is set out above, magistrate Venter's involvement in the matter had stretched beyond a period of two-and-a-half years, to which should be added a further period of seven months before the matter was transferred to the Khayelitsha Regional Court.

[20] The appellants' attorney addressed a letter to the State on 13 March 2015, seeking the release of their assets from the restraint order and wrongly declaring that the charges against them had been quashed. The State's response was that the charges had not been quashed. Paragraphs 4-6 of the State's letter dated 18 March 2015 bear repeating:

'4. The prosecution team of the Organised Crime Unit regrets the delay in re-instituting the charges against your client and assures you that no malice is intended on their part. The prosecution team has advised that the charges are indeed going to be re-instituted. At present the charge sheet is being re-drafted, specifically as to who and what formed the enterprise in this particular matter. You will recall it was the issue of the formulation of who the enterprise was, namely BATSA, that magistrate Venter had a problem with on 17 November 2014.

5. The prosecution team has undertaken to have an amended charge sheet drafted and that your clients are brought before court for the absolute latest by, Friday 17 April 2015.

6. Advocate Q B Appels is now dealing with this matter and will inform you when the charge sheet is completed and forwarded to the National Director of Public Prosecutions office for authorisation. He has further advised that his offices are eager to finalise this matter.'

I pause to note that more than three and a half years after the arrest of the appellants the State was still attempting to finalise a charge sheet. Furthermore, a period of five months had by now elapsed since the matter was struck from the roll. That, however, was not the end of the State's tardiness.

[21] The deadline of 17 April 2015 was not met by the State. The authorisation by the NDPP to amend the charge sheet was only issued on 30 July 2015. This is close to four years from the time of the appellants' first appearance in the Cape Town Magistrates' Court. Advocate Appels, referred to in the letter set out above, arranged

with the clerk of the court for a date on which the State would proceed with the prosecution, namely 4 September 2015. An 'amended' charge sheet was presented to the appellants before that date, to which they once again objected. According to the appellants the charge sheet was virtually the same as the one that had previously been objected to. It appears to be common cause that the changes were minimal. On 4 September 2015 magistrate Harmse was incorrectly informed on behalf of the appellants that the matter had been removed from the roll by magistrate Venter in terms of s 342A of the CPA and that the matter could only be re-enrolled with the authorisation of the NDPP in terms of s 342A(3)[8] thereof. The State contended before magistrate Harmse that no enquiry in terms of s 342A of the CPA had been conducted. The magistrate disagreed and struck the matter from the roll.

[22] I interpose to state that counsel on behalf of the appellants vigorously attempted to persuade us that what in fact had occurred before magistrate Venter, when he struck the matter from the roll, was an enquiry in terms of s 342A(3). That contention is utterly unsustainable. It is quite clear that argument was presented only on the objection to the charge sheet and that adjudication on that aspect was awaited. That did not materialise. The options provided for in s 342A(3) were not considered or dealt with in argument by the appellants or the State nor were they reflected in the order by the magistrate. There was no basis for what the defence

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[8] Section 342A(3) reads as follows:
'If the court finds that the completing of the proceedings is being delayed unreasonably, the court may issue any such order as it deems fit in order to eliminate the delay and any prejudice arising from it or to prevent further delay or prejudice, including an order –
(a) refusing further postponement of the proceedings;
(b) granting a postponement subject to any such conditions as the court may determine;
(c) where the accused has not yet pleaded to the charge, that the case be struck from the roll and the prosecution not be resumed or instituted *de novo* without the written instruction of the attorney-general;
(d) where the accused has pleaded to the charge and the State or the defence, as the case may be, is unable to proceed with the case or refuses to do so, that the proceedings be continued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed;
(e) that –
(i) the State shall pay the accused concerned the wasted costs incurred by the accused as a result of an unreasonable delay caused by an officer employed by the State;
(ii) the accused or his or her legal adviser, as the case may be, shall pay the State the wasted costs incurred by the State as a result of an unreasonable delay by the accused or his or her legal adviser, as the case may be; or
(f) that the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.'
(Date of commencement of subsection (e) not yet proclaimed.)

submitted before magistrate Harmse. The contention is also belied by the letter of the appellants' attorney to the State, referred to in para 20 above, indicating that magistrate Venter had quashed the charges, for which also there was no justification. The manner in which the defence was conducted on these aspects is unsettling.

[23] Simply put, the order of magistrate Venter striking the matter from the roll is inexplicable. Magistrate Harmse, apparently under the misapprehension that there had been an enquiry in terms of s 342A(3), struck the matter from the roll a second time. Confusion worse confounded. By this time, more than four years had passed since the appellants first appeared in court. All the while their assets were under restraint.

[24] During September 2015 and October 2015 correspondence was exchanged between the appellants' legal representatives and the State concerning the constitutional validity of the restraint order. During that period advocate Appels, who had been tasked with the prosecution, was overburdened with other complex prosecutions and was unable to give his attention to the case involving the appellants. During argument before us, we were informed that this was due to severe prosecution understaffing.

[25] In December 2015 the appellants launched the application which is the subject of this appeal in the Western Cape Division of the High Court, Cape Town. The matter was argued during March 2016 and judgment delivered on 16 March 2016.

[26] From the limited documentation provided by the State and their assertions in the answering affidavits, the charges appear, at least in part, to be related to consignments of cigarettes delivered under the authority and/or directions of the appellants in co-operation with their co-accused. According to the affidavit attested to by accused 6, who, it will be recalled agreed to testify against his co-accused including the appellants, he worked with Mr Van Heerden when damaged or defective cigarettes were returned to BATSA by retail clients. According to accused 6, Mr Van Heerden who received the retuned cigarettes would then despatch twice

the number being returned so that he and accused 6 could benefit from the surplus. Accused 6 also stated that cigarettes were sent to his home by Mr Van Heerden. This, of course, one can safely assume will be at least part of the State's version of events.

[27] At this stage it is necessary to consider, in some detail, the material parts of the appellants' case gleaned from the founding affidavit.

[28] At the outset the appellants contended that no 'negligence or wrongful actions' on their part led to the trial delays set out above. They allege that they requested further information as and when it became available. As an example they state that BATSA submitted an insurance claim in relation to the loss of the cigarettes in question and when they became aware of it they requested the information. They also assert that they had sought vital information from BATSA which was not forthcoming and that the State was unhelpful in that regard. The appellants were adamant that vital information had been withheld by the State which hampered them in their defence. The appellants insist that documentation on Mr Van Heerden's work computer and the BATSA system was essential to their defence and that, far from engaging in unlawful activity, Mr van Heerden was merely acting on instructions contained in emails and that these documents were denied them.

[29] It was contended on behalf of the appellants that magistrate Venter's refusal of the State's request for a postponement in November 2014, and the consequent striking from the roll implied that a fair trial was impossible. At the heart of the appellants' case are the contentions that due to the very many delays and the paucity of information supplied by the State, including a defective charge sheet, they have in effect been denied a fair trial. In this regard, they rely on their constitutional right to a fair trial entrenched in s 35(3) of the Constitution, which includes the right to have their trial begin and conclude without unreasonable delay.

[30] One of the complaints that the appellants raises is that the 'criminal enterprise',[9] which according to the State, the appellants are accused of being

[9] Enterprise is defined in s 1 of POCA as follows:

engaged in as part of a pattern of racketeering activity, within the provisions of POCA, is alleged to be BATSA itself and that this is absurd. It appears from the limited information made available by the State, that its case in this regard is that the appellants and their co-accused used BATSA's processes and premises to engage in the criminal conduct with which they were charged. They held out that they were acting as BATSA and that therefore the criminal enterprise that the appellants were engaged in was BATSA.

[31] The NDPP, in resisting the application, denied that the State failed to ensure that the appellants will have a fair trial. In respect of count 4, namely the theft of 160 boxes of cigarettes, the State insisted that all the information in its possession had been provided. According to the NDPP the State's case in relation to the theft charges is based on direct evidence, either oral or documentary and that the e-mail correspondence which Mr Van Heerden contends is vital does not form part of its evidentiary material.

[32] The NDPP responded to Mr Van Heerden's allegations that whilst at BATSA he worked on instructions that were delivered by e-mail and that the unlawful actions he was accused of were not so but were rather pursuant to instructions from BATSA via e-mail and that access to his emails, which he was being denied, was vital to his case. The response also encompassed his assertions that he was denied company registers or documents in relation to cigarettes that had been despatched from the factory that proved that no theft had occurred. Mr Van Heerden also referred to BATSA's standard procedures in respect of damaged or defective cigarettes, which he insisted proved that they are then considered *res nullius* with the consequence that BATSA's ownership had ceased and that there could thus be no theft. Mr Van Heerden was adamant that accounting and other records kept by BATSA, access to which he was denied, would prove his innocence. It was pointed out on behalf of the NDPP that Mr van Heerden's work computer had been seized by BATSA and not by the police. The NDPP stated emphatically that the State supplied all of the information and documentation within its possession to the appellants. The following part of the NDPP's answering affidavit bears repeating:

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'any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity.'

‘The contents of this paragraph are denied. The respondent has supplied the applicants with all the information and documents which are in its possession and which it intends to use during the trial. The documents were supplied as they became available. It is submitted that the matters raised . . . are matters which can be raised during cross-examination of the relevant witnesses during the trial. It is submitted in addition that only the trial court will be in a proper position to consider whether the alleged lack of any documents or other information will have resulted in an unfair trial for the applicants or failure to prove the State’s case beyond responsible doubt.’

[33] In relation to the uplifting of the restraint order, the appellants explained that as a result of their loss of employment and the extended duration of the proceedings referred to above, they have been severely prejudiced and that their finances are in a parlous state. They were forced to leave Heidelberg and settle in Oudtshoorn where their attempt at running a business resulted in failure. Ms Van Heerden presently conducts a modest business of her own which supplies her with an income of approximately R5000 per month. They were also burdened with supporting an adult child presently incapable of caring for herself and have had the care of a granddaughter entrusted to them by an order of court. This, they say, places an intolerable financial burden on them due to their assets being placed beyond their reach in the hands of the curator referred to above.

[34] Furthermore, the appellants complained that although the NDPP, in obtaining the restraint order, alleged that the known benefits derived from the crimes allegedly committed by them was R2,72 million, the subsequent charges properly analysed indicates that they benefited no more than an amount of R434 500. They contended that the restraint order is therefore disproportionate in the extreme.

[35] The NDPP responded to the complaints concerning the restraint order and the appellants’ alleged parlous financial circumstances. The NDPP stated that the charge sheet contains specific charges of theft by the appellants, involving a total number of 347 boxes of cigarettes worth approximately R3 470 000 and that the amount involved in the money-laundering charges against them involve a value of R393 500. The NDPP asserts that the appellants are clearly in error in this regard.

In relation to the appellants' complaint that the restraint order has rendered them destitute, the NDPP's response is that they did not provide monthly affidavits to the curator as required in respect of their financial position. The NDPP contended that the appellants have been economical with the truth.

[36] The application in the court below was heard by Weinkove AJ who wrote a three-and-a-half page judgment, culminating in the order dismissing the application with costs. The court in deciding the matter referred to an earlier application by the appellants in that division for an order varying the restraint order, which it considered to be crucial. In that application the appellants had sought to be paid an amount of R23 579 per month for living expenses as well as R25 000 per month for legal expenses. The application for the release of funds, brought in terms of s 26(6) of POCA,[10] was heard by Rogers J, who dismissed the application, essentially on the basis that it was clear that the appellants had not made full disclosure of all their assets. Rogers J noted that the appellants had also not provided, as required by the restraint order, monthly income and expenditure statements. Rogers J had regard to two prior release from restraint applications that had been brought by the appellants in which they had made sworn disclosures of their assets. He had regard to inconsistencies in relation to their version of how Ms Van Heerden funded her business initially when she set it up in partnership with someone else. He also questioned how the substantial loan accounts in that business had been repaid with the alleged meagre income. Rogers J considered how the business the appellants had set up, which failed, could have been set up with the capital required without the provision of suretyships, about which nothing was said by them. No financial accounts had been provided. He questioned the lack of explanation in the papers filed by the appellants in the initial restraint application concerning the proceeds of immovable property they had owned in Paarl and which had been sold by them.

[10] Section 26(6) of POCA provides:
'Without derogating from the generality of the powers conferred by subsection (1), a restraint order may make such provisions as the High Court may think fit –
*(a)* for the reasonable living expenses of a person against whom the restraint order is being made and his or her family or household; and
*(b)* for the reasonable legal expenses of such person in connection with any proceedings instituted against him or her in terms of this Chapter or any criminal proceedings to which such proceedings may relate,
If the court is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property.'

Rogers J expressed surprise at how rapidly the appellants had paid off their bond on property they had purchased in Heidelberg. He held it against the appellants that they had failed to provide bank statements for a reasonable period prior to the application he was adjudicating. In the result Rogers J dismissed the application with costs.

[37] In the view of Weinkove AJ the application before him, in the face of the refusal by Rogers J for a variation of the restraint order, was 'ill-conceived and opportunistic'. He took the view that part of the delay in finalising the prosecution of the appellants was because it suited them to await the judgment of the Constitutional Court in *Savoi*. Weinkove AJ had regard to the fact that the authorisation by the NDPP in relation to the amendment of the charge sheet, referred to above, had now been granted by the NDPP and allowing the matter to be re-enrolled for finalisation. The following are the last three paragraphs of the judgment which includes the order referred to at the beginning of this judgment:

'14. In any event, granting a permanent stay of prosecution is a draconian step to take and should only be done under compelling circumstances. These circumstances have not been demonstrated.

15. I find that the applicants have failed to justify an order either rescinding the Restraint Order or granting a permanent stay of the prosecution in this matter.

16. In the result, the applications to rescind the Restraint Order and to permanently stay the prosecution of the applicants are dismissed with costs.'

[38] Before us the appellants contended that the court below had failed to consider relevant factors in relation to the application for a permanent stay of prosecution and treated it as if it was an application for the release of funds in terms of s 26(6) of POCA. They complained that a period of six years had elapsed since the opening of the police docket and a period of 5 and a half years after the arrest of the appellants and the seizure of all their property. This, as alluded to above, they submitted is in conflict with their rights to a trial within a reasonable time guaranteed in terms of s 35(3) of the Constitution. That section of the Constitution also entrenches the rights of arrested and accused persons to be informed with sufficient detail of charges so as to answer them. They contended that the restraint order 'which has deprived the appellants of virtually all their assets (including the first appellant's pension), has the

effect of materially exacerbating the prejudice suffered by [them]'. They pointed to their advanced age, their difficulty in earning an income, their having to look after and support their grandchild and 'the creeping delay that has eroded any money they may have possessed and forced them to take food hand-outs from the church'. The appellants contended that the inadequate information supplied by BATSA and the State offended against their right to a fair trial. In support of their contention that their constitutional rights have been infringed, the appellants relied on *Sanderson v Attorney General Eastern Cape* [1997] ZACC 18; 1998 (2) SA 38 (CC)

[40] In granting leave to appeal Weinkove AJ candidly stated that he might have misunderstood the issues he had been called upon to adjudicate. The parties were in agreement that the judgement was unhelpful, with the State submitting that the order dismissing the application was nevertheless sound.

[41] It is necessary to record that on 11 October 2016 the appellants applied to the high court (Gamble J) for an order for the release of living and legal expenses in order to prosecute the present appeal. The order was granted and the second respondent, the curator, was ordered to release a lump sum of R469 120.00 for legal expenses and a monthly amount of R20 000.00 from October 2016 for household and living expenses. This has to be seen against the second report of the curator dated 11 May 2015 confirming the assets under his control. I consider it necessary to reproduce it in full:

'I, the undersigned, Andre Carl van Heerden, of Bedford Trust, confirm that I was appointed Curator Bonis in these proceedings in terms of an Order handed down by this Honourable Court on the 18th August 2011.

The purpose of this report, which is to be read in conjunction with my first curator's report dated the 20th September 2011, is to confirm the extent of the assets currently in my possession and/or under my control.

1. **R270 000.00 IN TRUST – INVENTORY ITEM 001**

These funds were receipted on the 23rd August 2011 and have been invested in a call deposit account.

**2. BMW X3 – CG 6461 – INVENTORY ITEM 003**

This motor vehicle was sold at public auction pursuant to the Court Order of 12 March 2012, which was granted by agreement between the parties, and the net proceeds in the amount of R142 954.82 have also been placed on fixed deposit.

**3. CAPITEC BANK (DISCLOSED BY RESPONDENTS)**

The amounts of R114 934.00 and R426 55 were receipted from Capitec Bank on 16th February 2012, and these funds are likewise on fixed deposit.

**4. SANLAM PRESNION FUND (DISCLOSED BY RESPONDENTS)**

An amount of R1 396 386.33 was receipted to the estate account on the 30th March 2012, in respect of the First Defendant's pension, and placed on fixed deposit.

**5. ACCRUED INTEREST & CURRENT NET POSITION**

Interest income to date amounts to R182 221.16 and there is thus a total of R2 106 922.86 currently under the control of the Curator Bonis.'

[42] We were informed by counsel during the hearing of the present appeal that an amount of approximately R400 000.00 is all that remains of the assets under the curator's control. It should be borne in mind that in the ex parte application to obtain the provisional restraint order the benefit the appellants were said to have obtained as a result of their alleged criminal conduct was approximately R2 720 000

[43] In the present case the appellants explained how they paid off the bond on their house and said that they would have provided the explanation to Rogers J if they had been called upon to do so. It is uncontested, however, that the monthly reports were not supplied to the curator.

[44] It is also necessary to record that from the charge sheet presented in the regional court it appears that the events on which the charges were based covered a period stretching back to January 2009, which means that a period of more than eight and half years has passed since the first offence is said to have been committed. For completeness I note from the affidavit supplied by accused 6 that he was convicted in terms of the Sentence and Plea agreement as follows:

1. One count of Racketeering
2. One count of theft
3. 21 counts of money laundering

He was sentenced to various terms of imprisonment, conditionally wholly suspended and ordered to pay an amount of R750 000, being the benefit that accrued to him as a result of his admitted criminal conduct. He was also sentenced to correctional supervision in that he was required for two years to perform community service of no

less than 24 hours per month, the conditions of which were to be determined by the Commissioner of Correctional Services. As can be seen, he was, in effect not required to serve any term of imprisonment.

[45] I now turn to deal with whether the appellants are entitled to the preferred relief sought by them. In *Wild & another v Hoffert NO & others* [1998] ZACC 5; 1998 (2) SACR 1 (CC) the Constitutional Court described an application for a permanent stay of prosecution as an extraordinary remedy.[11] That does not mean this relief cannot be granted in appropriate circumstances. The first step in considering whether a permanent stay of the prosecution is appropriate relief in terms of s 38 of the Constitution[12], is to determine whether there has indeed been an infringement of the appellants' right to a trial within the reasonable time provided for in s 35(3)*(d)* as a component of the right to a fair trial.

[46] In *Wild* the Constitutional Court found that a considerable period of the delay complained of was due to the appellants themselves. It also had regard to the fact that no trial prejudice had been alleged and held that a stay of prosecution could not be granted in the absence of trial related prejudice or extraordinary circumstances.[13]

[47] In *Sanderson*, the Constitutional Court was faced with an accused person complaining about a breach of his constitutional right to a public trial within a reasonable time after having been charged. In that regard he relied on s 25(3)(a) of the interim Constitution. The Constitutional Court took care to consider why the right to a trial within a reasonable time was included in the Constitution and what kind of interests it intended to protect. In para 21 the Constitutional Court noted that the right to a trial within a reasonable time is expressly cast as an incident of the right to a fair trial.[14] The court stated that the presumption of innocence is a relevant consideration

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[11] See para 11.

[12] The material part of s 38 of the Constitution provides:
'Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights.' The list includes persons, like the appellants, acting in their own interest.

[13] Paras 26 and 27.

[14] The same applies to s 35(3)*(d)* of the Constitution which provides:
'(3) Every accused person has a right to a fair trial, which includes the right –
a.
b.

but that has to be seen against an accused person being subject to various forms of prejudice and penalty by virtue of being an accused. Socially, doubt is cast on an accused person's integrity and conduct. Being subject to arrest and trial is disruptive and has an impact on one's personal life. The invasion of liberty brought about by incarceration and bail conditions is a very real form of prejudice to which an accused person is susceptible. The prejudice referred to in this paragraph is non-trial related.[15]

[48] The court in *Sanderson* noted that the right to a trial within a reasonable time is fundamental to the fairness of a trial. It went on to consider how a determination is to be made of whether a particular lapse of time is reasonable. In arriving at a conclusion the court warned that regard should be had to the imperfections in the administration of criminal justice in our country, including those of law enforcement and correctional agencies. It acknowledged that they were all under severe stress.

[49] In *Sanderson* it was stated that the amount of elapsed time was central to the enquiry. The following part of the judgment is important:

'[T]ime has a pervasive significance that bears on all the factors and should not be considered at the threshold or, subsequently, in isolation.'[16]

[50] Kriegler J, in *Sanderson*, stated that the relevant considerations are not only conditioned by time, but that time is conditioned by them. He referred to the factors generally relied upon by the State to diminish the effect of elapsed time. Generally these are waiver of time periods, time requirements inherent in the case and systemic reasons for the delay. As to how courts should approach the lapse of time the following is said at para 30:

'The courts will apply their experience of how the lapse of time generally affects the liberty, security and trial-related interests that concern us. Of the three forms of prejudice, the trial-related variety is possibly hardest to establish, and here as in the case of other forms of prejudice, trial courts will have to draw sensible inferences from the evidence. By and large,

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c.
d. to have their right begin and conclude without unreasonable delay.'

[15] See *Sanderson* at para 23.
[16] Para 28.

it seems a fair although tentative generalisation that the lapse of time heightens the various kinds of prejudice that s 25(3)*(a)* seeks to diminish.'

[51] The court in *Sanderson* thought that the nature of the prejudice suffered by an accused is the first of the most important features bearing on the enquiry presently under discussion. This, said the court, would be considered on a continuum from incarceration through restrictive bail conditions and trial prejudice and mild forms of anxiety. In the balancing act the more serious the prejudice, the shorter the period within which the accused is to be tried. The following appears at para 31:

'Those cases involving pre-trial incarceration, or serious occupational disruption or social stigma, or the likelihood of prejudice to the accused's defence, or – in general – cases that are already delayed or involve serious prejudice, should be expedited by the State. If it fails to do this it runs the risk of infringing s 25(3)*(a)*.'

[52] Kriegler J stated that if an accused has been the primary agent of delay he should not be able to rely on it in vindicating his rights to a trial within a reasonable time. An accused, so the court said, should not be allowed to complain about periods of time for which he has sought a postponement or delayed the prosecution in ways that are less formal.[17]

[53] The second factor, according to *Sanderson*, is the nature of the case. In that regard the following appears:

'Judges must bring their own experiences to bear in determining whether a delay seems over-lengthy. This is not simply a matter of contrasting intrinsically simple and complex cases. Certainly, a case requiring the testimony of witnesses or experts, or requiring the detailed analysis of documents is likely to take longer than one which does not. But the prosecution should also be aware of these inherent delays and factor them into the decision of when to charge a suspect. If a person has been charged very early in a complex case that has been inadequately prepared, and there is no compelling reason for this, a court should not allow the complexity of the case to justify an over-lengthy delay.'[18]

[54] The third and final factor set out in *Sanderson* is 'so-called systemic delay'. Under this heading the following was listed:

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[17] Para 33.
[18] Para 34.

'[R]esource limitations that hamper the effectiveness of police investigation or the prosecution of a case, and delay caused by court congestion.'[19]

The court also issued a warning in the following terms:

'Systemic factors are probably more excusable than cases of individual dereliction of duty. Nevertheless, there must come a time when systemic cause can no longer be regarded as exculpatory.'

[55] We are instructed in *Sanderson* that reasonableness requires a value judgment. In making that judgment courts have to be mindful of the 'profound social interest' in bringing a person charged with a criminal offence to trial and resolving the liability of the accused, particularly when a permanent stay of prosecution is being considered. The question in each case, we are told, is 'whether the burdens borne by the accused as a result of delay are unreasonable'.[20] We are also told as judges to be mindful that it is not only the accused's interests that we are concerned with, but that the public interest is also served by bringing litigation to finality.[21] Of course in having regard to all of these factors and considering that the remedy sought by the appellants is extraordinary, what has to be borne in mind as well is the interest of society in bringing suspected criminals to book.[22]

[56] At this stage it is necessary to have regard to the lapse of time, the cause thereof and all the other factors referred to in the preceding paragraphs. As stated earlier, more than seven-and-a-half years have passed since the first of the events alleged by the State, to form part of the charges brought against the appellants. Close to five-and-a-half years have passed since the appellants first appeared in the Magistrates' Court in Cape Town. It is true as appears from the detailed history set out in paras 8 to 25 above that delays were occasioned by what might rightly be termed as systemic delays and that periods of time were lost due to the needs of a number of the appellants' co-accused, the request for further particulars, the State's response thereto as well as the time that passed whilst the parties awaited the decision in *Savoi* (a period of slightly more than two-and-a-half months). A further

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[19] Para 35.
[20] Para 36.
[21] Para 37.
[22] See para 14 of *Sanderson* and para 52 of *Broome v Director of Public Prosecutions, Western Cape & others, Wiggins & another v Acting Regional Magistrate, Cape Town & others* [2007] ZAWCHC 61; 2008 (1) SACR 178 (CPD).

five months were lost when the matter was postponed to enable the appellants to respond to the further particulars supplied by the State. However, a careful consideration of that history also reveals that the State was irresponsibly lax in investigating the case, finalising the charge sheet and moving forward with the prosecution. It is clear that substantial and material parts of the delays were occasioned by the inertia and vacillation of the prosecutors involved on behalf of the NDPP. Three months after the appellants' first appearance in the magistrates' court, the State required a postponement on the basis that the investigation was incomplete and because authorisation was required from the NDPP for the inclusion of racketeering charges. On 2 March 2012, approximately six months after the appellants' first appearance in court a further postponement was sought by the State, once again on the basis that the investigation was incomplete and the authorisation by the NDPP was not yet forthcoming. The magistrate rightly recorded that nothing appeared to have been done by the State in the interim. It also appeared as if the magistrate was displeased with what he considered to be the attitude of the State in seeking to invoke the assistance of the appellants with regard to their prosecution. At that stage the presiding magistrate was inclined to refuse the State a further postponement. The prosecutor then asked for the matter to be transferred to the Khayelitsha Regional Court for the matter to be proceeded with only on the theft charge. If regard is had to the affidavit of accused 6 and the State's insistence that it had at its disposal witnesses to testify in that regard and did not require any documentation, particularly those documents that the appellants were calling for, the envisaged prosecution and trial held out no complexity and ought to have been dealt with expeditiously. In addition, the State had been instructed to provide a charge sheet to the appellants and their co-accused by the end of the day on which the matter had been transferred to the regional court.

[57] Distressingly, the State was disingenuous. It had no intention to proceed on the restricted basis of the theft charge as indicated to the magistrate when it sought a transfer to the Khayelitsha court on a priority basis. It gave that assurance to the court to prevent the matter from being struck from the roll. This admittedly was done after discussion with the office of the DPP in the Province. I shall have more to say on this aspect later in this judgment. Furthermore, the charge sheet it had been instructed by the court to provide was not forthcoming.

[58] No sooner had the matter been transferred to Khayelitsha when magistrate Venter was informed by the prosecutor, contrary to what the magistrate in Cape Town had been told, that the State intended to proceed to include racketeering charges against the appellants and required authorisation in that regard from the NDPP. This necessitated a further delay and a postponement to 4 May 2012. By that time the racketeering charges had not yet been finalised, which necessitated yet another postponement to 6 July 2012. Thereafter systemic delays intruded which included the needs of co-accused and the appellants own request for further particular, the wait for the *Savoi* judgment, the objection to the charge sheet and the rulings by magistrates Venter and Harmse. It will be recalled that they had each struck the matter from the roll.

[59] More than four months after the matter was first struck off the roll charges had not yet been re-instituted. The blame was laid at the door of advocate Appels and his workload. A contemplated amended charge sheet was still not finalised. Given the State's prior experience in this matter and the courts of the magistrates referred to above one would have expected greater urgency and care. During March 2015, as set out in para 20 above, a written undertaking was given by the State that the matter would proceed by not later than 17 April 2015 and that the appellants would be presented with an amended charge sheet. Yet again the State failed to meet a deadline. Authorisation by the NDPP for an amended charge sheet was now awaited. That was only forthcoming on 30 July 2015, almost four years after the appellants' first appearance in court. The reinstitution of charges only proceeded on the 4 September 2015. On that day magistrate Harmse struck the matter from the roll a second time.

[60] From that time until the launch of the application in the court below in December 2015, the State remained inert refusing to release the appellants' property under restraint.

[61] It is quite clear from what is set out above that inadequate consideration, if any, was given by the State to the appellants' rights to a trial within a reasonable

time and that a material and substantial part of the delay was due to the State's tardiness and lack of application and concern.

[62] I turn to deal with the prejudice occasioned to the appellants. It is true that they were incarcerated for only three days. However, in the present case their assets, including pension benefits have been under severe restraint since August 2011 until it was relaxed by Gamble J in 2016. The greater parts of the assets have now been dissipated. The remaining, though diminished parts of their assets, remain under restraint. The personal prejudice is set out earlier in this judgement. It is quite clear that their social standing has diminished and that their finances have been greatly reduced. At the time of the application in the court below they appear to have been living from hand-to-mouth, burdened with the care of their daughter and an infant granddaughter. The lapse of time also has to be considered in relation to their mature years.[23]

[63] Insofar as trial prejudice is concerned, it does not appear as if the State made any serious attempt to obtain the documents they had undertaken to request from BATSA. Having given the undertaking, they adopted a rigid position that their case was not founded on documentation and that whatever information was sought was in BATSA's possession. If the State made no contemporaneous attempt or was unsuccessful in soliciting and obtaining documentation from BATSA, the passage of a considerable period of time will exacerbate rather than ameliorate the position in relation to the availability of the documentation.

[64] It should also be borne in mind that the appellants, having waited for a long time for the charge sheet to be finalised, were at the very least entitled to have their objection to the charge sheet adjudicated upon. A decision in that regard would have ensured at least a degree of finality in relation to the validity of the charge sheet and would have either expedited the further conduct of the case or caused the State to consider its position afresh.

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[23] The charge sheet presented in the district court in Cape Town, which has a 2011 case number, which is the year during which the appellants first appeared in court, indicates that their age at that time was 53. In his founding affidavit signed during December 2015, Mr van Heerden states that he and his wife are 57 years old. Thus they appear presently to be approximately 60-years of age.

[65] Furthermore, the State had sought a transfer to the regional court on the basis that it would proceed only on the charge of theft. On the strength of the NDPP's answering affidavit in respect of the charge of theft and having regard to the eye witnesses it averred it had at its disposal an expeditious disposal of the case could rightly have been in contemplation. The undertaking to the court, in seeking and obtaining the transfer, that the State would proceed on the more restricted basis did not materialise. No sooner had the transfer occurred, when the State changed its position and sought a postponement to include the POCA charges. How, one might rightly ask, is an accused to deal with such vacillating conduct on the part of the State. The undertaking to the court, as will be discussed later, was dishonestly made.

[66] The nature of the case, the second factor referred to in *Sanderson*, has already to some degree been set out above. Having regard to the version of the State in relation to at least a substantial part of the case, no complexity appears to have arisen. The State appears to have been set on proceeding under the provisions of POCA, perhaps because it was concerned to recover the proceeds of what it alleged was the unlawful conduct of the appellants. In simple terms, it appears that the State's case was that the appellants and their co-accused had acted in concert in stealing cigarettes from BATSA. To prove this aspect of the case, they had eye witnesses available to them and do not appear to place any reliance on documentation which might necessitate complex analysis. It does appear that the many delays due to the State were because there had been inadequate preparation, particularly in relation to the POCA charges. The difficulty it appears to have encountered in relation to its description of the criminal enterprise, an aspect not calling for adjudication by us, seems to flow from the fact that the theft in question, on the State's version of its case, does not fall classically within the provisions of POCA, even though technically it might. The charge sheets have undergone a mutation over time and appear recently to have undergone yet another change which is minimal and will no doubt be open to the same challenges as had been brought by the appellants in the past and on which there has as yet been no decision. One might rightly ask how many years are required by the State to finalise a charge sheet.

[67] As appears from the detailed history, some of the delays were due to systemic failures. A number of years after the first appearance of the appellants in the Cape Town Magistrates' Court, those systemic failures do not seem to have abated, including the staff pressures faced by the NDPP.

[68] I return to an aspect foreshadowed above, namely, the conduct of the prosecutor and a senior in the DPP's office in giving the undertaking to the court to proceed on the restricted basis of theft to forestall the matter being struck from the roll. Ms Booysen, who was one of the counsel representing the NDPP before us and who has been a prosecutor for almost four decades, commendably, as an officer of the court, agreed that such behaviour was unacceptable. She described this as a ruse and/or stratagem to avoid the matter being struck from the roll. When it was put to her that it was dishonest, she conceded that it was not the way in which she would have conducted herself. To her credit, she conceded that in the event that it was held to be a significant factor in deciding the matter in favour of the appellants, the NDPP could not justifiably be dissatisfied.

[69] Having regard to the applicable factors on which *Sanderson* is instructive and considering the totality of the circumstances set out above, in my view, the passage of time in this case relative to its facts, was unreasonable. Importantly, the dishonest and unacceptable conduct of the State in facie curiae cannot go unnoticed and must be taken into account in favour of the appellants and against the NDPP, as rightly conceded by counsel. I have taken into account that the relief sought is an extraordinary remedy. In my view and for all the stated reasons, the conclusion is ineluctable that the appellants' right to a trial to begin and conclude without unreasonable delay has been infringed and that the appropriate relief in terms of s 38 of the Constitution is the principal relief sought by them. That conclusion makes it unnecessary to deal with any of the other questions raised on behalf of the appellants and the necessary result is that the assets under restraint are released therefrom.

[70] I cannot stress enough that decisions in matters of this kind are fact specific. It follows that this judgment should not be resorted to as a ready guide in determining the reasonableness or otherwise of delays in the finalisation of trials. Whether a

breach of a right to an expeditious trial has occurred and relief is justified, is to be determined by a court after having been apprised of all of the facts on a case by case basis.

[71] The following order is made:

1 The appeal is upheld and the first respondent is ordered to pay the appellants' costs including the costs of two counsel.
2 The order of the court below is set aside and replaced with the following:
'1 The prosecution against the first and second applicants instituted under the office of the Western Cape Director of Public Prosecutions with reference no. 9/2/17(1)-139/12 and encompassing the dockets under or together with the police reference Milnerton CAS 820/02/2010 is permanently stayed.
2 All the restraint orders (under case no. 16910/2011) related to the applicants' assets are set aside.
3 The second respondent is ordered to release to the applicants all the assets of the applicants in his control together with any interest accrued thereto.
4 The first respondent is ordered to pay the applicants' costs including the costs of two counsel.'

M S Navsa
Acting Deputy President

Appearances:

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|---|---|
| Counsel for Appellant: | W King SC (with him J Engelbrecht)<br>Instructed by:<br>Abrahams & Gross Inc., Cape Town<br>Lovius Block Attorneys, Bloemfontein |
| Counsel for Respondent: | M Titus (with him H Booysen and Q Appels)<br>Instructed by:<br>The National Director of Public Prosecutions, Cape Town<br>The National Director of Public Prosecutions, Bloemfontein |