

**IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG LOCAL DIVISION, JOHANNESBURG**



(1) REPORTABLE: YES/NO  
(2) OF INTEREST TO OTHER JUDGES: YES/NO  
(3) REVISED

**Case number: 02538/2015**

**In the matter between:**

**PAUL NICHOLAS HARTLEY  
And**

**Applicant**

**THE PRESIDING MAGISTRATE  
D COURT KRUGERSDORP MAGISTRATES COURT**

**First Respondent**

**THE PUBLIC PROSECUTOR  
D COURT KRUGERSDORP MAGISTRATES COURT**

**Second Respondent**

**THE DIRECTOR OF PUBLIC PROSECUTIONS  
GAUTENG – THE NATIONAL PROSECUTING  
AUTHORITY**

**Third Respondent**

**THE MINISTER OF JUSTICE & CONSTITUTIONAL  
DEVELOPMENT N.O**

**Fourth Respondent**

**SUMMARY:** Accused in criminal trial brings application for stay of prosecution on charge of assault with intent to commit grievous bodily harm - this application occasioned postponement of proceedings in trial court but none of respondents filed any response or set out in facts in relation thereto – section 342A deals with procedure to be followed and factors to be considered. Superior court without sufficient facts on which to make a decision – trial court is in a position to make an appropriate intervention.

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**JUDGMENT**

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**SATCHWELL J:**

## **INTRODUCTION**

1. Mr Hartley, the applicant, appears in person asking for an order that a criminal prosecution against him of assault with intent to commit grievous bodily harm be stayed. There has been service upon all respondents but only the presiding magistrate has responded thereto – giving notice to abide the decision of this court.
2. The notice of motion and founding affidavit are replete with irrelevant material alleging conspiracies on the part of neighbours and complainants, incompetencies of the SAPS, the prosecution and the magistrate. It has been quite difficult to fathom the true basis of this application and the facts upon which it is based.
3. Regrettably, as I have indicated above, the prosecution in this matter has failed to respond to the averments in the founding affidavit. I am most reluctant to simply accept them unchallenged but note that, although prosecution and the office of the DPP were aware of this application, these functionaries failed to deal therewith.
4. A charge of assault with intent to commit grievous bodily was instituted against Hartley in the Krugersdorp magistrate court on 30<sup>th</sup> August 2013 under case D 2067/13. According to Hartley, he has appeared in court no less than 14 times. It would seem that he has pleaded and that certain witnesses have given evidence. However, the matter has previously been postponed by reason of the non-availability of an interpreter for a witness. At the present time, the trial is adjourned pending the outcome of Hartley's application to this court.
5. This court is loath to interfere in the proceedings of another court – notwithstanding that the relevant statute permits same and that it appears that the presiding judicial officer and the prosecution in the criminal trial do not appear to have attempted to resolve the issues complained of. However, by reason of the confusion of the papers before this court, I would be very reluctant to make any order at all involving another court without a full investigation and corroborated facts being presented.

## **SECTION 342A OF THE CRIMINAL PROCEDURE ACT**

6. If indeed, there has been undue or unnecessary or unreasonable delay in conducting this criminal trial and this has been prejudicial to Hartley there is a remedy for which provision is made in the section 342A of the Criminal Procedure Act.<sup>1</sup> This section was introduced in 1996 in order to ensure that the Constitutional promise of conclusion of a criminal “without unreasonable delay” is effected.

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<sup>1</sup> 51 of 1977.

7. Should the accused, Hartley, have brought what he considers to be “unreasonable delay” to the attention of the presiding magistrate or should the presiding magistrate herself/himself have been/become concerned as to such delay and should there appear to be any prejudice resulting therefrom, then that presiding magistrate would have had regard to the factors set out in section 342A(2)<sup>2</sup> and, after consideration, have made an appropriate intervention.<sup>3</sup>
8. In the present case, Hartley has pleaded and “exceptional circumstances” must be found to exist and all other attempts to speed up this trial have failed, before any court may make an appropriate order. I have no idea of the basis of the representation of Hartley at the trial and accordingly do not know whether or not any legal representative has raised this issue with the court or counseled Hartley in regard thereto. I do not know if this issue has been pertinently raised at all with the trial court.
9. What I do know is that Hartley’s papers commence with local and then move on to regional conspiracy, aver incompetence within a multitude of State organs and do not crisply spell out that this is an application for a stay of proceedings on the basis of “unreasonable delay” nor detail the facts upon which this might be found. It may be that the presiding magistrate has not been afforded an opportunity to consider section 342A of the CPA.

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<sup>2</sup> The duration of the delay; The reasons advanced for the delay; Whether any person can be blamed for the delay; The effect of the delay on the personal circumstances of the accused and witnesses; The seriousness, extent or complexity of the charge or charges; Actual or potential prejudice caused to the state or the defence by the delay, including a weakening of the quality of evidence, the possible death or disappearance or non-availability of witnesses, the loss of evidence, problems regarding the gathering of evidence and considerations of cost; The effect of the delay on the administration of justice; The adverse effect on the interests of the public or the victims in the event of the prosecution being stopped and discontinued; and Any other factor which in the opinion of the court ought to be taken into account.

<sup>3</sup> Refusing further postponement of proceedings; Granting a postponement subject to any such conditions as the court may determine; Where the accused has not yet pleaded to the charge, that the case be struck off the roll and the prosecution not be resumed or instituted *de novo* without written instruction of the Director of Public Prosecution; 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, has been closed; that: the state must 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; the accused or his or her legal adviser, as the case may be, must pay the state the wasted costs incurred by the state as a result of an unreasonable delay caused by the accused or his or her legal adviser, as the case may be; or the matter be referred to the appropriate authority for an administrative investigation and possible disciplinary action against any person responsible for the delay.

10. There is a transcript of a portion of the proceedings in the trial court which suggest that at least one postponement was granted merely on the basis of the absence of an interpreter and that the trial was postponed for months for this application to be heard.
11. Accordingly, I do not propose to institute any investigation which it may be within my powers to so do in terms of subsection 342A(6).
12. For these reasons I do not propose to deal with the Constitutional right to a trial without “unreasonable delay” or the considerations relevant to a stay of prosecution.
13. The application for a stay of prosecution is dismissed.

**DATED AT JOHANNESBURG 21<sup>st</sup> APRIL 2015**

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**SATCHWELL J**

Dates of hearing: 15<sup>th</sup> April 2015.

Date of judgment: 21<sup>st</sup> April 2015.