

Transcripts provided by Saving the Wild appointed attorneys:

S / GWALA & 2 OTHERS

17/05/2018

MTUBATUBA REGIONAL COURT

PRESIDING OFF (MAGISTRATE)

MRS ZUNGU

PROSECUTING TEAM

MRS MCAMBI (SPP RICHARDS BAY)

ADV MKHONZA (ESHOWE)

MR NGUBANE (RESIDENT PP)

MR SYMINGTON (VRYHEID)

ACCUSED 1

MR NGIDI (LEGAL AID)

ACCUSED 2

IN PERSON

ACCUSED 3

MR NGIDI (LEGAL AID)

NEXT COURT APPEARANCE

18 JUNE 2018

For attorney for Accused 2

The matter was transferred from Ngwelezane Regional Court on 16 May 2018 to Mtubatuba Regional Court. The accused's first appearance at Mtubatuba being 17 May 2018.

A short overview of proceedings at Mtuba court for your records below.

The State indicated that it was ready proceed with trial.

The attorney for accused 1 & 3 confirmed that he was ready to proceed with trial.

The matter was set down for trial 17 & 18 May 2018. The court was available to accommodate the trial.

Accused 2 did not have a legal representative present. An enquiry ensued as to the wishes of accused 2 in respect of legal representation.

SUBMISSIONS BY ACCUSED 2 IN SUPPORT OF POSTPONEMENT

1. Acc 2 requested a 2 month postponement to enable him to raise funds to secure an attorney to represent him at trial.
2. His submissions were that, due to the matter having been moved from Ngwelezane to Mtubatuba, the attorney that he had paid to attend to the trial, would incur additional costs to travel from Ngwelezane to Mtubatuba and that he did not have the necessary funds to cover same.
3. He further submitted that his attorney, Miss Linda, and her family, had been accommodated in Ngwelezane and he does not have funds to accommodate them in Mtubatuba.

SUBMISSIONS BY THE STATE IN OPPOSITION OF POSTPONEMENT

1. The State averred that accused 2 had abused the judicial process and had employed the same tactics in Ngwelezane Regional Court, having changed attorneys on numerous occasions.
2. The State further confirmed that Miss Linda had in fact withdrawn as the attorney for accused 2 in Ngwelezane Regional Court on 16 May 2018 after the latter court ruled that the matter will be transferred to Mtubatuba Regional Court.
3. **The attorney had further not provided reasons for her withdrawal as his attorney. There were no supporting submissions in her application to withdraw. She simply withdrew without stating reasons for doing so.**
4. **The State submitted that accused 2 has had 4 legal representatives to date for this matter, being Ngwenya, Madela, Adv Ntshangase, Linda – all of which withdrew as attorneys of record.**
5. **In support of the State's averment that accused 2 is employing delay tactics, the State submitted that the matter had been on the roll for 3 ½ years to date. The accused was arrested on 18 December 2014.**
6. **The prejudice suffered in the pandemic delays at the instance of accused 2's delay tactics were cited as follows:**

- a) **The presence of 2 State witnesses from outside the province has to be secured on each occasion that the matter is set down for trial. The cost to the State is substantial in this regard;**
 - b) **There is a possibility that the State's evidence may be prejudiced in that witnesses may become untraceable or unavailable due to efflux of time;**
 - c) **The delays in finalisation of the trial has an adverse effect of public trust in the criminal justice system and victims alike.**
- 7. The State presented a substantial argument in opposing the postponement sought by accused 2.**

THE COURT'S RULING

The Court raised clarifying questions during the application for a postponement and made its ruling:

1. Accused 2 was questioned several times on his submissions that his attorney could not travel some 50km's from Ngwelezane to Mtubatuba, her having been available and placed for fees to attend to the trial in Ngwelezane. The accused did not offer a reasonable explanation;
2. The Court further raised its concern that the attorney had not advanced reasons for her withdrawal at Ngwelezane on the prior day and that the reasons were in fact reasons offered by the accused himself and not his prior attorney
3. The Court raised doubt as to the submissions by the accused that some 50km's makes a difference between Ngwelezane and Mtubatuba, it being a short distance (and impliedly not a valid reason)
4. The Court was very clear that accused 2 would most certainly not be granted a 2 month postponement. In the interest of fair trial, the Court however granted a 1 month postponement in order for accused 2 to raise funds and secure legal representation.
5. **The Court advised accused 2 that it would not entertain any delay tactics through change of legal representatives. In the event of accused 2 not having his legal representative present at court to confirm the trial dates and readiness in all**

respects on 18 June 2018, that he would have to apply for Legal Aid and proceed to trial on the future trial dates set.

6. In the event of the accused attempting to delay trial through terminating the mandate of his legal representative, the accused would have to represent himself (in person).
7. The matter was adjourned to 18 June 2018 for accused 2 to have his legal representative present at court.
8. The trial dates will be set on 18 June 2018.

**S / GWALA & 2 OTHERS
MTUBATUBA REGIONAL COURT**

26/11/'18

PRESIDING OFF (MAGISTRATE)

MS ZUNGU

PROSECUTING TEAM

MRS MCAMBI (SPP RICHARDS BAY)

ADV MKHONZA (ESHOWE)

MR NGUBANE (RESIDENT PP)

MR SYMINGTON (VRYHEID) - ABSENT

ACCUSED 1

WISEMAN MAGEBA

LEGAL REP

MR NGIDI - LEGAL AID

ACCUSED 2

DUMISANI GWALA

LEGAL REP

IN PERSON

ACCUSED 3

AUBREY DLAMINI

LEGAL REP

MR NGIDI - LEGAL AID

NEXT COURT APPEARANCE

28 NOVEMBER 2018

The matter was set down for trial from 26 – 30 November 2018.

The attorney for accused 2, Gwala, was absent. Accused 2 submitted that he spoke with his attorney, Ms Linda, and that he had no knowledge that she was going to be absent from court. The State confirmed that it is ready to proceed. The attorney for accused 1 and 3 confirmed he is ready to proceed.

The Court proceeded with an enquiry as to the absence of the attorney for Gwala. The Court indicated that there were several such delay tactics employed by Gwala in the past. The matter was set down for trial to commence in Ngwelezane on 4 August 2015. The attorney of record at the time, Ngwenya, did not come to court on the first day of trial and subsequently withdrew as attorney of record. Trial could not proceed.

The court noted that the matter was again set down for trial on 27 January 2016. The attorney of record was Mr Madela. On the first day of trial, Madela withdrew as attorney of record. Trial did not proceed and Adv Ntshangase placed himself on record as the attorney for Gwala. On 5 September 2016 Adv Ntshangase confirmed that they are trial ready. On the first day of trial, Adv Ntshangase withdrew as counsel. Ms Linda went on record for Gwala. The matter was still at Ngwelezane Regional Court at the time. The matter is transferred to Mtubatuba regional Court, the accused's first appearance and first trial date in the latter court being 17 May 2018. Trial was to proceed as arranged. Ms Linda, attorney for Gwala, however withdrew as attorney of record for Gwala at the close of proceedings in Ngwelezane Regional Court the day prior. Trial therefore did not proceed on 17 May 2018.

Ms Linda again went on record for Gwala on 18 June 2018 as his attorney and the trial date was confirmed by all parties, being 26 – 30 November 2018.

The Court's ruling was that accused 2, Gwala, must have his attorney of record, Ms Linda, at Court on Wednesday 28 November 2018 to give account for her absence on 26 November 2018 and a decision will be made on 28 November 2018 on proceedings. The Presiding officer, Ms Zungu, was firm and noted that the delays are prejudicial to the 2 co-accused and State witnesses. She indicated that, either Ms Linda is to proceed as Gwala's attorney on 28 November 2018 and trial will commence, or, that she would have to present a reasonable explanation as to her absence and possible application to withdraw as Gwala's attorney.

Whether Gwala will be compelled to represent himself if his attorney withdraws or whether trial will be adjourned to a future date for a new attorney is in the hands of the Court.

COURT PROCEEDINGS - BROADLY

COURT Is the State ready to proceed

STATE Yes

COURT Is Mr Ngidi, Legal Aid, ready to proceed for accused 1 and 3

NGIDI Yes

COURT Mr Gwala, where is your attorney

I don't know

When last did you speak to her

A few weeks ago

What did she say

Nothing, I paid her fees

Did you not discuss the trial

She said trial must proceed on 26/11/'18

[The matter stood down for Gwala to phone his attorney to establish her whereabouts and whether she could come to court]

ON RESUMPTION

NGUBANE I called Ms Linda using my cellphone. She did not pick up her phone. I called her offices in Durban. She was not at her office. The receptionist at her office did not want to disclose the whereabouts of Ms Linda

GWALA I called her and got hold of her. She said she could come to court around 12h00 – 13h00 today so arrangements could be made for tomorrow and that trial could only start on Wednesday.

COURT Did she tell you why she is dictating to court

GWALA She did not say much. She did not read a lot and I was in hospital for 14 days

NGUBANE An enquiry should be held. The accused used the same tactics to delay trial before

COURT *[Addressing Gwala]* Phone your attorney. **Trial will start today. I am going to report her to the law society.** She was the same attorney that withdrew at Ngwelezane and came to this court placing herself on record. The matter will

stand down. She must come to court. You must engage with your attorney.

Matter stands down until 11h30

GWALA My attorney can't come

ON RESUMPTION

GWALA I contacted my attorney. She cannot come today. She can come tomorrow to arrange a date for trial to proceed

COURT Did she tell you why she is not at court

She did not explain. She said that we did not discuss the way the matter was going to proceed.

Why did you not discuss the trial

I could not ask many questions, she knows more.

She must come tomorrow to discuss further dates and not for the matter to proceed?

She said she will come tomorrow so we can discuss the case as to how it will proceed.

What happened to your advocate from Mpumalanga

I Told her to contact my attorney as I don't know her

Do you want the matter to be rolled over for tomorrow

She did not say she is coming to court

What are your intentions

I'm asking court that I want to see my attorney and proceed with trial on Wednesday.

NGIDI [*A short discussion ensued as attorney for accused 1 & 3 addressed court – he indicated that he spoke with Ms Linda during the break as well and she indicated that she did not receive clear instructions, a mandate and that her client did not consult with her to prepare for trial*]

COURT Mr Gwala, your attorney informed Mr Ngidi that you are not co-operating.

GWALA It is the 1st time that I hear of this. Maybe it sounded like it but it is not what it is like.

COURT'S RULING ON THE ENQUIRY

The Court indicated that there were several such delay tactics employed by Gwala in the past. The matter was set down for trial to commence in Ngwelezane on 4 August 2015. The attorney of record at the time, Ngwenya, did not come to court on the first day of trial and subsequently withdrew as attorney of record. Trial could not proceed.

The court noted that the matter was again set down for trial on 27 January 2016. The attorney of record was Mr Madela. On the first day of trial, Madela withdrew as attorney of record. Trial did not proceed and Adv Ntshangase placed himself on record as the attorney for Gwala. On 5 September 2016 Adv Ntshangase confirmed that they are trial ready. On the first day of trial, Adv Ntshangase withdrew as counsel.

Ms Linda went on record for Gwala. The matter was still at Ngwelezane Regional Court at the time. The matter is transferred to Mtubatuba regional Court, the accused's first appearance and first trial date in the latter court being 17 May 2018. Trial was to proceed as arranged. Ms Linda, attorney for Gwala, however withdrew as attorney of record for Gwala at the close of proceedings in Ngwelezane Regional Court. Trial therefore did not proceed on 17 May 2018.

Ms Linda again went on record for Gwala on 17 May 2018 as his attorney and the trial date was confirmed by all parties, being 26 – 30 November 2018.

The Court's ruling was that accused 2, Gwala, must have his attorney of record, Ms Linda, at Court on Wednesday 28 November 2018 to give account for her absence on 26 November 2018 and a decision will be made on 28 November 2018 on proceedings. The Court was firm in its stance that trial should proceed on 28 November 2018, either with Gwala representing himself or his attorney, Ms Linda, representing him.

Court adjourned – the accused and witnesses were warned to appear before Mtubatuba Regional Court on 28 November 2018 at 8h30 for trial

QUESTION FOR THE MINISTRY OF JUSTICE AND ACTING KZN COURT PRESIDENT SHARON MARKS: THE COURT SAID THAT SHE WOULD REPORT LINDA TO THE LAW SOCIETY. DID SHE? IF SO, WHY DOES LINDA CONTINUE TO MAKE A MOCKERY OF THE COURT?

**S / GWALA & 2 OTHERS
MTUBATUBA REGIONAL COURT**

28/11/18

PRESIDING OFF (MAGISTRATE)	MS ZUNGU
PROSECUTING TEAM	MRS MCAMBI (SPP RICHARDS BAY) ADV MKHONZA (ESHOWE) MR NGUBANE (RESIDENT PP) MR SYMINGTON (VRYHEID) - ABSENT
ACCUSED 1	WISEMAN MAGEBA
LEGAL REP	MR NGIDI - LEGAL AID
ACCUSED 2	DUMISANI GWALA
LEGAL REP	IN PERSON
ACCUSED 3	AUBREY DLAMINI
LEGAL REP	MR NGIDI - LEGAL AID
NEXT COURT APPEARANCE	29 NOVEMBER 2018

COURT PROCEEDINGS - BROADLY

STATE [Appearances were read into the record. The State addressed Court]

Mr Gwala is supposed to tell Court what he intends to do about legal representation.

Two emails were received from Ms Linda. One on 26/11/18 and one on 27/11/18

The first email was addressed to [prosecutors] Mcambi and Ngubane

The email was read into the record – the content broadly follows

*Linda tried to contact their offices without success. She was instructed properly by her client. Her client did not attend scheduled consultations. **Linda contacted an attorney, one Madela, to attend Court on her behalf on 26/11/'18 to withdraw as attorney on her behalf***

[Email marked Exhibit 1]

The second email was addressed to the Registrar of the Court and read into the record – the content broadly as follows:

She regrets the uncertainty as to the legal representation of accused 2. She instructed a local attorney, Madela, to withdraw. Madela did not update her despite her enquiring as to an update. To date she had not received an update from Madela. The email is noted as notice that she withdraws as attorney of record.

[Email marked Exhibit 2]

A few weeks ago

COURT Mr Gwala, what do you say about these emails?

GWALA Linda is not telling the truth that I have not contacted her and lying when she says I have not paid her

COURT What do you say about her saying she withdraws?

GWALA I have nothing to say to her. There is no attorney that I asked to withdraw. They all withdraw on their own. **Linda withdrew because she cannot handle the case.**

COURT What are your intentions?

GWALA According to my knowledge I have two attorneys. She was supposed to come on Monday. She did not come. She said she will be at Court tomorrow.

COURT Who are the attorneys?

GWALA Marianna

COURT From which firm of attorneys?

GWALA I think she introduced herself when she came here. I do not know much about her.

COURT Do you not know her contact number or her firm's details?

GWALA I contacted her yesterday afternoon to tell her that Linda is not here

COURT You said you contacted her on Monday

GWALA I said I contacted her yesterday. She can only come to Court tomorrow

COURT What do you want Court to do?

GWALA I am asking Court to accept my request for my attorney to start trial tomorrow as I can't represent myself.

COURT [addressing State] Did the other attorney contact you?

Yes, we called her. M Nicholson. She was briefed by Linda

Is she the advocate from Mpumalanga?

Yes, Gwala phoned her yesterday. She said she was prepared to proceed tomorrow with trial

Did she not say why she did not appear on Monday. She was present in June

Yes, it is strange as she was sitting in the gallery. Ms Linda was here but she [Nicholson] did not place herself on record

I invite the State to comment in respect of the application by Gwala for a postponement

On Monday the Court made it clear to Gwala that it wanted the matter to proceed on Wednesday. Gwala was asked to stay and collect the FP's. He never stayed to collect the FP's. Gwala said he will contact Linda and they would prepare yesterday. This Nicholson should confirm in writing she is ready to proceed to trial tomorrow

NGIDI The Application of accused 2 requires a mind to be applied from all angles. It is a complex case. It may not be in the interest of justice if accused 2 represents himself. It is advisable that accused 2 is represented. It amounts to a delay and the predicament is the lack of communication between accused 2 and his attorney.

Even if there is direct contact, it is anticipated that she [Nicholson] would come to Court but she will not have a brief from an attorney. She would have to prepare for trial.

I have no objection to a postponement but the Court may have to make a decision as to whether we postpone for trial or whether we are postponing for Nicholson to place herself on record.

GWALA There is not much I have to say. I would like to have my attorney to come to Court. My attorney also needs the documents to proceed to trial.

COURT Is this attorney Marianna Nicholson?

STATE Correct

COURT'S RULING ON GWALA'S APPLICATION FOR A POSTPONEMENT

The Court has to assess whether there are reasonable grounds present to grant the postponement. It must be fair and justifiable for the Court to postpone.

I note previously that there is a trend that trial not proceed on the trial date. That is the trend.

It is usually by reason of attorneys withdrawing. Accused 2 has no attorney. There are emails from Linda. She is not interested in representing accused 2 in this matter. The Court will not deal with Ms Linda now but will deal with the Law Society. She confirmed her readiness to proceed. She did not indicate to Court there were outstanding issues. The matter was set down for trial and all parties were ready.

It does not make sense, her emails saying she did not consult and she had no instructions. She did not bother to come to Court and explain. **The Court will deal with her separately.** Accused 2 says that M Nicholson will represent him. Gwala is quick to point out she will need documents to prepare for trial. It is clear in the mind of accused 2 that the matter won't proceed because the attorney is not ready.

The attorney [Nicholson] is not new. She did appear. She was in the gallery. One wonder why accused 2 did not contact the advocate. At Monday's postponement, he did not contact her to come to Court.

Accused 2 has a Constitutional right to legal representation and an injustice may occur and/or the trial will be unfair if accused 2 is not represented.

Ngidi submitted that the matter is complex and if it proceeds, it will be unfair.

The right to legal representation is not absolute. The right may be limited in a Constitutional manner. This is when proceedings are delayed and there is an abuse of Constitutional rights to legal representation.

This is an old matter from 2014. I mentioned many delays. I am dealing with the matter before me at Mtubatuba and the picture painted since this matter came before me.

When this matter came to this Court [17 May 2018] the Court was ready but accused 2 had no attorney. Accused 2 was given enough time to get an attorney and came back with the same attorney [Linda] Ms Linda then, on instruction of accused 2, made application for a postponement for a decision by the Regional Court President in respect of an objection that the matter was transferred from Ngwelezane to Mtubatuba, saying that they await the review outcome in High Court. The matter was never sent to the High Court for review proceedings.

The instructions of accused 2 in respect of the review to High Court was a delay tactic. I have a duty to see that the matter is not delayed any further.

Further delays must come to an end. I am not allowing a further postponement. The State and accused 2 must phone the attorney M Nicholson now to confirm that she can proceed and is trial ready. If she does not, this matter will proceed come rain or shine.

If she does not confirm she is ready today for tomorrow, this trial will start today with Mr Gwala representing himself.

Mr Gwala, I will guide you as we go along.

Confirmation from the advocate must be obtained. The matter will stand down for same.

ON RESUMPTION

STATE We spoke with Adv Nicholson telephonically. She confirmed she will be here to proceed with the case against Gwala. She sent confirmation in writing.

[Confirmation read into the record]

Court adjourned – the matter was rolled over to 29 November 2018 for trial.

We, as a team from the NPA spoke to her and she confirmed.

COURT

Where is she? Please come forward.

[Marianna Nicholson walks from the gallery to the front of court]

Are you Marianna Nicholson?

Yes.

Yesterday you sent an email confirming that you are representing accused 2 at trial. You are not admitted.

I retired and retired from the bar.

You are aware that you don't have the credentials to represent the accused.

Yes.

I noted you were seated in the public gallery.

Yes.

You were present and seated in the gallery during pre-trial.

Yes.

You were seated in the gallery because you had no credentials.

I was told to step down. My services were no longer required.

Who informed you that your services were no longer required?

Ms Linda.

She informed you when she was still representing the accused?

Yes.

If you were informed last time your services were no longer required, what prompted you to re-engage again?

I was phoned in the evening on 27 November to say that Ms Linda did not appear for the 2nd day. If I can please come down and represent Mr Gwala. I said my services was terminated and not required anymore. I said to Mr Gwala I will come down to see what we can do.

I have a soft heart.

The Court does not want to know about your heart!

I will not leave him alone.

Did he respond in respect of your services that were terminated?

No.

As early as 6 August 2018 your services were terminated.

Correct.

Do you know the exact date that your services were terminated?

It was the Saturday before. The 4th of August. I received an email. I was ready to proceed to trial. Ms Linda and I consulted on the issues.

You may sit down at the back – in the gallery.

Okay.

COURT Mr Gwala, you heard what the State said about the person.

GWALA Yes.

COURT Your comment.

GWALA When I spoke to my attorney she did not inform me she was retired from work otherwise I would have phoned someone else.

COURT She says before 6 August 2018 she was informed she was not going to assist you.

GWALA I did not know when she sat in the gallery that she could no longer represent me.

COURT Monday you never mentioned anything about the retired advocate.

GWALA I did not know this advocate has retired. Linda did not tell me this advocate is retired.

COURT I'm asking for your comment. She informed you in a call that her services were no longer needed.

GWALA It might happen it was miscommunicated as she does not understand Zulu and I sometimes do not understand English. Even yesterday when the State called her she never informed the State that she was retired.

COURT She cannot represent you as she does not have valid credentials. What are your intentions?

I am worried about that as I do not have an attorney to represent me. The Court knows that I cannot represent myself. I need to get another attorney to represent me.

Do you want the matter to be postponed to find an attorney?

If the Court has justice it is supposed to be what is done.

My concern is that this is the trend when trial starts. What do you say?

I don't disagree. It is not my fault. I am not doing that.

Anything else you have to say?

I ask that the Court give me another opportunity to find an attorney to represent me as I cannot represent myself.

STATE As indicated previously, the State is ready to proceed. In respect of whether we proceed today, we leave it in the hands of the Court.

COURT Nothing will be left in the hands of the Court. Whether the State has a problem with the postponement or not, it must motivate.

He indicated he wants an attorney. He is not at fault that his advocate has no credentials. The matter might be taken on review if it proceeds. The matter may be postponed. We are asking a nearer date for the accused to come with an attorney to arrange for a date on which we may proceed.

Address me on the trend of attorneys changing. What is the State's stance on the trend?

It is not different today. I cannot be specific on dates. **There are many occasions when it was set down for trial and on trial day the attorneys withdrew.** It was set down for trial and it did not proceed because the attorneys withdrew – Ngwenya, Madela, Ntshangase, Linda...

The matter moved from Ngwelezane for the next day but Linda withdrew. This week Linda withdrew. Today, the State is concerned with the pattern. An enquiry in terms of s342(b) should be held so that the Court can establish who is causing the delay.

COURT It is the accused that is causing the delay?

NGIDI No objection to the postponement for accused 2 to obtain legal representation. I perceive this as a complex matter. We believe it is in the interest of justice that accused 2 be afforded such opportunity as accused 2 is a lay person.

Today is different than the past. He is facing a situation believing he instructed a person with the required credentials only to find out in court.

COURT That advocate was informed as early as 6 August her services were not needed.

It appears it was communication between Linda and Nicholson, the accused himself mostly dealing with Linda and Linda would be dealing with counsel.....

It appears that from all angles, most delays are caused due to withdrawal of attorneys, however, today is a different scenario. Accused 2 would not have known of this predicament and court should grant the postponement.

COURT'S RULING ON GWALA'S APPLICATION FOR A POSTPONEMENT

The Court considered the submission made in respect of the application for a postponement. Ms Nicholson indicated she will come to proceed with the matter. Yesterday accused 2 had the opportunity to have that legal representative. There was an email from the legal representative saying she will proceed to trial. Today it transpired she is not a practicing advocate and does not have the credentials.

When the court questioned her, she seemed confused.

Accused 2 brought her to proceed to trial and she has no right to appear. Court has no choice but to grant the postponement. It is granted on the technicality that the legal representative has no credentials and cannot appear.

I am going to monitor the progress of this matter. On the next occasion, accused 2 must come with a legal representative. I also require documentation that the person is a practicing attorney to ensure when this matter is set down for trial, that this does not happen again.

Matter is remanded to 12 December 2018 for accused 2 to have his attorney present.

QUESTION FOR CHIEF PROSECUTOR MS SIBEKO: YOU TOLD YOUR PROSECUTORS THAT YOU WOULD BE LAYING CHARGES AGAINST NICHOLSON FOR IMPERSONATING AN ADVOCATE. WAS THERE EVER ANY FOLLOW THROUGH?

QUESTION FOR THE COURT: WAS THERE EVER AN ENQUIRY IN TERMS OF S342(B) TO ESTABLISH WHO IS CAUSING THE DELAY?

Gwala trial finally began in April 2019

Between December 2018 and March 2019 Gwala changed his attorney two more times, first Mr Chetty and then Mr Govender. It was only when he was *really* ready to proceed to trial in April 2019 that Linda came back – for the third time – this time as attorney for Gwala’s co-accused Mageba. And Ngwenya came back as attorney for Gwala. Dlamini passed away in May 2019.

Trial dates for 2019:

24, 25, 26 April: Trial finally started, but with delays.

20 and 21 June: Trial continued, but with delays.

13, 14, 15 August: Trial continued, but with delays.

14, 15, 16, 17, 18 October: No trial. Only more delay excuses that spanned the entire week.

Trial is set down now for 4 and 5 December 2019. Five years since Gwala’s arrest, and as it stands, the first witness is yet to be cross examined.

1. S vs. Mageba & Gwala (on roll for 14, 15 and 16 August 2019):

- a. Evidence was presented by State’s 1st witness, IO Mr Roux (Roux)
- b. State Prosecutor started taking Roux through his testimony in chief
- c. Legal representative Ngwenya acting on behalf of Gwala indicated early during Roux’s testimony that he did not have all the documentation referred to by the prosecution in leading Roux through his testimony. Legal

representative Linda acting on behalf of Mageba also indicated that she did not have all the documentation referred to by the prosecution.

- d. **Magistrate placed on record her frustration that the defence constantly delay the matter for some reason or the other.** Magistrate commented that the matter will only stand down to afford the legal representatives of the defendants the opportunity to obtain the necessary documentation / information which they claim they don't have. **Magistrate re-iterated that the matter will continue as set down for the week without any postponement.**
- e. State proposed that the matter stand down for the day in order to allow the parties to compare documentation and to arrange for copies to be exchanged in instances where the defence claimed they did not have the relevant documentation.
- f. Following discussions between the State and legal representative acting on behalf of Mageba, it became apparent that **Linda would not be able to appear on 15 August as she was not available.**
- g. State objected on grounds that the trial dates had been agreed some time ago and that the legal representative had confirmed her availability to appear on all the dates.
- h. Following further discussion between the State and the defence, it was agreed that the matter stand down for the rest of the day and the 15th of August to afford the parties the opportunity to exchange documentation not in possession of the defence.
- i. **Postponement was agreed by Magistrate and recorded.**
- j. Matter continued on 16 August 2018 without any further delays.
- k. State concluded leading Roux in his testimony in chief.
- l. Matter remanded to continue 14 - 18 October 2019.

2. S vs. Mageba & Gwala (on roll for 14, 15, 16, 17 and 18 October 2019):

- a. **Matter did not commence as Ngwenya, legal representative of Gwala, was not present at court. It was explained to court that he had to write some examination and that he would only be available to appear on 16 October 2019.**

- b. Magistrate recorded her dissatisfaction with the state of affairs especially as the dates had been **explicitly agreed to by the parties on 16 August 2019.**
- c. Matter stood down until 16 October 2019 when legal representative Ngwenya would be available.
- d. On 16 October legal representative Linda acting on behalf of Mageba requested, through a colleague at her law firm, that the matter be postponed on grounds that she was medically unfit to appear.
- e. State insisted that Linda provide a medical certificate confirming (a) nature of her medical ailment and (b) whether she could continue or not.
- f. Magistrate enquired from Ngwenya, legal representative of Gwala, as to the reason why he was not present on 14 October 2019 after the dates had previously been agreed between the parties. Ngwenya indicated that he only received his exam time table on 14 September.
- g. Matter stood down to afford Linda, legal representative of Mageba, to provide a medical certificate.
- h. Medical certificate handed in indicating that legal representative Linda, acting on behalf of Mageba, was suffering from sore feet and headaches. **State objected to the validity of the medical certificate.**
- i. Magistrate agreed to have the matter roll over until 17 October to ascertain legal representative's availability.
- j. Matter proceeded on 17 October to establish availability of both legal representatives.
- k. Matter remanded to 4 and 5 December 2019.

QUESTION FOR THE COURT: CONSIDERING THE ENDLESS DELAY TACTICS RECORDED IN COURT BY BOTH GWALA AND ATTORNEYS NGWENYA AND LINDA, WHAT ACTION HAS BEEN TAKEN TO PREVENT FURTHER DELAYS? AS PER THE COURT SAYING ON MULTIPLE OCCASIONS LINDA WOULD BE REPORTED TO THE LAW SOCIETY – DID THAT EVER HAPPEN? AND WHAT ABOUT NGWENYA CLAIMING HE HAD AN “EXAM” – WAS THAT EVER PROVEN? WHY DID NGWENYA NOT GIVE WARNING AFTER ALLEGEDLY RECEIVING HIS STUDY TIMETABLE ONE MONTH EARLIER?

In closing...

Here are further insights into the atrocities against humanity and South Africa's natural heritage: <https://www.news24.com/SouthAfrica/News/corruption-in-the-courtroom-a-sordid-tale-of-sex-gambling-poachers-and-payoffs-20180922>

Worse, the escalating violence at court during the Gwala trial has made it unsafe for journalists and activists to attend. Further reading:

<https://www.savingthewild.com/2019/05/rhino-syndicate-trial-marred-by-hooligan-lawyers/>

It should be noted that the unidentified raging man at Court who accompanies Ngwenya and Gwala - who lives in eManguzi - has now been identified as Maxim Chirwa. Below is a snapshot of his police charge sheet:

emanguzi 283 / 6 / 2013 - murder - not guilty
emanguzi 36 / 7 / 2011 – murder - not guilty
emanguzi 54 / 04 / 2012 – murder - not guilty

AS THE TRIAL OF DUMISANI GWALA CONTINUES TO MOVE AT A GLACIAL PACE, WILL THERE EVER BE JUSTICE? OR WILL THIS TRIAL END IN THE DEATH OF A WITNESS? WASTING TIME APPEARS TO BE THE WEAPON OF CHOICE.