



HIGH COURT OF NAMIBIA MAIN DIVISION, WINDHOEK

RULING

Case no: CC 30/2018

In the matter between:

**THE STATE**

and

**ABIGAIL BASHALA**

**ACCUSED**

**Neutral citation:** *S v Bashala* (CC 30/2020) [2020] NAHCMD 39 (04 February 2020)

**Coram:** USIKU J

**Heard:** 04 February 2020

**Delivered:** 04 February 2020

**Flynote:** Criminal Procedure – Application for a postponement by the State – State must lay a proper basis for the application – Giving reasons from the bar or lead evidence in support of thereof – It is not for the mere asking.

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**ORDER**

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a) The request for the postponement in my view is well founded and is hereby granted.

b) The proceedings are postponed to the dates as arranged earlier on which are 11 – 15 May 2020 at 10h00. The accused person's bail is extended.

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## RULING

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### USIKU J

[1] The accused person faces charges of migrant smuggling. She pleaded not guilty to the charges, where after the matter proceeded on trial which was postponed to 3 – 7 February 2020.

[2] On the 3<sup>rd</sup> of February 2020, the matter was to proceed on trial, however, the State brought an application for a postponement because there was no French interpreter to assist in the consultation, thus, the court granted a postponement until the 4<sup>th</sup> of February 2020.

[3] On the 4<sup>th</sup> of February 2020 when the matter was to proceed, once more the State brought an application for a postponement because during consultation with the State witnesses who were lined up for the trial, appear to be fearful and the State sought to engage the Ministry of Gender who could provide social workers in order to counsel the intended witnesses. In her submissions, counsel for the State requested the court to grant a further postponement to enable the witnesses to be counselled by social workers before they could proceed to testify. She submitted further that the intended witnesses are vulnerable and implored the court to consider that fact.

[4] Counsel for the defence opposed the application on the basis that the case had been set down for trial and the State ought to have prepared itself. He further submitted that the alleged fear by the State witnesses could not be attributed to the accused person and that the interests of justice would be compromised if a further postponement is granted to the State. In his submissions, counsel further referred to

the accused's Constitutional right to a fair trial as provided for in terms of the Constitution. He argued the court to strike a balance between the interests of the State *vice versa* that of the accused.

[5] Postponements of proceedings are regulated by s 168 of the Criminal Procedure Act 51 of 1977 as amended which provides:-

'A Court before which Criminal proceedings are pending, may from time to time during such proceedings, if the Court deems it necessary or expedient, adjourn the proceedings to any date on the terms which to the Court may deem proper and which are not inconsistent with any provision of this Act'.

[6] It is therefore trite that courts bear the duty of controlling court affairs but the prosecution have also the duty to play in motivating the application for remand or postponements and must lay a proper basis for such an application, either by giving reasons from the bar or lead evidence in support thereof. It is not for the mere asking and the court cannot afterwards be heard complaining that there were no reasons advanced.

[7] The reasons for the postponement as advanced by the State counsel is to enable witnesses to be counselled as there appear, according to her, some fear or intimidation. That was observed during her consultation with the witnesses concerned. These witnesses are vulnerable in that they are refugees who were running away from the effects of war in their country of origin.

[8] This court is mindful that the intended witnesses are or can be considered to be vulnerable witnesses, being women who too need humane treatment and full protection of their rights and not only the accused's right to a trial within reasonable time. It is in the interest of both the State and the defence that justice should not only be done but must be seen to be done.

[9] Justice cannot be seen to be done if the intended witnesses are not properly consulted before they present their evidence before court. Thus, there is a need to have them counselled by professionals who have indicated their willingness to do so,

not only once off but in sessions to be conducted between today and the proposed dates of postponement.

[10] The request for the postponement in my view is well founded and is hereby granted. The proceedings are postponed to the dates as arranged earlier on which are 11 – 15 May 2020 at 10h 00. The accused person's bail is extended.

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D N USIKU  
Judge

APPEARANCES:

STATE : Ms Shikerete  
Office of the Prosecutor-General

ACCUSED : Mr Siambango  
Instructed by Directorate of Legal Aid