

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

CASE NO: 76755/18

In the matter between:

JOAO RODRIGUES

Applicant

and

**THE NATIONAL DIRECTOR OF PUBLIC
PROSECUTION OF SOUTH AFRICA**

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Amicus Curiae/Fourth Respondent

SECOND RESPONDENT'S HEADS OF ARGUMENT

1.

In terms of section 17A(1) of the Inquest Act:¹

¹ Inquest Act 58 of 1059

“the Minister, may on the recommendation of the attorney general concerned at any time after the determination of an inquest and if he deems it necessary in the interests of justice, request a judge president of a provincial division of the Supreme Court of South Africa to reopen that inquest, whereupon the judge thus designated shall reopen such inquest.”

2.

In re Mjoli²:

“...as the Attorney-General was free to re-open the inquest in terms of s 17(2) of Act 58 of 1959 and to lead further evidence: 'further evidence' in this connection could be acquired from witnesses who had already testified, whether by way of statement or viva voce.”

3.

The apposite criterion is the “interests of justice. ***Marais NO v Tiley***³ :

² 1994 (2) SA 815 (T) at 823

³ 1990 (2) SA 899 (A) at 901 E

“The underlying purpose of an inquest is to promote public confidence and satisfaction; to reassure the public that all deaths from unnatural causes will receive proper attention and investigation so that, where necessary, appropriate measures can be taken to prevent similar occurrences, and so that persons responsible for such deaths may, as far as possible, be brought to justice.”

4.

Applicant does not rely on the reopening of the Inquest proceedings as a basis for the relief sought.⁴

5.

Applicant is in agreement that the initiation and conduct of criminal proceedings is the prerogative of the first respondent⁵. The relief sought against second respondent, and more pertinently that set out in paragraphs 3 to 5 of the Notice of Motion is accordingly ill conceived.

⁴ Para 4, applicant’s replying affidavit to second respondent’s answering affidavit
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⁵ Para 3 applicant’s replying affidavit to second respondent’s answering affidavit
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6.

The application falls to be dismissed with costs of two counsel.

Dated at Sandton on 25 January 2019

PD Hemraj SC

RJ Mbuli