

**IN THE SUPREME COURT OF APPEAL
(BLOEMFONTEIN)**

**APPEAL CASE NO: 1186/2019
GAUTENG HIGH COURT CASE NO: 76755/18**

In the matter between:

JOAO RODRIGUES

Applicant

and

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

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Fourth Respondent

PRACTICE NOTE ON BEHALF OF SECOND RESPONDENT

(a) NATURE OF APPLICATION

1. This is an application for leave to appeal to this Honourable Court in terms of Section 17(2)(b) read with Section 16 of the Superior Courts Act, Act 10 of 2013 against the judgment and order by the

High Court of South Africa (Gauteng Division, Pretoria) delivered on the 12th of October 2018;

2. Applicant also seeks reinstatement of the appeal and condonation for the failure to file the record in terms of Rule 8 within three (3) months as directed by this Honourable Court on 27 January 2020;
3. Second Respondent seeks a dismissal of the application for leave to appeal and the appeal.

(b) **JURISDICTION OF THIS COURT**

Appellant was granted leave by this Honourable Court on 27 January 2020 to argue an application for leave to appeal before it.

(c) **CONSTITUTIONAL ISSUES**

The right to a fair trial, without unreasonable delay, Section 35(3)(d) of the Constitution.

(d) **ISSUES ON APPEAL**

The issues in the application are the following:

1. Whether the Applicant's right to a fair trial was infringed by the institution of criminal proceedings on the incident 47 years after the fact;
2. Whether the delay in the prosecution of the Applicant was undue;
3. Whether the political interference in the prosecution of the Applicant infringed his rights to a fair trial;
4. Whether there was a Presidential Pardon or amnesty granted preventing the prosecution of the Applicant;
5. Whether Applicant makes out a case for the stay of the prosecution.

(e) **ESTIMATED DURATION OF THE ARGUMENT**

6 hours.

(f) **PORTIONS OF RECORD IN THE LANGUAGE OTHER THAN ENGLISH**

The record is in English.

(g) **THE RECORD NECESSARY FOR DETERMINATION OF THE APPEAL**

The full record.

(h) **SUMMARY OF ARGUMENT OF SECOND RESPONDENT**

1. The Court a quo correctly conducted a balancing exercise of all the factors apposite to a stay of prosecution. There was no misdirection;
2. The Court a quo correctly found that the delay that required to be considered was that relevant to the period after Applicant was charged, and not a period of 42 years since the death of Mr Timol;
3. The Court a quo correctly found that the political interference that existed did not amount to trial prejudice to Applicant;
4. The Court a quo correctly found that there was no basis for an order that Second Respondent disclose the relevant and material facts relating to the political interference, alternatively to refer the application for oral evidence in order to compel the Second Respondent to provide the relevant facts;

5. The Court a quo correctly found that any prejudice suffered by the Applicant by with regard to recall of the details of the incident, applied equally to any witnesses for the prosecution;
6. The Court a quo correctly dismissed the point with reference to future matters of a similar nature arising which required the attention of this Honourable Court.

(i) **CORE BUNDLE**

It is submitted that the pages referred to in Core Bundle are necessary to be read for determination of this appeal.

Dated at Durban this 15th day of July 2020

P. D. HEMRAJ SC

082 870 8254

RJ MBULI

076 5561 271