

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

**CASE NUMBER: 76755/2018**

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

**THE MINISTER OF POLICE**

Third Respondent

**IMITIAZ AHMED CAJEE**

Fourth Respondent

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**NOTICE OF APPLICATION FOR LEAVE TO APPEAL  
ON BEHALF OF APPLICANT**

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**PLEASE TAKE NOTICE** that the Applicant hereby gives notice of his intention to appeal the whole of the judgment and order by the Honourable Kollapen J with the Honourable Moshidi J and Opperman J concurring delivered on the 3<sup>rd</sup> of June 2019 in this Honourable Court.

**PLEASE TAKE FURTHER NOTICE** that the Applicant seeks leave to appeal in terms of section 17(1) Superior Courts Act, Act 10 of 2013 to the Supreme Court of Appeal of South Africa *alternatively* the Full Court of the High Court, Gauteng Division, Pretoria and relying on the grounds of appeal as set out hereinafter.

**TAKE NOTICE** that the application for leave to appeal is based on the grounds that the appeal would have a reasonable prospect of success as is envisaged in section 17(1)(a)(i) on the following grounds:

1. The Honourable Court, with respect, misdirected itself in not finding that the criminal proceedings instituted against the Applicant constitutes an unfair trial against the Applicant as is envisaged in section 35(3) of the Constitution of the Republic of South Africa, Act 108 of 1996 ("the Constitution"); and/or
2. That the Honourable Court, with respect, misdirected itself by refusing to grant a declaratory order that the criminal proceeding instituted against the Applicant will constitute an infringement of his

fundamental rights to a fair trial as is provided for in section 35(3) of the Constitution; and/or

3. That the Honourable Court, with respect, misdirected itself by not granting a permanent stay of the criminal proceedings relating to the charge of murder against the Applicant relating to the death of the late Ahmed Essop Timol on or about the 27<sup>th</sup> of October 1971; and/or
4. That the Honourable Court, with respect, misdirected itself by not finding that the institution of criminal proceedings against the Applicant after approximately 47 years after the relevant incident infringes the Applicant's right to a fair trial that should begin and be concluded without unreasonable delay as is provided for in section 35(3)(d) of the Constitution; and/or
5. The Honourable Court, with respect, misdirected itself by not finding that the deliberate political interference at the highest political level in the criminal justice system did not infringe the fundamental right of a fair trial of the Applicant; and/or

6. The Honourable Court, with respect, misdirected itself by not finding that the deliberate decision by the National Prosecuting Authority to adhere to the political interference in the criminal justice system that caused a substantial delay of the prosecution of the Applicant did not infringe the fundamental right of the Applicant to a fair trial. The conduct of the First Respondent by deliberately withholding material facts from the Court in their initial answering affidavits is also relevant in this regard; and/or
  
7. The Honourable Court, with respect, misdirected itself by failing to give the necessary weight *alternatively* sufficient weight to the Second Respondent's (Minister of Justice) failure to disclose the relevant and material facts relating to the political interference that caused the substantial delay in the proceedings to Court. This conduct must be evaluated under circumstances where the Second Respondent had a legal duty to disclose all relevant facts to the Court; and/or
  
8. The Honourable Court, with respect, misdirected itself by not ordering the Second Respondent to disclose all the relevant facts to the Court by way of affidavit *alternatively* to refer the application for

oral evidence in order to compel the Second Respondent to provide the relevant facts; and/or

9. The Honourable Court, with respect, misdirected itself by failing to consider or adequately consider the prejudice suffered by the Applicant by the lengthy delay and political interference to be of such nature that it will seriously prejudice his right to a fair trial; and/or
10. The Honourable Court, with respect, misdirected itself by failing to consider or adequately consider the failure by the First Respondent to disclose the political interference in their Answering Affidavit as a continuation of the political interference and confirmation of the unfairness of the prosecution of the Applicant; and/or
11. The Honourable Court, with respect, misdirected itself by failing to consider or adequately consider the failure by the Second Respondent to disclose or explain the political interference in their Answering Affidavit as a continuation of the political interference and confirmation of the unfairness of the prosecution of the Applicant.

**PLEASE TAKE FURTHER NOTICE** that the application for leave to appeal to be enrolled at a time, date and place as decided and/or indicated by the Honourable Court.

**PLEASE** enrol the matter accordingly.

SIGNED at PRETORIA on this 19<sup>th</sup> day of JUNE 2019



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**TO:** THE REGISTRAR OF THE  
HIGH COURT  
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**AND TO: THE NATIONAL DIRECTOR OF  
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**AND TO: THE MINISTER OF JUSTICE AND  
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