

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

**APPEAL COURT CASE NO: 1186/2019**

**GAUTENG HIGH COURT 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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**PRACTICE NOTE ON BEHALF OF APPELLANT**

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**I. 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. This is furthermore an application wherein the applicant seeks reinstatement of the appeal and condonation for the for failure to file the record in terms of rule 8 within three months as directed by this Honourable Court on 27 January 2020

**II. JURISDICTION OF THIS COURT:**

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

**III. CONSTITUTIONAL ISSUES:**

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

**IV. ISSUES ON APPEAL:**

5. The issues in the application are the following:

- 4.1. 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;
- 4.2. Whether the delay in the prosecution of the Applicant was undue;
- 4.3. Whether the political interference in the prosecution of the Applicant infringed his rights to a fair trial;
- 4.4. Whether there was a Presidential Pardon or amnesty granted preventing the prosecution of the Applicant.

**V. ESTIMATED DURATION OF THE ARGUMENT:**

6. 6 hours:

**VI. PORTIONS OF RECORD IN THE LANGUAGE OTHER THAN ENGLISH:**

7. The record is in English.

**VII. THE RECORD NECESSARY FOR DETERMINATION OF THE APPEAL:**

8. The full record

**VIII. SUMMARY OF ARGUMENT OF RESPONDENT:**

9. Appellant will argue that:

- 9.1 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
- 9.2 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
- 9.3 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 27th of October 1971; and/or
- 9.4 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
- 9.5 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

9.6 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

9.7 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

9.8 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

9.9 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

9.10 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

9.11 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.

9.12 It is common cause that this case deals with alleged offences that occurred in the so-called apartheid era allegedly committed by members of the South African Police in order to uphold the then Government.

9.13 There are still a substantial number of these alleged crimes occurring in that era for the mentioned purpose by members of the then South African Police and/or other State agencies that are presently being investigated and where prosecutions are envisaged.

9.14 Very material is also the fact that it deals with alleged perpetrators who did not apply to the Amnesty Committee of the Truth and Reconciliation Commission for amnesty for offences

and/or who applied unsuccessfully for amnesty to the TRC during the late 1990's.

9.15 All these alleged offences were committed a substantial time ago, mostly in the 1970's and 1980's.

9.16 It appears to be clear that a substantial number of further prosecutions will be instituted in the above regard and surely the same issues relating to fairness of such prosecutions that formed the subject matter of this application will be raised during such trial.

9.17 It will therefore be of the utmost importance to get clarity and finality on the approach that Courts should follow in this prosecution as well as future prosecutions based on the same principles.

**IX. CORE BUNDLE:**

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

**X. COMPLIANCE WITH RULE 8(8) AND (9):**

11. applicant seeks condonation and for the reinstatement of the appeal for failure to file the record in terms of rule 8 within three months as directed by this Honourable Court on 27 January 2020. The record was filed a month late.

Done at Pretoria on 12 June 2020

J G CILLIERS SC

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