IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
BLOEMFONTEIN

APPEAL COURT CASE NO: 1186/19
COURT *A QUO* CASE NO: 76755/18

In the matter between:

JOAO RODRIGUES Appellant

and

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

HEADS OF ARGUMENT OF FOURTH RESPONDENT

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INTRODUCTION

1 The main issue on appeal is whether the Full Court below correctly refused the application for a permanent stay of prosecution of the appellant on the charge of murdering Ahmed Essop Timol ("**Timol**") on 27 October 1971.[1]

2 The appellant was arrested and indicted on 30 July 2018.[2] The indictment followed the High Court's decision in the reopened inquest into Timol's death before Mothle J ("**the 2017 Inquest**") dated 12 October 2017.[3] On 18 October 2018, the appellant applied to permanently stay the prosecution against him.[4] On 3 June 2019, the Full Court (hearing the application *a quo*) dismissed the appellant's application.[5]

3 On 18 September 2019, the Full Court refused the appellant's application for leave to appeal.[6] He has since applied for leave to appeal to this Court. On 27 January 2020, this Court directed that oral argument be heard on:[7]

3.1 The appellant's application for leave to appeal in terms of section 17(2)(d) of the Superior Courts Act, 10 of 2013 ("**the SC Act**"); and

3.2 The merits of the appeal if called upon to do so.

4 We structure our submissions as follows:

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1 The indictment is at Record pp CB1-CB16.

2 NPA AA Record p 305 para 3.13.

3 The 2017 Inquest judgment is at Record pp 67-196.

4 NOM Record pp 1-5.

5 The Full Court judgment is at Record pp 798-857.

6 The judgment in the application for leave to appeal is at Record 858-866.

7 Record p 868.

4.1 First, we set out the primary legal provisions relied upon by the fourth respondent.

4.2 Second, we set out the background to the present matter.

4.3 Third, we explain why leave to appeal should be refused.

4.4 Fourth, we deal with the merits of the appeal.

4.5 Finally, we set out our concluding submissions, including as to costs.

LEGAL PROVISIONS

5 The primary statutory and constitutional provisions relied upon by fourth respondent in this appeal are as follows.

The Constitution

6 Section 1(c) of the Constitution provides that South Africa is founded on the values of constitutional supremacy and the rule of law.

7 The right to life is protected by section 11 of the Constitution. It has two components – a material and a procedural component. The material component means that every person has the right to be free from the arbitrary deprivation of life. The procedural component requires proper investigation and accountability where the arbitrary deprivation of life is suspected or has occurred. A failure by the State to ensure

accountability for the arbitrary deprivation of life is a violation of the right to life and undermines the rule of law.[8]

8 The Constitutional Court when considering whether the quashing of charges gave rise to a constitutional matter held:

> *"In a constitutional State the criminal law plays an important role in protecting constitutional rights and values. So, for example, the prosecution of murder is an essential means of protecting the right to life, and the prosecution of assault and rape a means of protecting the right to bodily integrity. The State must protect these rights, through, amongst other things, the policing and prosecution of crime. The constitutional obligation upon the State to prosecute these offences which threaten or infringe the rights of citizens is of central importance in our constitutional framework ... By providing for an independent prosecuting authority with the power to institute criminal proceedings, the Constitution makes it plain that the effective prosecution of crime is an important constitutional objective."*[9] (Underline added)

9 Section 179(2) of the Constitution which vests exclusive power in the NPA to institute criminal proceedings on behalf of the State. The obligation to prosecute offences is not limited to offences that were committed after the Constitution came into force but applies to offences committed before it came into force.[10]

10 Section 179(4) of the Constitution enjoins the prosecuting authority to exercise its functions without fear, favour or prejudice. A well-functioning criminal justice system is at the centre of any functioning constitutional democracy, and a subversion of the

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8 *S v Basson* 2005 (1) SA 171 (CC) paras 31-33. See more generally: United Nations General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns A/HRC/26/36 (1 April 2014), available at: https://digitallibrary.un.org/record/771922?ln=en

9 *S v Basson* 2005 (1) SA 171 (CC) paras 31-33.

10 *Ibid,* para 37.

criminal justice system is a subversion of the rule of law and constitutional democracy itself.[11]

National Prosecuting Act

11 Section 32(1)(a) and (b) the National Prosecuting Authority Act 32 of 1998 ("**the NPA Act**"), which requires prosecutors to serve impartially and which protects the prosecuting authority from interference or obstruction.

Prosecution Policy

12 The Prosecution Policy made in terms of section 179(5)(a) of the Constitution stipulates that in deciding whether or not to institute criminal proceedings, prosecutors must assess whether there is sufficient and admissible evidence to provide a reasonable prospect of a successful prosecution.[12] Once it has been established that there is sufficient evidence, a prosecution should follow unless the public interest demands otherwise.[13] Where there is sufficient evidence to prosecute, the NPA must comply with its constitutional obligation.[14]

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11 *Corruption Watch NPC v President of the Republic of South Africa*; *Nxasana v Corruption Watch NPC* 2018 (10) BCLR 1179 (CC) para 20.

12 NPA Prosecution Policy Revised June 2013 p 5 (issued in terms of section 21 of the NPA Act).

13 *Id* at p 6. When considering whether it is in the public interest to prosecute all relevant factors must be considered including the nature and seriousness of the offence, the interests of the victim and broader community, and the circumstances of the offender.

14 *Nkadimeng v National Director of Public Prosecutions* (32709/07) [2008] ZAGPHC 422 (12 December 2008) para 15.4.4.

Interim Constitution and the TRC Act

13 The historic compromises made during our negotiations for a peaceful transition demand that justice be pursued for serious apartheid-era crimes, when such crimes were not amnestied through the truth and reconciliation process.[15] This was encapsulated in the postscript to the *Constitution of the Republic of South Africa Act* 200 of 1993 ("**the Interim Constitution**") and subsequently in the Promotion of National Unity and Reconciliation Act 34 of 1995 ("**the TRC Act**").

14 The constitutional and statutory design of the TRC process envisaged that criminal investigations, and where appropriate, prosecutions, would take place where perpetrators were refused amnesty or failed to apply for amnesty. This lay at the heart of the compact struck with victims. The compact required the State to take all reasonable steps to prosecute deserving cases of offenders who were not amnestied.

15 In its Final Report released on 21 March 2003 the TRC stressed that the amnesty provision should not be seen as promoting impunity; and highlighted the imperative of "*a bold prosecution policy*" in those cases not amnestied in order to avoid any suggestion of impunity or of South Africa evading its obligations in terms of international law.[16]

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15 Cajee AA Record pp 445-447 paras 47-55

16 TRC Final Report, Volume 6, Section 5, Chapter 1 at paragraph 24

FACTUAL BACKGROUND

16 The background to these proceedings has been set out in considerable detail in Cajee's answering affidavit[17] and in the judgment *a quo*. Aside from providing a high-level overview we will not burden these submissions by repeating this background. The facts described below are common cause unless otherwise stipulated.

Death in Detention

17 Ahmed Timol was a political activist who had been arrested and was detained at John Vorster Police Station ("**JVS**") in 1971 after the South African Police ("**SAP**") discovered he was transporting anti-apartheid pamphlets in the boot of his car.

18 Timol died in detention on 27 October 1971 in the custody of the notorious Security Branch ("**SB**") of the SAP. The police claimed that Timol committed suicide by jumping or diving out a window in room 1026 on the 10th floor of JVS. The appellant alleged that he was the only person in room 1026 at the time Timol exited the window.[18] The 1972 inquest rubber stamped the police version and ruled that Timol's death was a suicide for which no one was to blame.

19 The appellant was specifically invited and encouraged to engage with the TRC during 1997. He spurned this request.[19]

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17 Record pp 437-458 paras 22-76

18 2017 Inquest Record pp 140-141 paras 185-187.

19 Supporting affidavit of Piers Ashley Pigou, Record pp 609-610 paras 7-12.

20 The Timol family did not accept the 1972 inquest finding.[20] They believed that Timol was murdered by the SB and the 1972 inquest covered up this fact. Timol's mother participated in the TRC process by testifying at a victim's hearing.[21] Cajee waged a campaign for justice, including writing two books profiling Timol and detailing his quest to see justice done.[22] He pushed for the reopening of the inquest into Timol's death in terms of section 17A of the Inquests Act, 58 of 1959 ("**Inquests Act**").[23]

The 2017 Inquest

21 The 2017 reopened Inquest Court found that Timol did not jump or dive from the 10th floor of JVS but was pushed by members of the SB from the 10th floor or the roof of JVS, and that such act amounted to murder.[24] The 2017 Inquest also found that prior to his death Timol was grievously injured following more than four days of unrelenting torture at the hands of the SB.[25]

22 Mothle J ruled on 12 October 2017 that the appellant should be investigated with a view to his prosecution.[26] Mothle J also referred the record of the inquest proceedings to the NDPP in terms of section 17A(3)(c) of the Inquests Act.[27]

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20 Cajee AA Record pp 443-455 paras 40-60 and 56-63.

21 *Ibid*, p 443 para 41.

22 *Ibid*, p 444 para 43.

23 *Ibid*, pp 447-449 paras 56-61.

24 2017 Inquest Record p 188 para 320.11

25 *Ibid*, p 167 para 263; p 171 para 279.

26 *Ibid*, p 192 para 335(d).

27 *Ibid*, p 192 para 336.

Post the 2017 Inquest

23 On 30 July 2018, the appellant was charged as follows:

> *"1. Murder, read with section 257 of the Criminal Procedure Act, 51 of 1977.*
> *2. Defeating and/or obstructing the administration of justice, read with section 256 of the Criminal Procedure Act, 51 of 1977."*[28]

24 On 18 October 2018, the appellant applied for a permanent stay of the prosecution in respect of the murder charge. The appellant took issue with the fact that a period of 47 years had elapsed between the date of Timol's murder and the date of the indictment.[29] He maintained that if the prosecution were to proceed it would infringe his right to a fair trial in section 35(3) of the Constitution.[30]

25 Following receipt of the appellant's application, the State respondents were conspicuously silent on the delay that ensued in the post-apartheid era. The Minister of Justice filed a short answering affidavit essentially abrogating the responsibility to address the appellant's application to the NDPP.[31] The NDPP's answering papers dated 3 December 2018 curiously offered little detail as to what transpired in the case post the winding up of the TRC.

26 Cajee was not initially cited as a respondent in these proceedings despite the family's obvious interest the proceedings. He had to bring an application to intervene as a respondent and was admitted as such by the High Court on 19 December 2019.[32] Cajee

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28 The indictment is at Record pp CB1-CB17.

29 FA p 34 para 36; FA p 36 para 41; FA p 44 para 46.

30 FA p 10 para 7.

31 The Minister of Justice's AA is at Record pp 254-270.

32 Cajee AA p 432 para 5.

intervened in these proceedings to prevent a grave injustice being perpetrated upon himself, his family and the wider community.

27 Cajee's answering affidavit disclosed evidence of gross political interference that resulted in the suppression of hundreds of cases handed over by the TRC to the NPA ("**the TRC cases**"), including the Timol case.[33] Given the stance adopted by the State respondents, Cajee concluded that they preferred to conceal the real explanation for their inaction.[34]

28 Even in the face of evidence of obstruction of justice the NPA remained silent and took no further steps. When it became clear that the NPA had held back the affidavit of NPA prosecutor, Chris Macadam (signed on 1 November 2018), which dealt with the delays and conceded the political interference in the TRC cases,[35] Cajee complained that the NPA's conduct amounted to obstructing the administration of justice.[36] It was only on 4 February 2019 that the NPA finally filed a supplementary answering affidavit, attaching Macadam's affidavit.[37]

29 In the NPA's belated supplementary answering affidavit, Adv J P Pretorius admits that gross political interference in the operations of the NPA resulted in the blocking of the

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33 Cajee's answering affidavit enclosed: (1) a secret government report that explored ways of avoiding prosecuting the TRC cases [Record p 508-519]; (2) an affidavit by former NDPP, Adv Vusumzi Patrick Pikoli describing how he was subjected to political pressure from the highest levels to abandon the TRC cases [Record pp 531-559]; (3) an affidavit by former head of the Priority Crimes Litigation Unit (PCLU), Adv Anton Rossouw Ackermann SC detailing how he was stopped from pursuing the TRC cases [Record pp CB31-CB48]; and (4) a secret memorandum addressed by Adv Pikoli to the then Minister of Justice, concluding that there had been improper interference in the TRC cases that obstructed their progress and impinged on his conscience and oath of office [Record pp CB49-CB59].

34 Cajee AA Record p 461 para 84.

35 Record p 644 para 8.2; pp 641-647.

36 Record pp 645-646 paras 10-11.

37 NPA SAA Record pp 659-702.

Timol matter and the other TRC cases, however he claimed that the blame for such conduct should not be attributed to the NPA but rather to the role players who applied the pressure.[38]

LEAVE TO APPEAL

30 The appellant seeks leave to appeal the Full Court's decision of 3 June 2019 in which it rejected the appellant's bid for a permanent stay of prosecution. Under section 17(1)(a) of the SC Act, leave to appeal "*may only be given*" where one of these two requirements are satisfied.—

30.1 First, in terms of section 17(1)(a)(i) of the SC Act "*the appeal would have a reasonable prospect of success*"; or

30.2 Secondly, in terms of section 17(1)(a)(ii) of the SC Act "*there is some other compelling reason why the appeal should be heard, including conflicting judgments on the matter under consideration*".

31 We submit that the appellant has failed to meet the requirements for leave to appeal to be granted under s 17(1)(a) of the Act. The appellant simply seeks to reargue his case. No attempt is made to explain how the court below erred or misdirected itself.

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38 NPA SAA pp 661-662 para 2.3, p 675 para 2.28, p 675 para 2.29, p 675 para 2.30.

Appeal does not have reasonable prospects of success

32 The appellant ought to have stipulated why the Full Court erred in making the impugned findings. This is especially so since the Act imposes a heavy onus on the appellant to establish that another Court would come to another decision.

33 At a minimum the appellant ought to have set out the case that the respondents must meet on appeal.[39] Ultimately, the appellant merely complains that the court below failed to make the findings he sought and declined to grant the relief he wanted. No attempt is made to explain how or why the Court erred in reaching these conclusions. The case is simply reargued.

34 The appellant does not explain how the court *a quo* misdirected itself in reaching its conclusions. He does not, for example, contend that the court erred in applying or interpreting the law or failed to apply the law to the facts; and/ or failed to apply its mind in relying on certain facts or evidence. Accordingly, the respondents are left to guess the possible reasons for the erring of the court below.

35 Indeed, it is apparent from a conspectus of the appellant's heads of argument that he simply reargues his case in a vacuum rather than demonstrate, with reference to the judgment of the court below, why there is a reasonable prospect that another court would come to a different decision.

36 A prime example of the appellant's failure is his lament that criminal charges have only been brought against him after a delay of some 47 years. The appellant refers to this 47-

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39 *Smit v Greylingstad Village Council* 1951 (4) SA 608 (T) at 613A-C.

year period at four different places in his heads and complains of delay some 33 times throughout his submissions. However, despite the significance that the appellant attributes to the delay, he does not explain why the analysis in the judgment of the court below of this period is incorrect.

37 The consideration of the Full Court on the question of delay comprises some 19 pages with a detailed analysis of the facts and law.[40] Notwithstanding the repeated lament of the appellant on the question of delay, no attempt is made to demonstrate how the court below erred or misdirected itself in its analysis. The appellant merely argues the question of delay afresh.

38 The Appellant's central assertion appears to be that the political interference, which suppressed the Apartheid-era cases post the closure of the TRC, warranted the granting of a permanent stay of prosecution. This claim, amongst others, will be addressed, when we deal with the merits of the appeal.

39 This Court has confirmed that the requirement that "*the appeal would have a reasonable prospect of success*" in section 17(1)(a)(i) of the SC Act requires that:

> *"An appellant for leave to appeal must convince the court on proper grounds that there is a reasonable prospect or realistic chance of success on appeal. A mere possibility of success, an arguable case or one that is not hopeless, is not enough. There must be a sound, rational basis to conclude that there is a reasonable prospect of success on appeal.*"[41] (Our emphasis.)

40 This Court will therefore consider whether the appellant has provided it with "*a sound, rational basis*" for concluding that its application enjoys a reasonable prospect of

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40 High Court judgment Record pp 813-832 paras 41-89

41 *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176 para 17.

success on appeal. We submit that it does not. We deal with the appellant's arguments on merits of the appeal in the ensuing section not only to show that the appellant's case is bad on the merits, but also to demonstrate that the appeal fails to meet the threshold requirements of section 17(1)(a)(i) of the SC Act.

No other compelling reason why the appeal should be heard

41 The appellant also relies on section 17(1)(a)(ii) of the Act. While appellant's heads of argument are silent on this aspect, the appellant's affidavit in support of his petition to this Court for leave claims that there are other compelling reasons why leave should be granted; namely, that:

41.1 Several further prosecutions of apartheid era crimes from the 1970s and 80s are likely to be instituted with the same issues relating to the fairness of these prosecutions.

41.2 Because these prosecutions will be instituted in separate provinces there is a real possibility if not probability that the various High Courts in the difference Provinces may deliver conflicting judgments on the matter.

41.3 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.[42]

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[42] Founding Affidavit in support of the application for leave to the SCA, pp 50-52, paras 48-50.

42 The Appellant's contention that there is a possibility of conflicting judgments on the same issues of fairness is pure speculation. The Appellant does not refer to any conflicting judgments or pending cases. Indeed, there are no conflicting judgments.

43 There is only a single pending prosecution of an apartheid-era case that we are aware of, which is the matter dealing with the 1983 murder of Nokuthula Simelane in the case of *S v Coetzee, Barnard & Mong, CC19/2016*. This case is set down for trial on 5 October 2020 in the Gauteng Division of the High Court. No stay of prosecution has been sought in that matter. It is apparent from the uncontested facts put up in the fourth respondent's answering affidavit that virtually all the TRC cases were suppressed with little likelihood of their resuscitation at this very late stage.[43]

44 Furthermore, section 17(1)(a)(ii) of the SC Act must be read with section 17(1)(b), which requires that an applicant seeking leave must also show that "*the decision sought on appeal does not fall within the ambit of section 16(2)(a) [of the SC Act]*". Section 16(2)(a) of the SC Act provides that:

> *"When at the hearing of an appeal the issues are of such a nature that the decision sought will have no practical effect or result, the appeal may be dismissed on this ground alone."*

45 The section accords with the well-established principle that our Courts will not exercise their discretion to decide points that are merely abstract, academic or hypothetical.[44]

46 There is simply no reason to speculate that conflicting judgments will arise at some future unknown date which this Court must now anticipate. This, we submit, is a classic

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43 Cajee AA pp 450-452 paras 64 – 65.5 and pp 461-466 paras 84 – 94.4, Fourth Respondent's answering affidavit.

44 *JT Publishing (Pty) Ltd v Minister of Safety and Security* 1997 (3) SA 514 (CC) para 14.

example of the appellant asking this Court to grant leave to decide points "*that are merely abstract, academic or hypothetical ones*".

47 Accordingly, the alleged compelling reasons are illusory. In our submission the Appellant has failed to demonstrate that there are other compelling reasons why this appeal should be heard.

THE APPEAL MUST FAIL

48 The appellant in his heads of argument sets out the 'basis of his application' being that:

48.1 his prosecution will infringe his rights under sections 35(3)(d) and 35(3)(i) of the Constitution, namely his right to have his trial begin and conclude without unreasonable delay; and his right to adduce and challenge evidence.

48.2 He is entitled not to be prosecuted with an unlawful and/ or improper motive.

48.3 "The issue relating to an amnesty granted by the President in terms of section 84(2)(j) of the Constitution."

48.4 "The issue relating to an agreement/ arrangement between Government and other interested parties not to prosecute" certain cases including the Timol murder, since such a prosecution would be "*contrary to [the] agreement/ arrangement*" and will "*have a bearing on the fairness of the prosecution*".[45]

49 The basis of the appeal is not that court below erred in any particular way, but rather the claimed entitlements of the appellant.

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[45] Appellant's HOA, p 2 – 3, paras 5 – 5.5.

More facts on the political interference not required

50 The first complaint of appellant is that more facts ought to have been placed before the court *a quo* on the question of the political interference into the handling of the TRC cases before the matter was finally adjudicated. [46]

51 The Full Court correctly dismissed the appellant's point *in limine* that the political interference had to be fully investigated before it could determine the stay of prosecution application.[47] It did so on the basis that, while regrettable, the absence of further detail as to the political interference did not preclude the Court from adjudicating the matter, finding in particular:

> *"While these details will no doubt be relevant in the writing of the history of episode in our democracy - and no doubt more will emerge around it – the absence of such detail would not stand as an obstacle to this Court determining the issues before it. ·In particular, all of the parties are in agreement that there was political interference and that such interference may well have delayed the investigation and prosecution of the Applicant. It does not take the matter any further to seek the finer detail of how the political interference materialised.*"[48]

52 The appellant made no attempt to impugn the reasoning of the court *a quo* in this regard. While fourth respondent agreed that it was important to understand the genesis of the political interference, and its impact, the proper place for such an investigation was a commission of inquiry, which he called for. [49] Cajee's call was backed by former

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46 Appellant's HOA, p 5 – 6, paras 9 – 12.

47 High Court judgment Record pp 810-811 paras 29-34.

48 High Court judgment Record pp 810-811 para 32.

49 Cajee AA p 493 para 143.

TRC commissioners who called upon the President to institute an inquiry and to apologise to victims, whose cases were abandoned.[50]

53 Since the NDPP admitted that political interference stopped the prosecution of TRC cases, including the Timol case, the pertinent question that arose on this issue was whether the political interference justified or warranted a permanent stay of prosecution. That is the question that the Full Court correctly proceeded to interrogate and address.

Question of delay

54 The next complaint of appellant is the question of delay, which is dealt with under the heads of "Undue Delay" and "Evaluation of Reasonable Time". Under these heads the appellant impugns the conduct of the first respondent and takes issue with several assertions made by respondents in the court below. As mentioned above, not a single attempt is made to impugn the actual findings and detailed reasoning of the Full Court. In other words, the appellant merely reargues his case on the question of delay.

55 While appellant makes it clear that he disputes the points advanced by the respondents he does not disclose what his disagreements are with the court *a quo* on the issue of delay. The appellant, without saying so, perhaps infers or insinuates that the judgment of the court *a quo* adopted the arguments of the respondents 'lock stock and barrel', thereby obviating the need to attack the Full Court's findings and reasoning. We submit that such an approach to litigation at the appellate level is not permissible.

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50 Cajee SAA p 643 para 6, p 648.

56 Since the appellant only impugns the arguments of the respondent, he appears to be inviting this Court to assume that such attacks can simply be inferred as an attack on the relevant parts of the judgment itself. In our respectful view, such invitation should be firmly declined. Since the appellant reargues his case, respondents may be tempted to reargue their cases, which they may feel obliged to do in case an effective rehearing is permitted on appeal.

57 Amongst other submissions, appellant contends in his heads of argument are that he was never on the run, the evidence against him was always there to be uncovered, and but for the political interference, he could have been prosecuted at an earlier time, or at least following the conclusion of the TRC. [51]

58 Appellant then takes issue with the respondents' argument that the time period referred to in s 35(3)(d) of the Constitution starts from the date of the issuing of the indictment, not the date of the crime. [52] Appellant does not point to what the court *a quo* opined on this matter and presumably takes no issue with the judgment in this regard. [53] In the circumstances it is not clear why this point is raised on appeal, but nonetheless we submit that the period in question can only be from the date of charge, since prior to this date the appellant was not an accused, and s 35(3)(d) only applies to accused persons, not suspects who have not been charged.[54]

59 However, while the period between the date of crime and date of charge may not be relevant for purposes of s 35(3)(d), it is a factor in terms of the first respondent's own

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51 Appellant's HOA, p 7 – 11, paras 13 – 22.

52 Appellant's HOA, p 11 – 12, paras 23 – 29.

53 High Court judgment Record pp 811-812 para 36.

54 Arrested and detained persons are dealt with in terms of s 35(1) and (2) of the Constitution.

Prosecution Policy, which requires it to consider the period between the committal of crime and the trial date when deciding whether it is in the public interest to prosecute.[55] However, this provision was never invoked by appellant in his founding papers. It is noteworthy that Rodrigues never sought to invoke s 22(2)(c) of the NPA Act to review the decision to prosecute him on this basis or any other ground, before launching proceedings to stay the prosecution.

Appellant's treatment of case law

60 Appellant's heads of argument purport to rely on *Sanderson v Attorney-General, Eastern Cape* 1998 (2) SA 38 (CC) and they summarises various fair trial principles emerging from that case, without applying such principles to the instant matter, or even alleging that they had been violated in respect of the appellant.[56] Appellant makes no reference to the treatment of *Sanderson* by the Full Court and makes no observation of the fact that it only dealt with the delay after a person has become an accused, that is following charges. [57]

61 The appellant places reliance on *Broome v Director of Public Prosecutions, Western Cape v Acting Regional Magistrate, Cape Town* 2008 (1) SACR 178 (CPS).[58] The court in this matter granted a stay of prosecution in respect of various white-collar crimes that had been delayed for 7 years. It is necessary however to note the distinguishing features between *Broome* and the instant matter:

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55 Prosecution Policy issued in terms of s 179(5)(a) of the Constitution (Revision Date: June 2013), p 7.

56 Appellant's HOA, p 13 – 14, paras 33 – 36.4.

57 The four factors distilled in *Sanderson* were accepted. with qualification and applied in respect of a pre-trial delay in *Bothma* v *Els and Ohers* 2010 (2) SA 622 (CC) at para 37.

58 Appellant's HOA, p 14 – 15, paras 37 – 40.

61.1 In *Broome*, the offences in question were significantly less serious than the present case and concerned only fraud and contraventions of the Companies Act, 61 of 1973 and the Banks Act, 94 of 1990.

61.2 While the appellant refers to the 7-year period as a delay, no attempt was made to accurately describe the actual period. In fact, it was the period from the conclusion of the investigation to the bringing of charges.[59] In the present case the comparable period was less than a year. The investigations were only finalised during the Reopened Inquest, or after its conclusion in October 2017, and the charges were brought in July 2018, less than a year later.

61.3 Moreover, the prejudice to the accused in *Broome* was clear in that the audit working papers, that were the central subject matter of the crime in question, had been lost by the State and that these documents were fundamental to the case the accused had to answer. [60]

62 The appellant makes only passing reference to *Wild and Another v Hoffert NO and Others* 1998 (3) SA 695 (CC), *Bothma v Els and Others* 2010 (2) SA 622 (CC) and *Director of Public Prosecutions and Minister of Justice and Constitutional Development v Phillips* [2012] ZASCA 140 but no attempt is made to apply these authorities to the present case. [61] No reference is made to the treatment of *Wild* and *Bothma* by the Full Court, let alone a critique of such treatment.

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59 *Broome,* paras 27- 28.

60 *Broome,* paras 71- 75.

61 Appellant's HOA, p 15 – 16, paras 41 – 43.

63 No rebuttal or comment is offered by the appellant on the Full Court's application of *Wild* in concluding that the appellant's claim of trial prejudice is illusory in that he has access to the full docket; is free to engage experts (at state expense); has legal defence (also at state expense); that he is on bail and not at risk of pre-trial incarceration or having to bear any financial burden in connection with his case. [62]

64 It is particularly surprising that the appellant has nothing to say about the court *a quo*'s extensive reliance of the holdings in *Bothma,* in particular its application of the factors to be applied in permanent stay proceedings. No critique or challenge is offered in relation to the Full Court's analysis of the various factors (six in total) in balancing the interests of prosecution and defence – and ultimately deciding whether to grant a stay of prosecution. [63] This comprises the centrepiece of the judgment of the court below, covering some 25 pages,[64] yet the appellant is entirely silent on whether the court was correct or not. These findings stand uncontested. If the appellant disputes the correctness it was incumbent upon him to explain how the court below erred.

65 Appellant attempts to distinguish the cases from foreign jurisdictions dealing with long delay and old age by claiming that in these cases the accused persons had gone into hiding and sought to evade detection, in contrast to the appellant. [65] No cases or facts were supplied in support of this claim, which amounts to pure conjecture. Appellant makes specific reference to the cases dealing with Nazi perpetrators, also without identifying any cases or providing any facts.

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62 High Court judgment Record pp 828-829, paras 80 - 82.

63 High Court judgment Record pp 812-813, paras 37 - 39.

64 High Court judgment Record pp 812-837, paras 37 - 99

65 Appellant's HOA, p 16 – 17, paras 44 – 44.4.

65.1 The fourth respondent, and some of the amicus curiae in the court below, did make references[66] to such cases in which elderly Nazi suspects are standing trial well into their nineties. [67]

65.2 While some Nazis, especially those who fled Germany, did evade justice, several of those tried, resided in Germany in plain sight of the authorities. An example is the case of Oskar Gröning, who was stationed at Auschwitz in World War II. He was found guilty by the Luneburg Regional Court in 2015 of facilitating mass murder and sentenced to 4 years' imprisonment, which was upheld by the German Federal Constitutional Court.[68] There was never any suggestion that the long delay in bringing the proceedings was as a result of Gröning having fled justice.

65.3 The Full Court made no reference to the cases mentioned above but did cite comparable cases from South Africa, France and the United States, which appellant does not address in his heads of argument. [69]

66 The court below analysed the 47-year period in detail and found that the timeline is nuanced and complex. It divided this time period into 3 periods (1971 – 1994; 1994 – 2002; and 2003 – 2017) and analysed each period in considerable detail before concluding that the delay will not taint the fairness of the proposed trial.[70] The

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66 Cajee AA pp 468-470 paras 99-100.

67 By way of example see: *Former Nazi camp guard, 95, charged with war crimes in Germany*, AFP, 13 July 2020, available at: https://www.news24.com/news24/World/News/former-nazi-camp-guard-95-charged-with-war-crimes-in-germany-20200713

68 Decision of the Federal Constitutional Court (*In dem Verfahren über die Verfassungsbeschwerde 2 BvR* 2772/17). English official press release summarising the decision available at: https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2017/bvg17-115.html

69 High Court judgment Record pp 829-830, paras 83 - 85

70 High Court judgment Record pp 813-832, paras 41 - 89

appellant does not bother to impugn or challenge the analysis or reasoning behind this conclusion, even though it boldly proclaims that such an "*extreme delay in commencing with the prosecution against any accused will materially prejudice the accused's right to a fair trial*."[71]

Other complaints

67 Appellant makes multiple complaints about the formulation of the charge sheet and complains that he has been supplied with inadequate further particulars.[72] However, he makes no attempt to explain why such grievances constitute a basis for a permanent stay of prosecution; and why he cannot pursue other remedies available to him under the Criminal Procedure Act ("**CPA**"), including seeking a discharge in terms of s 174 of the CPA and / or to review the decision to prosecute on this basis.

68 Equally significant is the failure of appellant to explain why an allegedly defective charge sheet and an allegedly deficient set of further particulars constitutes a ground of appeal. Appellant attempts to bolster this complaint by claiming that he is "*confronted with the situation that he as an 81-year-old person, hampered by a seriously fading memory, has to answer and defend himself*" against allegations of serious crimes.[73]

69 Unsurprisingly, appellant remains silent when it was pointed out that this is a bald claim unsupported by any evidence. His concern regarding his memory and ability to recall must be contrasted with the fact that his version of the events surrounding

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71 Appellant's HOA, p 18, para 46.

72 Appellant's HOA, p 18 - 21, paras 47 - 53.

73 Appellant's HOA, p 20, para 52.

Timol's death has remained largely consistent from 1971 through to 2017.[74] In any event, appellant provided no evidence or medical records of his fading memory or other health concerns.[75] We submit that advanced age on its own is not a basis to escape justice. The message that ought to be sent to perpetrators of serious crime, such as murder, should be that they will be held to account for their actions, no matter their age.[76]

No grant of amnesty, pardon or leniency

70 Appellant makes the remarkable claim that he is the beneficiary of a pardon, amnesty or some other form of leniency[77]. The basis for the claim appears to be the assertion that the President enjoys strong prerogative powers under the Constitution to grant pardon, which are not easily assailed. [78]

71 Reference is then made to the secret Amnesty Task Team (ATT), which explored possibilities of protecting Apartheid-era perpetrators from prosecution. While the ATT considered the question of amnesty it decided not to recommend an amnesty process to the President. Nonetheless, the appellant concludes that on the probabilities a pardon was granted to all who did not apply for amnesty. No evidence of such action was supplied by appellant who simply speculates that it did happen because prosecutors did not take these cases forward. [79]

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74 NPA AA pp 311-312 para 3.22.

75 Cajee AA p 472 para 107.

76 Cajee AA p 473 para 109.

77 Appellant's HOA, pp 21 - 23, paras 55 - 60.

78 Appellant's HOA, pp 21 - 22, paras 55 - 58.

79 Appellant's HOA, pp 22 - 23, paras 59 - 60.

72 The Full Court swiftly dismissed the appellant's conjecture pointing out that this was nothing more than speculation on the part of appellant and that there was no evidence on the papers remotely pointing to an amnesty or pardon. [80] Appellant made not the slightest attempt to rebut such findings, indeed he made no reference to the findings of the court on this aspect.

73 In addition, it scarcely needs to be mentioned that an amnesty may only be issued under law, and, post the TRC, no such law exists. Cajee's answering affidavit set out, what in fact transpired from the machinations of the ATT – at least at a public level. [81] There was an attempt to create a 'back door' amnesty by amending the NPA's Prosecution Policy; and President Mbeki's Special Dispensation for Political Pardons sought to assist those perpetrators who did not benefit from the TRC's amnesty. Both initiatives were stopped in the courts.[82]

74 It is worth noting that, Rodrigues never applied for a decision not to prosecute under the Amended Prosecution Policy, before it was struck down in 2008. He also never applied for a presidential pardon, nor did he seek a pardon through the Special Dispensation on Political Pardons, before it was stopped in 2009. It should also be pointed out that in South Africa nobody has a right or entitlement to a pardon.[83]

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80 High Court judgment Record pp 825-826, paras 71 - 73

81 Cajee SAA pp 450-453 para 65.

82 In *Nkadimeng v National Director of Public Prosecutions* [2008] ZAGPHC 422 and subsequently *Albutt v Centre for the Study of Violence and Reconciliation & Others* 2010 (3) SA 293 (CC) ("***Albutt***").

83 *Albutt*, para 27

75 Section 101(1) of the Constitution requires that any decision taken by the President, including a pardon, must be in writing if is to have legal consequences. No such written decision has been produced.

No lawful agreement not to prosecute

76 In the absence of an amnesty or pardon, appellant advances the theory that he is the beneficiary of an agreement or arrangement not to prosecute, which ought to be respected. It is even suggested that appellant has accrued rights from such arrangements, even if they are manifestly unlawful.[84] Remarkably, appellant argues that the President, Minister of Justice and NDPP would have enjoyed legal competence to enter into such arrangements or agreements, even if they were in fundamental violation of the rule of law and their oaths of office. [85]

76.1 While patently illegal and unconstitutional measures were taken by various functionaries and political role players to suppress the TRC cases, as set out in the affidavits of Advocates Vusi Pikoli,[86] Anton Ackermann SC[87] and Chris Macadam, [88] there is no evidence, as yet, of a specific transaction or agreement between parties to take such measures. Even if there was such an agreement, appellant would accrue no rights under an arrangement that would amount to violations of multiple constitutional and statutory obligations, not to mention a

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84 Appellant's HOA, pp 24 - 26, paras 61 - 69.

85 Appellant's HOA, p 25, para 65.

86 Record pp 531-568

87 Record pp CB31-CB48

88 Record pp CB72-CB101

conspiracy to commit serious crimes, including the wilful obstruction of the course of justice.[89]

76.2 As mentioned, s 101(1)(b) of the Constitution requires that a decision by the President must be in writing if it is to have legal consequences. Appellant can point to no such written decision. In any event, a requirement for the principle of presumptive legal validity is that a decision must be communicated to a subject who then places reliance on the decision. (*MEC for Health, Eastern Cape v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC) paras 64, 66 and 105). In the present case, no decision has been communicated to the appellant, upon which he placed reliance.

76.3 The appellant's reliance on *Tamarillo (Pty) Ltd v BN Aitken (Pty) Ltd* 1982 (1) SA 398 (A) is also misplaced as this case dealt with a binding contract concluded between two private parties. *Tamarillo* relies on private law contractual principles, whereas the present matter concerns the exercise of public power. In any event, no such contract was concluded by the appellant.

76.4 The appellant's resort to *State Information Technology Agency SOC Ltd v Gijima Holdings (Pty) Ltd* 2018 (2) SA 23 (CC) is equally misplaced since, even if it applied to these circumstances, the appellant was not a party to any contract to award leniency, let alone an innocent and misled party, warranting the exercise of the court's just and equitable remedial discretion.

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89 Soliciting a prosecutor by unlawful means not to prosecute constitutes the crime of obstructing the course of justice (*S v Burger* 1975 (2) SA 601 (C) at 607) ; See *R.* v *Field* (1964) 3 All E. R. 270 at 271, 281 quoted by Baker R in *S v Burger* 1975 (2) SA 601 (C) at 616: "*Held: A conspiracy to obstruct the course of justice was different from, and might be far more reprehensible than, a conspiracy to obstruct the police in the execution of their duty*…" and may amount to "*a grave crime*".

No unfair or improper motive

77 Appellant complains that the decision to charge him with the murder of Timol, when the Reopened Inquest Court did not make a specific finding to this effect, amounts to an unfair or improper motive on the part of the first respondent. [90]

78 Appellant points to no legal provision or precedent that binds the discretion of prosecutors to the recommendations of an inquest court. There are none. Notwithstanding the Applicant's strenuous objections there is no evidence that appellant made any representations to the NDPP in terms of s 22(2)(c) of the NPA Act to reverse this decision – as he was entitled to do.

79 The claim that the NPA should have prosecuted Rodrigues at the time of the decision to reopen the inquest – since it had all the evidence at that time[91] –does not withstand scrutiny. In fact, the decision to reopen the inquest was taken essentially on the back of the comprehensive affidavit of Salim Essop, which was taken by the family's legal representatives. The bulk of the additional evidence, including all the expert evidence, was only generated subsequent to this decision. This was mostly prepared by the family's legal team and investigator. Some of the investigations were only finalised during the inquest itself.[92]

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90 Appellant's HOA, pp 26 - 33, paras 70 – 85.4.

91 Appellant's HOA, p 28, para 78.

92 Cajee AA p 487 para 133.

80 In any event, the appellant's objections to the murder charge must be considered in the light of the fact during the Reopened Inquest he effectively admitted to the murder of Timol based on *dolus eventualis* in respect of his conduct post the fall.

81 During the 2017 Inquest, the appellant admitted, under cross examination, that following his observing Timol fall 10 floors onto the garden, an ambulance and emergency medical care should have been immediately summoned.[93] In addition, he conceded that he and the other officers should not have moved Timol from the garden in which he lay at the foot of JVS.[94]

82 The appellant, who on his own version was the only person in room 1026 with Timol, knew better than anyone else that Timol had fallen 10 storeys. It was overwhelmingly obvious to him that Timol needed very urgent medical assistance. As a police officer, and as the only person, on his version, who saw Timol exit the window, he was under a compelling a legal duty[95] to seek emergency medical attention. Notwithstanding this knowledge, he chose not to obtain medical assistance for Timol.[96]

83 Despite owing a duty of care to Timol, the appellant chose not to pick up the phone in room 1026 to call an ambulance.[97] Instead, he and other SB members proceeded to the garden placed the critically injured Timol, with likely spinal and neck injuries, on a

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93 Cajee AA pp 441-442 para 35.

94 Cajee AA p 442 para 36.

95 *Minister of Safety and Security v Craig NNO* 2011 (1) SACR 469 (SCA) paras 60 and 61.

96 *S v Van Aardt* 2008 (1) SACR 336 (E) 345A-B.

97 Cajee AA p 442 para 37.

blanket and moved him up to the 9th floor of JVS, thereby hastening the death of Timol before he could receive medical attention.[98]

84 The appellant must have foreseen, and by implication did foresee, that there was a reasonable possibility that Timol would die if not medically treated and if moved by the police.[99] By refraining from calling an ambulance and clumsily moving the critically injured Timol, the appellant subjectively reconciled himself with the foreseen consequences, and is accordingly liable for Timol's murder on the basis of *dolus eventualis*.[100] He, and the other police officers involved, had the requisite intention to kill in the form of *dolus eventualis*.

Appellant's evaluation of the court a quo's judgment

85 Towards the end of appellant's heads of argument, a section appears purporting to offer an evaluation of the Full Court's judgment, raising the expectation that at last the appellant will explain how that court erred in reaching its conclusions.

86 However, no evaluation follows. Instead the appellant lists 5 findings dealing with the political interference which are described as "*not only relevant but important for purposes of this application*." The appellant does not impugn these findings but claims that they are helpful to his cause. Appellant only takes issue with the court *a quo's* finding that it was unlikely that an amnesty or pardon was granted. [101]

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98 Cajee AA p 442 para 36.

99 *S v Van Aardt* 2008 (1) SACR 336 (E) 346F-J.

100 *S v Sigwahla* 1967 (4) SA 566 (A) 570B-E.

101 Appellant's HOA, pp 33 - 35, paras 86 – 87.

87 In the final paragraph of this section, appears the one and only assertion in the heads of argument where the appellant impugns the Full Court, albeit in a vague and general manner. In this paragraph the appellant claims that despite making the aforesaid apparently helpful findings, the court below found that a proper case for a stay of proceedings had not been made out.

CONCLUSION

88 The conduct of the appellant must be placed in context. He participated in the cover-up of Timol's death by committing perjury before the first inquest in 1972 and during the 2017 Inquest.[102] With the advent of democracy in 1994, and the establishment of the TRC, it was open to him to come forward and come clean about his role and claim amnesty. [103] Instead he chose to remain silent ignoring the invitations for closure, thereby causing the family considerably more trauma for several more years.[104] He only testified at the Reopened Inquest after Mothle J issued a subpoena against him.[105] He has constantly spurned the Timol family's pleas to disclose the true circumstances into Timol's death.[106]

89 The appellant has directly benefitted from the unlawful interference with the operations of the NPA and was shielded from investigation and prosecution in the post-TRC years.[107] He now seeks to use the same delay to permanently stay his prosecution. The

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102 2017 Inquest Record p 188 para 320.12.

103 Cajee AA Record p 444 para 45.

104 Cajee AA Record p 483 para 129.

105 Cajee AA Record p 483 para 129.

106 Cajee AA Record p 436 para 19.

107 Cajee AA Record p 464 paras 88-89.

disgraceful behaviour of the NPA and SAPS, in succumbing to political interference, should not be exploited for the benefit of the apartheid-era perpetrators. To stay the prosecution in such circumstances would amount to near total impunity for those behind serious apartheid era crimes, such as murder and torture. Moreover, it would be deeply offensive to our constitutional order and be in violation of South Africa's international law obligations.[108]

90 In our respectful view, granting a stay of prosecution in these circumstances would amount to a perversion of the rule of law as it would play into the hands of dark forces that sought total impunity for serious crimes such as murder and torture. It would signal that unlawful efforts to suppress justice are to be rewarded and it would encourage further such machinations going forward. This, we submit, is manifestly contrary to the interests of justice.

91 Rodrigues has failed to demonstrate sufficient, if any, prejudice to warrant the drastic remedy of a permanent stay of prosecution. Instead, we submit that his behaviour, past and present, illustrates a consistent predilection for avoiding truth and accountability.

92 Granting a permanent stay of prosecution would compound the suffering of the Timol family and unjustly reward the appellant's persistent refusal to cooperate. Rodrigues has made his choices. Having elected not to participate in the TRC process, he reconciled himself to the possibility that an independent investigation would expose his

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108 These include Art 2(3) of the International Covenant on Civil and Political Rights, *U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171;* Articles 4(m) and (o), Constitutive Act of the African Union, OAU *Doc. CAB/LEG/23.15, Adopted by the 36th Ordinary Session of the Assembly of Heads of State and Governments on 11 July 2000 at Lomé, Togo, entered into force May 26, 2001: Articles 4 and 11 of the* Basic Principles and Guidelines on the Right to a Remedy, *G.A. Res. 60/147, U.N. Doc. A/Res/60/147* (Dec. 16, 2005). Adopted unanimously by the UN General Assembly.

role in Timol's untimely demise and open himself to prosecution. That reckoning has now come. History demands that such reckoning be allowed to take its course.

93 Weighing all the factors in this case and considering the seriousness of the nature of the offence, the interests of the family and society are compelling. The family seeks no injustice or revenge against Rodrigues. Their interest is closure and justice. In the circumstances, the criminal proceedings should proceed. We submit that this is a crime that will not go away.[109]

94 For the reasons set out above, the Timol family prays that leave to appeal be refused or, if leave to appeal is granted, that the appeal be dismissed. In either event, the Timol family submits that costs should be awarded against the appellant, including the costs of two counsel. Should the appellant prevail we submit that the 4th respondent should not be mulcted with a cost order as per the *Biowatch* principle. In resisting this appeal Cajee has sought to vindicate his constitutional rights

H VARNEY

T SCOTT

Counsel for the Timol Family

Chambers, Sandton

15 July 2020

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109 *Bothma v Els* 2010 (2) SA 622 (CC) para 77.

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United Nations General Assembly Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns A/HRC/26/36 (1 April 2014)

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
BLOEMFONTEIN

APPEAL COURT CASE NO: 1186/19
COURT *A QUO* CASE NO: 76755/18

In the matter between:

JOAO RODRIGUES	Appellant
and	
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

CHRONOLOGY FOR IMTIAZ CAJEE (FOURTH RESPONDENT)

	DATE	EVENT	REFERENCE
95	22/10/1971	Timol arrested by SAP	p 18 para 19.1
96	27/10/1971	Timol murdered by SB	p 192 para 335
97	30/04/1996	Timol's mother testified at a TRC victims hearing	p 443 para 41
98	27/09/2002	Cajee phoned Gloy to confront him about his role in Timol's interrogation and torture	p 448 para 60.1
99	21/11/2002	Cajee phoned Gloy to confront him about his role in Timol's interrogation and torture	p 449 para 60.4
10	21/03/2003	TRC released final report	p 445 para 47
10	2003	Cajee approached NPA requesting them to investigate the Timol case	p 449 para 61
10	23/02/2004	Secret Amnesty Task Team appointed	p 451 para 65.1
10	25/02/2004	NPA advised Cajee of the "*negative results*" of the Timol investigation	p 449 para 62
10	30/01/2005	Cajee launches his book "*Timol – A Quest for Justice*"	p 453 para 66
10	29/11/2006	NPA produced a report stating that it had closed its investigation into the Timol case	p 449 para 62
10	2007	Cajee wrote a letter to Gloy pleading with him to reveal the truth about Timol's death	p 449 para 60.5

10	15/02/2007	Secret memorandum authored by Adv Pikoli to Justice Minister Mabandla	p 462 para 85.3
10	23/09/2007	President Mbeki suspends Adv Pikoli as NDPP	p 462 para 85.2
10	09/2007	Adv Ackermann SC relieved of his duties in relation to TRC cases	p 463 para 85.4
11	2009	Cajee contacted former TRC Commissioner Yasmin Sooka in 2009 for assistance with the Timol case	p 453 para 68
11	2015	Documentary "*Indians Can't Fly*" aired on national television	p 458 para 75.3
11	06/02/2015	Cajee met with Adv Varney, Frank Dutton and Yasmin Sooka to pursue re-opening of the Timol inquest	p 453 para 68
11	20/05/2015	Thembisile Nkadimeng launches application in Pretoria High Court to compel SAPS and the NPA to investigate and prosecute the death of Nokuthula Simelane	p 452 para 65.4
11	19/01/2016	Cajee met with NDPP to present evidence in support of the re-opening of the inquest	p 49 para 49.7, p 454 para 69
11	26/10/2016	NDPP announced that the NPA supported Cajee's application for the re-opening of the inquest	p 49 para 49.7, p 454 para 69

11	26/06/2017	Inquest into Timol's death formally re-opened	p 38 para 42.2
11	24/08/2017	Mothle J delivers 2017 Inquest judgment	p 21 para 19.13
11	30/07/2018	Rodrigues charged and arrested	p 21 para 19.14
11	18/09/2018	Rodrigues first appearance in court	p 22 para 19.15
12	01/10/2018	Rodrigues submitted request for further particulars in terms of section 87 of the CPA	p 22 para 19.17
12	05/10/2018	NPA replied to Rodrigues request for further particulars	p 23 para 19.18
12	12/10/2018	Rodrigues filed application to compel NPA to provide further particulars	p 23 para 19.19
12	12/10/2018	Pre-trial held between NPA and Rodrigues	p 24 para 19.20
12	14/10/2018	Documentary "*Someone to Blame – The Ahmed Timol Inquest*" aired on national television	p 458 para 75.3
12	15/10/2018	Rodrigues second appearance in court	p 24 para 19.21
12	19/10/2018	Rodrigues instituted application for stay of proceedings	p 24 para 19.21
12	26/11/2018	Minister of Justice files answering affidavit	pp 254-270
12	03/12/2018	NDPP files answering affidavit	p 356
12	19/12/2018	High Court grants Cajee application to intervene	p 432 para 4

13	08/01/2019	Cajee files answering affidavit	p 501
13	16/01/2019	NPA spokesperson holds interview with Radio 702	p 644 para 8
13	25/01/2019	Cajee files supplementary answering affidavit	pp 641-647
13	04/02/2019	NPA filed a supplementary answering affidavit attaching Macadam affidavit dated 1 November 2018	pp 659-702