

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
(BLOEMFONTEIN)

SCA CASE NO: 1186/19

GAUTENG HIGH COURT CASE NUMBER: 76755/18

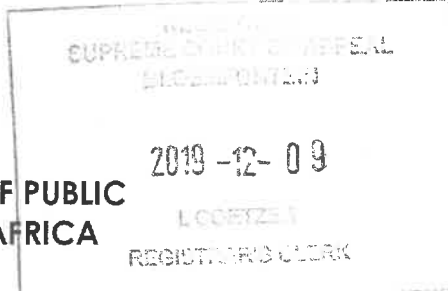
In the matter between:

JOAO RODRIGUES

APPLICANT

and

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



1ST RESPONDENT

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

2ND RESPONDENT

THE MINISTER OF POLICE

3RD RESPONDENT

IMITIAZ AHMED CAJEE

4TH RESPONDENT

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FIRST'S RESPONDENT'S ANSWERING AFFIDAVIT

FILED BY:

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TO: THE REGISTRAR
SUPREME COURT OF APPEAL
BLOEMFONTEIN

AND
TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA

AND
TO: APPLICANT'S ATTORNEY
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Applicant Attorneys

**AND
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REF : LIETTE VAN SCHALKWYK

**Copy hereof received on
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Time:**

Kock Elise

168

From: Sethuu Marumo
Sent: 06 December 2019 01:12 PM
To: Kock Elise
Subject: FW: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

From: Ben Minnaar [mailto:benjaminnaar@gmail.com]
Sent: 06 December 2019 01:11 PM
To: Sethuu Marumo
Subject: Re: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Dear Sir,
Receipt is hereby acknowledge.
Regards
Ben Minnaar

On 06 Dec 2019, at 13:07, Sethuu Marumo <MSethuu@justice.gov.za> wrote:

Good day

Please find the enclosed First Respondent's answering affidavit.

Please acknowledge receipt.

Kind Regards
Marumo Sethuu

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Kock Elise

From: Breggie Viljoen <bv@webberslaw.com>
Sent: 06 December 2019 01:37 PM
To: Kock Elise
Cc: Liette van Schalkwyk
Subject: FW: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
Attachments: S021001362_1912061027000.pdf

Dear Elise,

We acknowledge receipt hereof.

Thank you,

Breggie Viljoen



111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000

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in re: the matter

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 20 DECEMBER 2019 &
 RE-OPEN ON 6 JANUARY 2020**

MERRY
Christmas
 AND
 HAPPY NEW YEAR

From: Kock Elise [mailto:EKock@justice.gov.za]
Sent: Friday, 06 December 2019 12:50
To: Liette van Schalkwyk <lvs@webberslaw.com>; Breggie Viljoen <bv@webberslaw.com>
Subject: FW: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Good day Liette/Breggie

Herewith please find the 1st Respondent's Answering Affidavit for your attention.

Kindly acknowledge receipt hereof.

Elise Kock

Office of the State Attorney (BLOEMFONTEIN)

☎: (051) 400 4301 | 📠: 086 507 0424 | 📞: Cell: 082 818 6145

✉: EKock@justice.gov.za

📁: Private Bag X20630, Bloemfontein, 9300

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Department:
Justice and Constitutional Development
REPUBLIC OF SOUTH AFRICA

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0IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA,
BLOEMFONTEIN

In the matter between:

SCA Case No.:2019/

High Court Case No.: 2018/76755

JOAO RODRIGUES

APPLICANT

And

NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS 1ST RESPONDENT

MINISTER OF JUSTICE 2ND RESPONDENT

MINISTER OF POLICE 3RD RESPONDENT

IMITIAZ AHMED CAJEE 4TH RESPONDENT

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned:

JACOBUS PETRUS PRETORIUS

do hereby make oath and state as set out below:



1. INTRODUCTION

- 1.1 I am an adult and I am employed by the first respondent. I am competent to make this answering affidavit to oppose the applicant's application for leave to appeal.
- 1.2 Unless the context otherwise indicates, the contents of this founding affidavit fall within my knowledge and they are both true and correct.
- 1.3 I have considered the applicant's founding papers and I respond thereto below.

2. THE APPLICANT IS NOT ENTITLED TO LEAVE TO APPEAL

- 2.1 The applicant has failed to demonstrate that the High Court got it wrong in dismissing his application for a permanent stay of prosecution. This Court should accordingly refuse leave to appeal because an appeal would not succeed if leave to appeal is granted.
- 2.2 I demonstrate below why the first respondent contends that leave to appeal should be refused under separate headings and thereafter respond to the allegations contained in the applicant's founding affidavit.



The section 35(3) of the Constitution complaint

- 2.3 The applicant has failed to establish the basis on which it is sought to be contended that the High Court erred by not finding in his favour on his reliance upon section 35(3) of the Constitution.
- 2.4 The High Court correctly identified the factors which must be taken into account in considering whether a prosecution would violate section 35(3) of the Constitution to justify a permanent stay of prosecution. The applicant does not take issue with the High Court's identification of those factors and does not go on to take issue with the manner in which the High Court applied those factors in this case.
- 2.5 For the applicant to succeed on the section 35(3) point, the applicant ought to say, and he does not make out a case, that the High Court erred in dealing with the following issues:
- 2.5.1 the length of the delay and its impact;
 - 2.5.2 the reasons advanced by the government respondents for the delay;
 - 2.5.3 the assertion of the applicant's right to a speedy trial;
 - 2.5.4 prejudice to the applicant;

2.5.5 the nature of the offence and the policy considerations attached to it;
and

2.5.6 the interests of the Timol family.

2.6 The applicant does not in his founding affidavit say that the High Court's consideration or application of the above factors is wrong in law or in fact. Without the applicant taking issue with the factors which the High Court took into account and the manner in which the High Court applied those factors to the facts of this case, this Court cannot find that "*the appeal would have a reasonable prospect of success*" because there is no basis to make that finding.

Not granting a permanent stay for the charge of murder

2.7 Without the applicant attacking any of the factual findings and the law issues on the basis of which the High Court did not grant him the permanent stay of prosecution, there is no basis to grant leave to appeal to this Court.

2.8 The High Court refused leave to appeal because, amongst others, it is still possible for the applicant to have a fair trial in the Criminal Court. There is no suggestion supported by evidence that the Criminal Court is not in a position to protect the applicant's right to a fair trial. For as long as a fair



trial is still possible, there is no basis to grant a permanent stay of prosecution and an appeal would not succeed for this reason.

Political interference

- 2.9 The applicant's reliance on political interference is opportunistic because the applicant did not rely on this point in his founding affidavit in the High Court.
- 2.10 The High Court properly dealt with political interference from paragraph 57 of its judgment. Therein, the High Court correctly concluded that the NDPP could not hide behind political interference because it could have taken steps to prosecute despite such interference. On this basis alone, the High Court cannot be faulted for not granting a permanent stay of prosecution due to political interference. In fact, it was not the first respondent's case that a permanent stay should be refused simply because it was interfered with. It only said that it did not prosecute earlier because of political interference.
- 2.11 In any event, the issue of political interference was not raised as an issue to justify the relief sought by the applicant. The High Court would have been wrong if it granted a permanent stay of prosecution because of political interference because that was not the case made by the applicant in his founding affidavit.



5 

2.12 Political interference was raised to demonstrate how the new government has betrayed the victims of crimes committed by the previous government not to justify the permanent stay of prosecution.

2.13 In his affidavit, the fourth respondent correctly said that granting a permanent stay because of political interference would serve to validate and reward the political interference complained of and that:

“92 *Families and victims would be punished for the political interference and inaction by the authorities, when they took no part in such obstructions and were entirely oblivious of such machinations. This would be iniquitous and unjust, particularly in circumstances where families, such as mine, have been persistently and diligently campaigning for justice for decades.*

93 *I submit that staying the prosecution in such circumstances would play into the hands of unscrupulous elements who have engineered near total impunity for apartheid era crimes. This is precisely the perverse outcome that they have sought. It would stand as a deep betrayal of the sacrifices made by victims such as Timol, Biko, Simelane and others. It would also be deeply offensive to our constitutional order.”*



2.14 Having admitted that it was politically interfered with, the first respondent also contended that the political interference was not a basis to grant a permanent stay. It said:

“2.55 *The above being the case, this court cannot perpetuate the injustice to which Mr Timol was subjected by granting an order in terms of which the applicant’s prosecution is stayed permanently. Mr. Timol was subjected to injustice by the apartheid government and its security agents and cannot again be subjected to injustice by this government, for which he died.*”

2.15 The High Court clearly accepted what is quoted above. It is not the applicant’s case in his founding affidavit that the Court erred in accepting what is quoted above.

2.16 The applicant cannot therefore seek to rely on political interference to justify leave to appeal because he did not himself make out that case in his founding affidavit. There was no basis for the High Court to rely on political interference to grant the permanent stay of prosecution. The fact that the first respondent gave in to the political interference brought to bear upon it does not justify the granting of leave to appeal. In any event, the High Court dealt with this issue correctly in its judgment and there is no basis to find that it erred.

Failure to disclose material facts by the Minister of Justice

- 2.17 The applicant cannot rely on the fact that the respondents did not provide him with evidence to prove his case. If such evidence existed, there is no reason why the applicant did not bring an application to compel the relevant respondents to produce that evidence.
- 2.18 It was the applicant's function to place all the necessary facts and evidence before the High Court to justify the relief sought by him. The first respondent and the Minister of Justice did not rely on political interference to oppose the application. For this reason, there was no basis for them to produce information which they did not need to justify the opposition. Insofar as the applicant wanted more information to justify the relief which he wanted, the applicant cannot blame the respondents for not relying on that information in opposing his application.
- 2.19 This was not a review application where the author of a decision sought to be reviewed and set aside is in law required to file a full record of the decision sought to be reviewed and set aside. For this reason, the criticism levelled against the Minister of Justice is misplaced and there was no basis for the High Court to grant any order against the Minister of Justice to produce any documents because there was no application for such an order.

- 2.20 The applicant failed to invoke the correct remedies available to him to obtain whatever information he wanted in the Minister of Justice's possession.
- 2.21 The applicant did not bring an application to compel the Minister of Justice to produce any records. For this reason, the High Court could not have ordered the Minister of Justice to produce unidentified records or documents.

Prejudice

- 2.22 After having considered all the issues on the basis of which the applicant claimed prejudice, the High Court correctly concluded that¹:

“[89] In conclusion, while the delay has caused some measure of prejudice, it cannot be said that it will taint the fairness of the proposed trial or that such a trial, if it proceeds, will not of necessity incorporate the safeguards of fairness that the Applicant is entitled to. In any event, the right to a fair trial is subject to the limitations envisaged in section 36(1) of the Constitution.” (Own emphasis).

¹ Paragraph 89 of the judgment



- 2.23 Without the applicant seeking to challenge the above quoted conclusion, which is correct, the reliance on prejudice is ill-conceived and ought to be rejected.

Compelling reasons

- 2.24 There are no compelling reasons to grant leave to appeal.
- 2.25 The Constitutional Court has pronounced itself on the law relating to the granting of an order for a permanent stay of prosecution. This Court itself has also pronounced itself on the topic. There is therefore more than enough case law, from the highest Courts in the land, to provide guidance to the various divisions of the High Court in dealing with cases such as the present. For this reason, there is no basis to grant leave to appeal to this Court to only restate the legal position.
- 2.26 Whilst there is always room to develop the law, the applicant's case is not one which justifies leave to appeal for that purpose. The applicant has not in his founding affidavit attempted to make out a case as to in what respect the law on this topic requires development by this Court.

The delay

- 2.27 The High Court correctly divided the relevant times to be considered as far as the time delay is concerned. Having done this, the High Court correctly found that there was a lengthy delay after the end of the TRC process. The



applicant accepts this because he does not challenge it in his founding affidavit.

2.28 Having arrived at the aforesaid conclusion, the High Court concluded that² “*this cannot be the end of the enquiry.*” After taking the enquiry further, the High Court concluded that the delay is not of such a nature that it would irremediably taint the overall substantive fairness of the trial if it were to commence. This conclusion is not attacked in the applicant’s founding affidavit. Even if it were attacked, it would lack merit because the High Court’s conclusion is supported by the facts and the correct legal position as restated in *Bothma*.

2.29 In the premises, the application for leave to appeal ought to be dismissed with costs.

3. AD PARAGRAPHS 1 TO 9

3.1 I deny that the contents of the applicant’s founding affidavit are true and correct to the extent that they are at variance with the contents of the respondents’ affidavits filed of record in the High Court and in this Court.

3.2 The contents of paragraphs 2 to 9 are not in dispute.

² Paragraph 75 of the judgment.

4. AD PARAGRAPHS 10 TO 26

- 4.1 The background facts set out in these paragraphs are largely not in dispute and they do not constitute a basis to grant leave to appeal.
- 4.2 It is not common cause that the applicant did not participate in the events which led to Mr. Timol's death.
- 4.3 The State disputes that Mr. Timol fell to his death.
- 4.4 The findings of the 2017 inquest do not mean that the applicant cannot be charged with Mr. Timol's murder. In any event, the inquest's conclusion as to what charges must be levelled against the applicant are of no consequence. The first respondent remains entitled to charge the applicant with any competent offence and has charged the applicant with murder.

5. AD PARAGRAPHS 27 TO 33**Ad paragraph 27**

- 5.1 None of the applicant's rights provided for in section 35(3) of the Constitution were violated.
- 5.2 The trial Court is still competent to protect all of the applicant's rights and to ensure that he gets a fair trial.

- 5.3 There is nothing placed before this Court to suggest that it would not be possible for the applicant to have a fair trial.

Ad paragraph 28

- 5.4 Whilst there was political interference in the prosecution of accused people such as the applicant, that does not justify the granting of a permanent stay of prosecution and of leave to appeal to this Court.

- 5.5 The High Court properly dealt with the issue of political interference and there is no factual and legal basis to fault its conclusions in this regard.

Ad paragraph 29

- 5.6 There was no secret amnesty given to accused people such as the applicant.
- 5.7 Even if there may have been secret amnesty given to others, which is not correct, the applicant was not given such amnesty and remains liable for prosecution.

Ad paragraph 30

- 5.8 The first respondent did not withhold anything from the High Court.
- 5.9 In his founding affidavit in the High Court, the applicant did not rely on political interference. The issue of political interference was fully dealt

with in the first respondent's supplementary answering affidavit in the High Court, not to respond to the applicant's founding affidavit but to deal with what was raised in the fourth respondent's affidavit, who did not raise the issue to justify a permanent stay of prosecution.

- 5.10 There is therefore, no basis to suggest that the first respondent did not disclose certain things to the High Court.

Ad3 paragraphs 31 and 32

- 5.11 The contents of these paragraphs are denied.
- 5.12 It was the applicant's duty to place all the facts to justify a permanent stay of prosecution before the Court. Assuming that the first and second respondents had in their possession records which the applicant wanted to support his case for a permanent stay, the applicant ought to have invoked the uniform rules of Court to compel them to produce such records. The applicant did not do so.

6. AD PARAGRAPHS 34 TO 43

- 6.1 The contents of paragraph 34 are denied.
- 6.2 The issue of political interference is dealt with in the judgment of the High Court. It does not justify a permanent stay of prosecution and the manner in

which the High Court dealt with it is correct and there are no prospects of this Court arriving at a different conclusion on that issue.

- 6.3 Even if there were prospects of this Court arriving at a different conclusion on the issue of political interference, it does not justify the granting of leave to appeal because the applicant did not rely on it in his founding affidavit to justify the permanent stay of prosecution.

Ad paragraph 36

- 6.4 The contents of this paragraph do not justify a permanent stay of prosecution or leave to appeal to this Court.

- 6.5 In any event, the High Court found against the first and second respondents on the issue of political interference, which was admitted by the first respondent.

- 6.6 The High Court correctly concluded that political interference was not a basis to grant a permanent stay of prosecution.

Ad paragraph 37

- 6.7 The contents of this paragraph do not justify leave to appeal in the light of what I have stated above and what the High Court said about political interference.



15



- 6.8 Even if it were to be found that the second respondent could have said more, that would not justify a permanent stay of prosecution. In any event, it was not for any of the respondents to provide litigation assistance to the applicant by producing evidence which he thinks exists when it does not.

Ad paragraph 38

- 6.9 The contents of this paragraph are irrelevant to the question whether leave to appeal should be granted.

Ad paragraph 39

- 6.10 The delay complained of does not justify a permanent stay of prosecution.
- 6.11 In addition, the applicant has not demonstrated why the High Court erred on the issue of delay. Without this having been done, leave to appeal is not competent.

Ad paragraph 40

- 6.12 The contents of this paragraph are irrelevant in the light of the fact that the High Court found against the first and second respondents on the issue of political interference.

7. AD PARAGRAPHS 44 TO 47**Ad paragraph 44**

- 7.1 The contents of this paragraph do not justify a permanent stay of prosecution and leave to appeal to this Court.
- 7.2 If the applicant wanted to rely on amnesty having been granted to certain people, the applicant ought to have produced evidence thereof. The applicant could also simply have alleged that other people were granted amnesty and that he was also entitled to have been given amnesty. But this he could not do because he continues to deny that he played a role in the death of Mr. Timol. On his own version, he does not deserve any amnesty because he did nothing unlawful.
- 7.3 The applicant himself was not granted amnesty and he remains liable for prosecution.
- 7.4 If the applicant was left out of an amnesty process to which he considers himself to have been entitled, that does not justify a permanent stay of prosecution. His remedy is to sue the people who did not grant him amnesty for an order compelling them to grant him amnesty.
- 7.5 If the applicant wants to rely on an agreement not to prosecute him, the applicant must prove that agreement. The applicant failed to produce any evidence of an agreement not to prosecute him.

- 7.6 The delay in prosecuting the applicant is not of such a nature that a fair trial is no longer possible to take place. The trial Court is still competent to ensure that a fair trial takes place and there is no basis to contend otherwise.

Ad paragraph 45

- 7.7 The contents of this paragraph are denied.

Ad paragraphs 46 and 47

- 7.8 The contents of these paragraphs are denied.
- 7.9 The contents of these paragraphs do not justify a permanent stay of prosecution and leave to appeal.

8. AD PARAGRAPHS 48 TO 51

- 8.1 There are no compelling reasons to justify the granting of leave to appeal.
- 8.2 The law on when to grant or refuse a permanent stay of prosecution is clear from judgments of this Court and the Constitutional Court and this is not a case which justifies the further development of that law.



- 8.3 The circumstances of this case do not justify that leave to appeal be granted. The other similar cases will be considered with reference to their own circumstances, which are different from the circumstances of this case. For this reason, the fact that there are other cases waiting to be prosecuted does not justify leave to appeal.

Ad paragraphs 49 to 51

- 8.4 The contents of these paragraphs are denied.
- 8.5 In the premises, the application for leave to appeal ought to be dismissed with costs and such costs be paid by the applicant personally and not by the State.

WHEREFORE, I pray that it may please the Court to dismiss the application with costs, such costs to be paid by the applicant personally and not by the State.


5/12/2019
J P PRETORIUS ADVOCATE FOR THE STATE

PCLU

I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Pretoria on the 5th December ~~November~~ 2019, the regulations contained in Government Notice No. R 1258 of 21 July 1972, as amended, and Government Notice No. R 1648 of 19 August 1977, as amended, having been complied with.


H. Heap Colonel

COMMISSIONER OF OATHS

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