

IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

(BLOEMFONTEIN)

SCA CASE NO: 1186/19

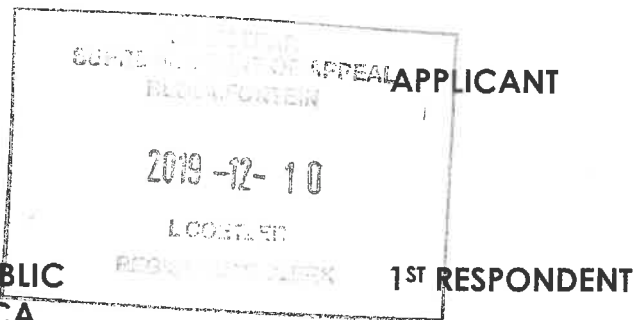
GAUTENG HIGH COURT CASE NUMBER: 76755/18

In the matter between:

JOAO RODRIGUES

and

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



**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

2ND RESPONDENT

THE MINISTER OF POLICE

3RD RESPONDENT

IMITIAZ AHMED CAJEE

4TH RESPONDENT

FILING NOTICE

ON ROLL:

DOCUMENT: SECOND AFFIDAVIT RESPONDENT'S ANSWERING

FILED BY:

[Signature]
SECOND RESPONDENT'S ATTORNEY
THE STATE ATTORNEY, PRETORIA
 316 SALU BUILDING
 CNR FRANCIS BAARD &
 THABO SEHUME STREET
 ENTRANCE THABO SEHUME
 GROUND FLOOR
 PRIVATE BAG X 91
 PRETORIA, 0001
REF: 6002/2018/Z65/jb
E-MAIL: Pseleka@justice.gov.za
TEL: (012) 309 1545/1539
FAX: (012) 309 1649/50
ENQ: G P SELEKA

TO: THE REGISTRAR
SUPREME COURT OF APPEAL
BLOEMFONTEIN

AND

TO: THE REGISTRAR OF THE ABOVE
HONOURABLE COURT
PRETORIA

AND

TO: APPLICANT'S ATTORNEY
BEN MINAAR ATTORNEYS
190 MELT MARAIS STREET
WONDERBOOM A/H X 1
WONDERBOOM
PRETORIA
TEL: 0824462644
REF: BM 01/10/18
E-MAIL: benjaminnaar@gmail.com
C/O HILL McHARDY & HERBST INC
7 COLLINS ROAD
ARBORETUM
BLOEMFONTEIN
REF: SCHURMAN/rs/G26184
TEL: 015 447 2171
E-MAIL: pieter@hillmchardy.co.za

Copy hereof received on

Date:

Time:

Applicant Attorneys

**AND
TO:**

**FOURTH RESPONDENT
LEGAL RESOURCE CENTRE**

BRAAM FISCHER TOWERS
15TH AND 16TH FLOOR
20 ALBERT STREET
MARSHALLTOWN, JOHANNESBURG
TEL: 011 8369831
FAX: 011 836 8680
EMAIL: Lucien@lrc.org.za

C/O WEBBER WENTZEL

10 FRICKER ROAD, ILLOVO BOULEVARD
JOHANNESBURG
P. O. BOX 61771
MARSHALLTOWN
TEL: 011 530 5539/5288
FAX: 011 530 6539
E-MAIL: moray.hothorn@webberwentzel.com

REF: MORAY HATHORN 3005789

C/O WEBBERS ATTORNEYS

WEBBERS BUILDING
96 CHARLES STREET
BLOEMFONTEIN
TEL : 051 – 430 1340
E-MAIL : lvs@webberslaw.com

REF : LIETTE VAN SCHALKWYK

Copy hereof received on

Date:

Time:

Kock Elise

194

From: Liette van Schalkwyk <lvs@webberslaw.com>
Sent: 06 December 2019 05:55 PM
To: Kock Elise; Ben Minnaar
Cc: Breggie Viljoen; pieter@hillmchardy.co.za; PaMyburgh; Paul Myburgh
Subject: RE: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Dear Elise

We hereby acknowledge receipt.

Kind regards

Liëtte van Schalkwyk

lvs@webberslaw.com
T: 021 431 3010
F: 021 431 3011

100 Waterlooplein
DOKTHES 3010
EDU: 100 Waterlooplein
PO: 100 Waterlooplein
Waterlooplein, 7800

webbers
ATTORNEYS

1906

matter

www.webberslaw.com

**OUR OFFICE WILL CLOSE ON
20 DECEMBER 2019 &
RE-OPEN ON 6 JANUARY 2020**

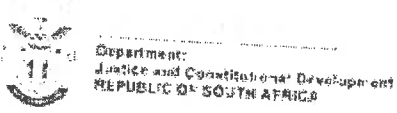
MERRY
Christmas
— AND —
HAPPY NEW YEAR

From: Kock Elise <EKock@justice.gov.za>
Sent: Friday, December 6, 2019 4:13 PM
To: Ben Minnaar <benjaminnaar@gmail.com>
Cc: Breggie Viljoen <bv@webberslaw.com>; Liette van Schalkwyk <lvs@webberslaw.com>; pieter@hillmchardy.co.za
Subject: RE: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Good day

I hereby recall the Second Respondent's Answering Affidavit send to you earlier today.
I attach herewith the correct Answering Affidavit on behalf of the Second Respondent which will be filed at the SCA.
I apologise for any inconvenience.
I 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
📍: 10th Floor, Room 1006, Fedsure building, 49 Charlotte Maxeke Street,
Bloemfontein 9300



From: Ben Minnaar [<mailto:benjaminnaar@gmail.com>]
Sent: 06 December 2019 02:46 PM
To: Kock Elise
Cc: Breggie Viljoen; Liette van Schalkwyk; pieter@hillmchardy.co.za
Subject: Re: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Dear Elise,
Receipt is acknowledged .
Best regards
Ben Minnaar

On 06 Dec 2019, at 14:39, Kock Elise <EKock@justice.gov.za> wrote:

Good day Liette/Breggie and Mr Minnaar
Herewith please find the 2nd Respondent's Answering Affidavit for your attention.
Kindly acknowledge receipt hereof.

<image001.jpg>

Elise Kock
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Bloemfontein 9300

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Subject: Re: JOAO RODRIGUES//NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

Receipt is acknowledged.
 Regards
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<image001.jpg>

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 ☎: (051) 400 4301 | 📠: 086 507 0424 | Cell: 082 818 6145
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 Bloemfontein 9300

<image002.jpg>

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

APPEAL COURT CASE NO: _____

GAUTENG HIGH COURT CASE NO: 76755/18

In the matter between:

JOAO RODRIGUES

Applicant

and

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

First Respondent

**MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES**

Second Respondent

MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Fourth Respondent

SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I the undersigned,

JACOB SKHOSANA

do hereby make oath and state:

VP JTB

1.

- 1.1 I am the Acting Director-General of the Department of Justice and Constitutional Development (“the Acting Director-General”);
- 1.2 save as may otherwise be stated herein or as may appear from the context, the facts herein deposed to are within my personal knowledge and belief; and
- 1.3 to the extent that I make submissions of a legal nature herein, I do so from my own knowledge and on the basis of advice from counsel.

2.

- 2.1 I have read the Notice of Motion and founding affidavit of the Applicant in this matter together with the annexure thereto comprising the judgment of the Court *a quo*;
- 2.2 I note that in paragraph 1 of the Notice of Motion, the date of the judgment is incorrectly stated as 12 October 2018. The correct date is 3 June 2019;
- 2.3 I do not propose to deal with each of the allegations as they appear in the applicant’s founding affidavit. I deal only with those specific allegations which are relevant to myself for the purposes of the relief sought; and



2.4 I understand that in terms of section 17 of the Superior Courts Act 10 of 2013, leave to appeal may only be granted where the Judges concerned are of the opinion that the appeal would have a reasonable prospect of success, and there is some other compelling reason why the appeal should be heard.

Ad Paragraphs 1 to 6

3.

3.1 I have no knowledge of the averments made in paragraph 1.1 and 1.2;

3.2 I admit the averment made in paragraph 1.3; and

3.3 I admit the content of paragraphs 2 to 6.

Ad Paragraphs 7 to 9

4.

I note the content hereof.

Ad Paragraphs 10 to 25

5.

I note the content set out as the background facts.

Ad Paragraph 26

6.

I am not privy to the basis of the decision to prosecute. I understand that First Respondent will address the content hereof.

Ad Paragraphs 27 to 31

7.

I note the content hereof.

Ad Paragraphs 32 to 33

8.

- 8.1 The content of paragraph 32 is denied;
- 8.2 the Court a quo dealt with the issue of political interference in paragraphs 31 to 32 of the judgment; and
- 8.3 the finding is stated thus:

"..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 details of how the political interference materialized.”¹

9.

Applicant has not, in this application, set out how any further details of political interference would affect the outcome of the matter. There is an absence of any averment that any further detail will enhance the prospects of success of the appeal.

Ad Paragraphs 34 to 44.4

10.

I note the content hereof.

Ad Paragraphs 44.5

11.

11.1 The Court a quo dealt with the issue of amnesty in paragraphs 71 to 73. The finding is that there was no evidence of an amnesty of a

¹ Judgment para 32, pages 13 to 14

pardon and that the suggestion by Applicant was "*nothing more than speculation*"; and

- 11.2 the averment that there is a basis for the assertion that there was an amnesty granted to Applicant, is denied.

Ad Paragraphs 44.6 to 47

12.

- 12.1 The content is noted;
- 12.2 Applicant seeks for the issue of political interference to be over-emphasized in the evaluation of factors and considerations apposite to a determination of a stay of prosecution, contrary to the guidelines established by the Constitutional Court, which requires a Court to conduct a balancing exercise of the various considerations.

Ad Paragraphs 48 to 50

13.

- 13.1 There are no existing conflicting judgments;
- 13.2 Applicant seeks to have this Honourable Court provide guidance on matters that might arise in future; and

WJ JB

13.3 the averment is without merit, as each matter has a particular factual matrix, and each matter will fall to be decided on a case by case basis.

14.

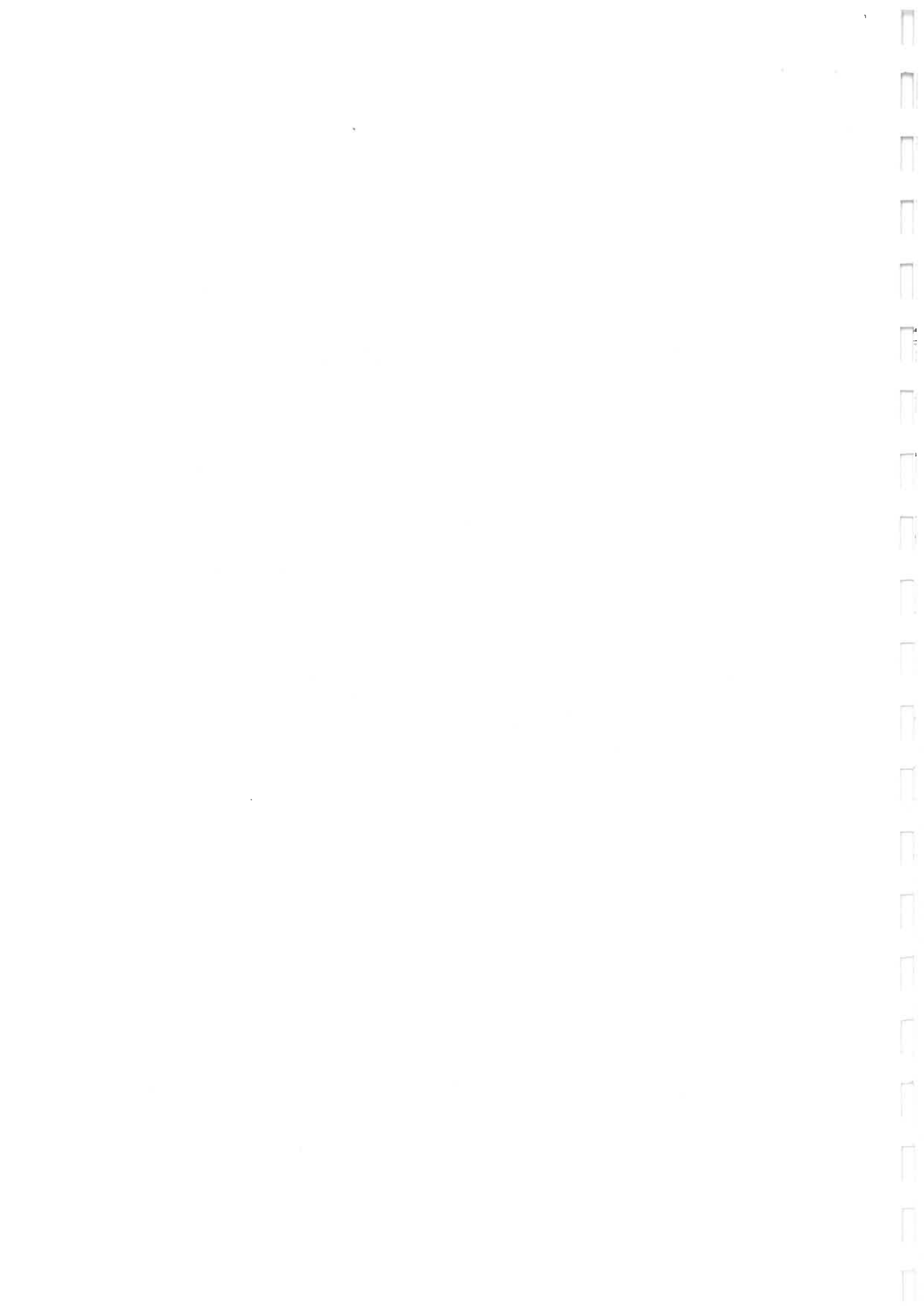
Applicant does not make the point that there is "*discrete legal issue of public importance that will have an effect on future matters*". I understand that this Honourable Court has previously found such a consideration to be a compelling reason for an appeal to be heard. However, Applicant fails to bring his application within the ambit of that consideration.

15.

Applicant has failed to show that the appeal would have a reasonable prospect of success.

16.

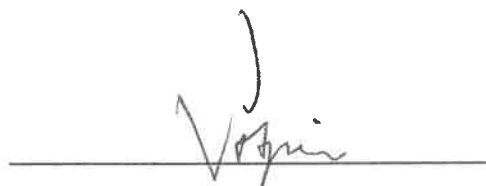
It is accordingly, respectfully submitted that the application does not make out adequate grounds for the relief sought and ought to be dismissed.





DEPONENT

The Deponent has acknowledged that he/she knows and understands the contents of this Affidavit which was signed and sworn to at Pretoria before me this 6th day of December 2019 and that the provisions of the regulations contained in Government Notices R1258 of 21 July 1972 and R1648 of 16 August 1977 having been complied with.



COMMISSIONER OF OATHS

Ex Officio Commissioner
of oaths

Admitted Advocate of
the High Court

Full names:

JOHANN HENRIK BOUWER

Address:

BELEVUE NO 7
129 NICOLA STR
WONDERBOOM
PRETORIA

Contact number:

083 307 2992

012 543 3747