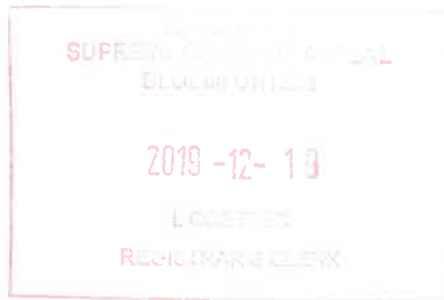


**IN THE SUPREME COURT OF APPEAL
[BLOEMFONTEIN]**

**APPEAL COURT CASE NO: 1186/2019
GAUTENG HIGH COURT CASE NO: 76755/2018**

In the matter between:

JOAO RODRIGUES



Applicant

and

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

First Respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Second Respondent

THE MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Fourth Respondent

FILING SHEET: APPLICANT'S REPLYING AFFIDAVIT

HEREWITH FILED:

- 2 -

Three copies of the Applicant's replying affidavit.

SIGNED at **BLOEMFONTEIN** on this the **18th** day of **DECEMBER**
2019.



BEN MINNAAR ATTORNEYS
ATTORNEYS FOR THE APPLICANT
190 MELT MARAIS STREET
WONDERBOOM AH X 1
WONDERBOOM
PRETORIA
REF: BM/01/09/18
TEL: 082 446 2644
E-MAIL: benjaminnaar@gmail.com

C/O
HILL McHARDY & HERBST INC
7 COLLINS ROAD
ARBORETUM
BLOEMFONTEIN
REF: SCHUURMAN/rs/G26184
TEL: 051 447 2171
E-MAIL: pieter@hilmchardy.co.za

- 3 -

TO: THE REGISTRAR
SUPREME COURT OF APPEAL
BLOEMFONTEIN

**AND TO: THE NATIONAL DIRECTOR OF
PUBLIC PROSECUTIONS**
FIRST RESPONDENT
C/O STATE ATTORNEY: PRETORIA
316 THABO SEHUME STREET
SALU BUILDING
PRETORIA
REF: PETER SELEKA

SERVED BY E-MAIL AS AGREED TO:

Pseleka@justice.gov.za

**AND TO: THE MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**
SECOND RESPONDENT
C/O STATE ATTORNEY: PRETORIA
316 THABO SEHUME STREET
SALU BUILDING
PRETORIA
REF: PETER SELEKA

- 4 -

SERVED BY E-MAIL AS AGREED TO:

Pseleka@justice.gov.za

AND TO: THE MINISTER OF POLICE
THIRD RESPONDENT
C/O STATE ATTORNEY: PRETORIA
316 THABO SEHUME STREET
SALU BUILDING
PRETORIA
REF: PETER SELEKA

SERVED BY E-MAIL AS AGREED TO:

Pseleka@justice.gov.za

AND TO: IMTIAZ AHMED CAJEE
JOINT ATTORNEYS FOR FOURTH RESPONDENT
C/O LEGAL RESOURCES CENTRE
BRAAM FISHER TOWERS
15th AND 16th FLOOR
20 ALBERT STREET
MARSHALLTOWN
JOHANNESBURG
REF: LUCIEN LIMACHER

SERVED BY E-MAIL AS AGREED TO:

- 5 -

E-MAIL: Lucien@lrc.org.za

C/O WEBBER WENTZEL
JOINT ATTORNEYS FOR FOURTH RESPONDENT
10 FRICKER ROAD
ILLOVO BOULEVARD
JOHANNESBURG
2196
REF: MORAY HATHORN 3005789

SERVED BY E-MAIL AS AGREED TO:
E-MAIL: moray.hathorn@webberwentzel.com

Rochelle Streso

From: benjaminnaar@gmail.com
Sent: 17 December 2019 13:53
To: 'Seleka Peter (DoJ&CD Contact)'; 'Lucien Limacher'; 'Moray Hathorn'
Cc: 'Rochelle Streso'
Subject: Appeal J Rodrigues Replying affidavit
Attachments: J Rodrigues NDPP and Others Replying Affidavit.pdf

Dear Sir, Madam

Herewith the replying affidavit of the Applicant.

Kindly acknowledge receipt for filing at the SCA.

Regards

Ben Minnaar

Rochelle Streso

From: Seleka Peter <PSeleka@justice.gov.za>
Sent: 18 December 2019 09:07
To: benjaminnaar@gmail.com; 'Lucien Limacher'; 'Moray Hathorn'
Cc: 'Rochelle Streso'
Subject: RE: Appeal J Rodrigues Replying affidavit

Dear Mr Minnaar

I confirm receipt of the replying Affidavit.

Regards
 GP SELEKA

From: benjaminnaar@gmail.com [mailto:benjaminnaar@gmail.com]
Sent: Tuesday, December 17, 2019 1:53 PM
To: Seleka Peter <PSeleka@justice.gov.za>; 'Lucien Limacher' <lucien@lrc.org.za>; 'Moray Hathorn' <moray.hathorn@webberwentzel.com>
Cc: 'Rochelle Streso' <klerk7@hillmchardy.co.za>
Subject: Appeal J Rodrigues Replying affidavit

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Kindly acknowledge receipt for filing at the SCA.

Regards

Ben Minnaar

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Rochelle Streso

From: Moray Hathorn <moray.hathorn@webberwentzel.com>
Sent: 17 December 2019 14:20
To: benjaminnaar@gmail.com; 'Seleka Peter (DoJ&CD Contact)'; 'Lucien Limacher'
Cc: 'Rochelle Streso'
Subject: RE: Appeal J Rodrigues Replying affidavit

Dear Sir

Receipt acknowledged.

Yours sincerely

Moray Hathorn | Partner

T: +27115305539 | M: +27630030640 | moray.hathorn@webberwentzel.com | www.webberwentzel.com

WEBBER WENTZEL

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From: benjaminnaar@gmail.com [mailto:benjaminnaar@gmail.com]
Sent: 17 December 2019 13:53
To: 'Seleka Peter (DoJ&CD Contact)'; 'Lucien Limacher'; Moray Hathorn
Cc: 'Rochelle Streso'
Subject: Appeal J Rodrigues Replying affidavit

Dear Sir, Madam

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Regards

Ben Minnaar

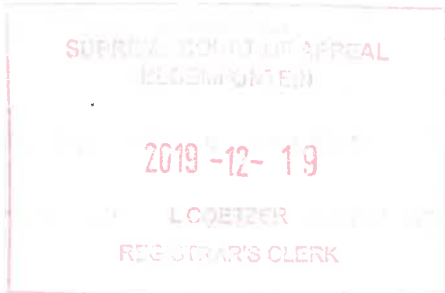
IN THE SUPREME COURT OF APPEAL

[BLOEMFONTEIN]

**APPEAL COURT CASE NO: _____
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In the matter between:

JOAO RODRIGUES



Applicant

and

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First Respondent

**MINISTER OF JUSTICE AND
CORRECTIONAL SERVICES**

Second Respondent

THE MINISTER OF POLICE

Third Respondent

IMITIAZ AHMED CAJEE

Fourth Respondent

REPLYING AFFIDAVIT

I, the undersigned,

JOAO RODRIGUES

do hereby declare under oath as follows:

[Handwritten signature]
TSD

- 2 -

1.

- 1.1. I am an adult pensioner presently residing at 835 Eleventh Avenue, Wonderboom South, Pretoria, Gauteng.
- 1.2. The facts contained in this affidavit fall within my personal knowledge unless stated to the contrary and are both true and correct.
- 1.3. I have already deposed to the founding affidavit in this application for leave to appeal to this Honourable Court.

2.

I have read the opposing affidavits filed on behalf of First, Second and Fourth Respondents in this application and wish to broadly deal with the disputes raised in those affidavits. I am advised that there are certain constraints as to the length as well as content of a replying affidavit. It further appears that the disputes raised by the various Respondents are mostly repetitive. I will therefore deal on a broad basis with the main disputes raised and wish to emphasise that I deny any allegation in the answering affidavits insofar as it is not consistent with the allegations in

TSD *h*

- 3 -

the founding affidavit. I again confirm the correctness of the allegations in the founding affidavit.

3.

When considering the answering affidavits, it appears that the main disputes raised by the Respondents are the following:

- 3.1. That I did not mention and/or rely on the political interference by the authorities as basis for the application for a permanent stay in the founding affidavit.
- 3.2. That the Trial Court mentioned the facts relating to the political interference and dealt with those facts in terms of the existing law.
- 3.3. That I did not attack the factual findings by the Trial Court and/or the application of the legal principles thereto.

4.

I submit that these disputes raised by the Respondents have no merit and I will deal with them in more detail hereinafter.

TSDA

- 4 -

5.

I wish to emphasise and reiterate that when considering these issues raised by the Respondents it is important to have regard to the common cause facts as it appears from the papers:

- 5.1. The relevant incident occurred almost 50 years ago.
- 5.2. The delay to institute a prosecution can be subscribed to the deliberate decisions and instructions from the authorities at the highest level – including the pre-1994 government, the then State President, Minister of Justice and Director-Generals.
- 5.3. The present defence of the Respondents, following the substantial delay in the prosecution, is based on allegations of political interference by the authorities at the highest level.
- 5.4. There is no suggestion that I was part of, involved in and/or even had knowledge of the political interference and/or decisions not to institute prosecutions for offences of this nature.



- 5 -

5.5. The First and Second Respondents, in an opportunistic manner, deliberately failed to disclose these facts relating to the decisions not to prosecute and political interference to the Trial Court in their answering affidavits. It was only after the Fourth Respondent was joined as a party to the proceedings and the filing of the answering affidavit by the Fourth Respondent, disclosing the political interference, that the First Respondent, in a supplementary affidavit, admitted to the substantial political interference.

5.6. Second Respondent (Minister of Justice) still, to this day, failed to disclose any information relating to this extremely serious matter.

6.

It is therefore correct that I did not expressly rely on political interference as basis for the application for a stay of prosecution in the founding affidavit. The simple reason for that is the fact that I was not aware of the political interference and/or decisions disclosed subsequent to the Fourth Respondent's answering affidavit. I am, however, advised and respectfully submit that Respondents are incorrect with their approach that I should have been denied the opportunity to rely on this


TSD

- 6 -

issue following the supplementary affidavit filed by the First Respondent admitting to the political interference in this regard.

7.

It is therefore submitted that it is, with respect, opportunistic from First and Second Respondents to now criticise me for not disclosing the facts relevant to the political interference in the founding affidavit.

8.

I deny that I did not allege in the founding affidavit that the Trial Court, with respect, erred in its findings in the judgment. I refer the Honourable Court *inter alia* to paragraphs 45 to 47 of the founding affidavit where I specifically alleged that the Trial Court did not fully appreciate and/or evaluated the effect of the conduct of the authorities relating to the failure to prosecute.

I deny that these proceedings are merely designed to delay my prosecution. The issues raised herein are serious and important for the constitutional administration of justice and should be addressed on the highest level to determine the effect thereof on my prosecution.

TSP 

- 7 -

9.

It is further clear that the Trial Court was confronted with a totally unique situation. I am advised that no previous Court was confronted with common cause facts illustrating political interference in the criminal justice system as was shown in the present case. I am advised that this issue, on its own, justifies the attention and direction of this Honourable Court. This, with respect, must justify the attention of the Supreme Court of Appeal to evaluate and rule on the consequences of such interference by the authorities specially where it infringes the fundamental rights of individuals.

10.

With reference to the mistake in the notice of motion I beg this Honourable Court's indulgence in this regard. It is correct that the date of the decision by the High Court reflected in the notice of motion as 12 October 2018 is incorrect and it should have read 18 September 2019. I am advised by my attorney of record that that was an error. I submit that no prejudice flowed from this mistake to any of the parties.

TSB 

- 8 -

11.

With reference to the Gauteng Division, Pretoria in prayer 1 of the notice of motion I am advised that this is indeed a correct reference. Although the application was heard in Johannesburg the application was issued in Pretoria and was indeed a decision from the High Court of South Africa, Gauteng Division, Pretoria. I am advised that the directions from the Deputy Judge President that the matter be heard in Johannesburg for the convenience of the Court did not alter this situation. The case number used on all pleadings and orders was also the Pretoria case number. Insofar as it is indeed found to be a mistake, I also beg for an indulgence in this regard.

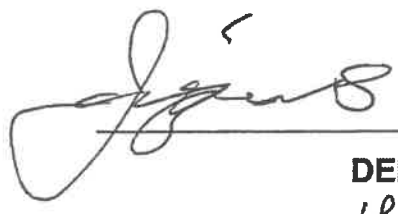
12.

Much of what is raised in the Answering Affidavits are arguments on interpretation and legal principles which will be argued, should it become necessary.



13.

I therefore submit that I made out a proper case in the founding papers for leave to appeal to this Honourable Court.



DEPONENT

SIGNED and SWORN to at PRETORIA on this 13th day of DECEMBER 2019 by the Deponent who stated that:

1. He knows and understands the contents of the declaration; and
2. He has no objection to taking the prescribed oath; and
3. He considers the prescribed oath as binding on his conscience;

And Government Notice Regulation 1258 as amended by the Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773 was fully complied with.


COMMISSIONER OF OATHS

FULL NAMES: Tlou S. Phala
 BUSINESS ADDRESS: SAPS PTD WOOD
 AREA: 17TH AVENUE 586
 DESIGNATION: 2197200751
W/O

LESU-AFRIKAANSE POLISIEDIENS VSPOL	2019 -12- 13	PRETORIA MOOT POLICE SERVICE
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