

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO: 76755/18

In the matter between:

JOAO RODRIGUES

Applicant

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

IMTIAZ AHMED CAJEE

Fourth Respondent

FOURTH RESPONDENT'S PRACTICE NOTE

1. NAME AND NUMBER

The name and number of the matter appears above.

2. COUNSEL

2.1. Attorney/ Counsel for the Applicant

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2.2. Attorney/ Counsel for the First Respondent

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2.4. Attorney/ Counsel for the Third Respondent

Unknown

2.5. Attorney/ Counsel for the Fourth Respondent

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3. NATURE OF APPLICATION

The applicant ("**Rodrigues**") applies to permanently stay the criminal prosecution against him in respect of the charge of murdering Ahmed Essop Timol ("**Timol**") on the basis that the prosecution undermines his constitutional right to a fair trial.

4. ISSUES

Whether the prosecution against Rodrigues should be stayed, having regard to the:

- 4.1. serious nature of the crime of murder;
- 4.2. long delay in prosecuting Rodrigues;
- 4.3. advanced age of Rodrigues;
- 4.4. extent to which this delay is attributable to the conduct of the first to third respondents;
- 4.5. role of political interference perpetrated by the first to third respondents and other officials in obstructing the prosecution of apartheid-era crimes;
- 4.6. interests of the victims of apartheid-era crimes, including their constitutional rights and the constitutional compact of truth, reconciliation and justice that our democracy was predicated upon;

- 4.7. broader societal interests as enshrined in the preamble of the Constitution;
- 4.8. rule of law;
- 4.9. conduct of Rodrigues, including participating in the cover-up of Timol's death; failing to participate in the TRC process; and spurning the Timol's family's offers to come clean;
- 4.10. legal relationship between Rodrigues and Timol, the former being a policeman with a legal obligation to protect detainees in his custody, of which Timol was one; and
- 4.11. ultimately, the interests of justice.

5. ESTIMATED DURATION

2 days

6. PARTS OF RECORD NECESSARY FOR DETERMINATION OF APPEAL

The fourth respondent submits that the following papers must be read:

- 6.1. Application (pp 1 – 61) and annexure JR1 (pp 62 – 77) thereto;
- 6.2. First respondent answering affidavit (pp 312 – 381) and annexures JPP1 to JP2 (pp 382 – 415) thereto;
- 6.3. Applicant's replying affidavit to first respondent answering affidavit (pp 435 – 469);

- 6.4. Fourth respondent answering affidavit (pp 473 – 545) and annexures IC4 (552 – 563), IC6 (pp 575 – 603, 699d-e), IC7 (623 – 640, 699f-g) and supporting affidavit (pp 695 – 699);
- 6.5. Replying affidavit to fourth respondent answering affidavit (pp 703 – 731);
- 6.6. Fourth respondent supplementary answering affidavit (pp 732 – 738);
- 6.7. First respondent supplementary answering affidavit (pp 750 – 793) and annexure SA1 (pp 794 – 877);
- 6.8. Applicant's supplementary replying affidavit (pp 943 – 952).

7. AUTHORITIES PARTICULARLY RELIED UPON

- 7.1. *Sanderson v Attorney-General, Eastern Cape* 1997 (12) BCLR 1675 (CC)
- 7.2. *Wild v Hoffert NO* 1998 (6) BCLR 656 (CC);
- 7.3. *Bothma v Els* 2010 (2) SA 622 (CC).

HOWARD VARNEY

THAI SCOTT

Counsel for the Timol
Family

Chambers
Sandton
18 February 2019