

**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

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**SUPPLEMENTARY AFFIDAVIT**

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I, the undersigned

**IMTIAZ AHMED CAJEE**

do hereby make oath and state that:

- 1 I am the nephew of the late Ahmed Timol. I am the fourth respondent in this matter. The facts contained herein are, save where otherwise stated or appears from the context, within my own personal knowledge and belief, and are true and correct. Where I make submissions of a legal nature, I do so on the advice of my legal representatives, which advice I accept as correct.



- 2 On 8 January 2019, I deposed to an affidavit opposing the application brought by the accused seeking a permanent stay and the withdrawal of the criminal proceedings in respect of the charge of murdering Timol.
  
- 3 Events have arisen subsequent to the filing of my answering affidavit that I could not foresee, which I submit are necessary for the proper adjudication of the present matter. I depose to this affidavit to draw these facts to the attention of this Court. I submit that the interests of justice favour permitting this further affidavit in terms of Uniform Rule 6(5)(e).
  
- 4 My answering affidavit placed evidence before this Court of institutional capture and political interference at the highest level in the first respondent ("**NPA**") with the singular aim of enabling the perpetrators of so-called apartheid era crimes to evade justice, including:
  - 4.1 A secret government report that explored ways of avoiding the State's responsibilities to prosecute offenders denied amnesty by the TRC or who had not applied for amnesty.
  
  - 4.2 An affidavit deposed to by former NDPP, Advocate Vusumzi Patrick Pikoli describing how the former NDPP was subjected to political pressure from the highest levels to abandon TRC cases. When Adv Pikoli decided to proceed with prosecuting one such case he was suspended by President Mbeki on 23 September 2007.
  
  - 4.3 An affidavit deposed to by former Special Director of Public Prosecutions in the office of the NDPP and former head of the PCLU, Advocate Anton

Rossouw Ackermann SC detailing how he was stopped from pursuing the investigation and prosecution of TRC cases. Following Adv Pikoli's suspension, Adv Ackermann SC was relieved of his duties in relation to TRC cases with immediate effect.

- 4.4 A secret memorandum authored by Adv Pikoli concluding that there had been improper interference in relation to TRC cases that obstructed their progress and impinged on his conscience and oath of office.
- 5 Against the backdrop of these unrefuted allegations of gross political interference, it became clear when reading the NPA's affidavit that it had inexplicably failed to explain the delay period between the committal of the crime and the trial date, especially the period post the TRC and its amnesty process.
- 6 On 15 January 2019, I was interviewed on Radio 702 by Ms Joanne Joseph.
  - 6.1 In this interview I called upon President Cyril Ramaphosa to open a commission of inquiry into the NPA's failure to prosecute TRC cases.
  - 6.2 I pointed out that the Priority Crimes Litigation Unit of the NPA had only taken steps in a handful of the more than 300 TRC cases that were handed over to the NPA by the TRC for investigation with a view to prosecute. The reason for this frightening lack of progress was that *"there was political interference that prevented them from investigating the TRC cases"* with the effect that *"these cases have been blocked for a number of years"*.

A handwritten signature or set of initials, possibly 'TR', with a flourish extending to the right.

7 A copy of the transcript of my aforesaid radio interview can be provided on request.

8 The following day, on 16 January 2019, the NPA's spokesperson, Luvuyo Mfaku and a spokesperson for the third respondent ("**Minister of Police**"), Hangwani Mulaudzi, were interviewed on Radio 702 by Ms Joseph to exercise their "*right of reply*" to my interview of 15 January 2019. I attach a copy of the transcript marked "**IAC1**".

8.1 During the interview, the NPA's spokesperson was asked by Ms Joseph to explain why the NPA had done so little in respect of the 300 cases that the TRC had recommended for prosecution.

8.2 In response, Mr Mfaku indicated to Ms Josephs that

*"[O]ne of the lead prosecutors Chris Macadam who has been seized with the matters from inception has actually filed and deposed an affidavit outlining all the delays that the essence of the delay is the investigative capacity has never been there."* (My emphasis).

8.3 Ms Josephs then put it to Mr Mfaku that the affidavits submitted by Adv Pikoli and Adv Ackerman SC before this Court alleged that former Justice Minister Brigitte Mabandla and late former police commissioner Jackie Selebi, amongst others, "*actively interfered in investigations which hampered them*".

8.4 In response, Mr Mfaku stated as follows:

*"I will never contest that. Remember Adv Pikoli was the head of NPA and Ackerman was the head of priority crime unit which was since with the investigation of the, the guiding of the investigations in respect of the TRC matters. If they are saying that there was that*

interference then they have exclusive knowledge of what was happening. I would never contest that." (My emphasis).

- 8.5 Mr Mfaku also indicated that Adv MacAdam had confirmed that some 300 cases had indeed been referred by the TRC to the NPA for prosecution and that Adv MacAdam had been "*guiding investigations in respect of TRC matters from the beginning*".
- 9 To date no such affidavit has been filed. The NPA was ordered by this Honourable Court to file its answering affidavits on 14 November 2018, which was then extended to 27 November 2018. All further answering affidavits had to be filed on 8 January 2019 and replying affidavits by 15 January 2019.
- 10 The comments of the NPA spokesperson raise serious questions as to why the NPA has held back the affidavit of Adv MacAdam, particularly in the light of the following factors:
- 10.1 Adv MacAdam is a senior prosecutor who has been guiding investigations in TRC matters from the beginning and clearly possesses the necessary knowledge to explain the delay period.
- 10.2 The NPA's spokesperson has publicly stated that Adv MacAdam has deposed to an affidavit explaining the delay period that is clearly relevant to the present proceedings.
- 10.3 The reference in the affidavit of Adv T P Pretorius SC, that he "*consulted with Adv Macadam*" and confirms an affidavit deposed to by Adv MacAdam that he attaches as Annex JPP5".



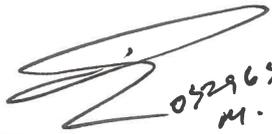
- 10.4 However, "Annex JPP5" is not an affidavit deposed to by Adv MacAdam. Nor does it concern delay. It is an internal memorandum analysing the legal framework applicable to inquests.
- 10.5 The testimony of Adv MacAdam at the Mokgoro Commission of Inquiry on 22 January 2019, as reported in the media, that cases involving political killings were dropped by the NPA because of political pressure. A news article titled '*NPA official tells #MokgoroInquiry cases were dropped due to political pressure*' dated 22 January 2019 by Botho Molosankwe is annexed hereto, marked "**IAC2**".
- 11 Accordingly, I call on the first respondent to:
- 11.1 take this Court into its confidence and file the affidavit of Adv MacAdam which explains the pre-prosecution delay period; alternatively
- 11.2 deny under oath the existence of an affidavit deposed to Adv MacAdam which explains the pre-prosecution delay period.
- 12 If the first respondent fails to do so, I respectfully submit that such conduct, could reasonably be construed as obstructing the administration of justice.



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IMITIAZ AHMED CAJEE

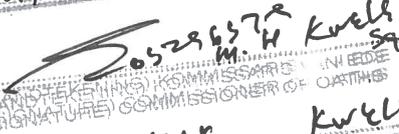
I certify that the deponent has acknowledged that he knows and understands the content of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and affirmed to before me at Rosebank on this 25 of January 2019, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

  
07296572  
M. H. Kwelle  
Sgt

COMMISSIONER OF OATHS

I certify that the deponent has acknowledged that he knows and understands the content of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and affirmed to before me at Rosebank on this 25 of January 2019, the regulations contained in Government Gazette Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.

to at Rosebank on 2019/01/25 at 05.55

  
07296572  
M. H. Kwelle  
Sgt  
(SIGNATURE) KOMMISSARIS VAN EDE  
(SIGNATURE) COMMISSIONER OF OATHS

MODISE HENDRICK KWELLE  
VOLLE VOORNAAM EN VAN IN DRUKSKRIEF  
FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

15 STURDEE AVE  
BUSINESS ADDRESS (STREET ADDRESS)  
BUSINESS ADDRESS (STREET ADDRESS)

Rosebank

SEKGEHWI  
HAND/BANK

SA POLICE  
SA POLICE

CASE NUMBER: 76755/2018  
JOAO RODRIGUES VS NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS OF  
SOUTH AFRICA & 3 OTHERS

5

RADIO 702 PODCASTS

INTERVIEW: NPA BLAMED FOR LACK OF PROGRESS IN PROSECUTING  
APARTHEID CRIMES

10

DATE: 16 JANUARY 2019

JOANNE JOSEPH: Let's bring you this story now, you may have heard our interview  
yesterday with anti-apartheid fighter Ahmed Timol's nephew  
15 Imtiaz Cajee. He wants the president to institute an inquiry into  
why most of the 300 cases the Truth and Reconciliation  
Commission recommend be investigated haven't been touched.  
He says the NPA's reluctance to look into these cases should be  
probed especially because of political interference may have  
20 been the cause. We're giving the NPA right of reply this evening  
to Cajee's request spokesperson Luvuyo Mfaku joining us on  
the line now. Luvuyo good evening to you and lovely to have  
you on the program. So how many of the 300 cases the NPA  
should perhaps have been prosecuting have actually been taken  
25 to court.

LUVUYO MFAKU: Good evening Joanne. At this stage we've got about 4 matters  
emanating from that TRC list that are before court and the

## “IAC1”

Hawks have provided investigative capacity to ensure that other matters are actually investigated and advised by the head of the Priority Crimes Litigation Unit who've helped the prosecutors who are giving the necessary guidance to the Hawks investigators that at this stage they are looking at 24 matters that are at an advanced stage that are being investigated by the Hawks and they are giving the necessary guidance.

5  
JOANNE JOSEPH: 4 matters out of 300 that were recommended for prosecution, how's that happened Luvuyo?

10 LUVUYO MFAKU: Let me outline the fact that the NPA cannot institute criminal proceedings on the basis of an investigation by the TRC. What the TRC did investigated and said these people, some of them never need full disclosure other they denied amnesty and therefore the NPA must establish whether there is a, they warrant a criminal investigation then they look at those dockets and those files and then they are forwarded to the police for investigation. One of the lead prosecutors, Chris MacAdam, who has been seized with the matters from inception has actually filed and deposed an affidavit outlining all the delays  
15  
20 that the essence of the delay is the investigative capacity has never been there.

JOANNE JOSEPH: Alright so in other words, the intention was to pursue these cases but you just didn't have enough hands on deck to be able to do so?



LUVUYO MFAKU: That is correct. As a prosecutor you cannot investigate and prosecute they have separation of responsibility, hence the DSO commonly known as the Scorpions has disbanded is because the NPA cannot have an investigative and prosecutorial capacity in line with the constitution. So the investigative element of it is it requires the police, therefore prosecutors are saying we always had a team of prosecutors to give the necessary guidance but within that in terms of over the years in terms of they dedicated investigative capacity to look at these matters.

JOANNE JOSEPH: Alright so Luvuyo you make some important points here about police investigations let's bring into the conversation Hangwani Mulaudzi who is spokesperson for the Hawks. Hangwani good evening to you and thank you indeed for your time as well to discuss the story with us. 4 matters out of 300, I mean that suggests to me that very little effort has been put into actually investigating these matters.

HANGWANI M: Joanne, good evening and thank you for giving us an opportunity as well. Look Joanne, like my colleague said there, Luvuyo, these cases, we had to look, we had to get guidance from the NPA and as such there are some cases that are being looked at, but so far we are dealing with about 36 dockets that comes out of the referral from the NPA and off course there are others that are already in court so that does not necessarily mean that there's nothing being done. Out of those cases some

## “IAC1”

of them that have difficulties that we are also experiencing in terms of families that are not co-operating they do not want even suggest to open some of those cases, some had to be, we had to talk to them in terms of giving them guidance and trying to convince them to co-operate. There are documents that are also missing we are also going through the archives of the TRC to be able to get those documents, so it's a tedious job that we are facing does not necessarily mean that everything that we are looking for is there. So we have a team of about 15 investigators that have been assisting in this investigation, so they are working full-steam in terms of making sure that these cases are getting priority. We also have some witnesses that's overseas, we have already taken some statements from them. So it's a tedious job it's not like, you know some people has also relocated so there is a lot of work that needs to be done.

JOANNE JOSEPH: You know it's, I'm listening to what you're saying and I think you make some very good points about the limitations that make your job extremely difficult in these cases. But are you saying, just to pick up on one of your earlier points, that families who are looking for, or who should be looking for closure, who should be looking for justice perhaps in these unresolved cases, are actually resistant to having them investigated?

HANGWANI M: Of course, that is one of the challenges that we are facing because...

25 JOANNE JOSEPH: Why, what reasons do they give you Hangwani?



HANGWANI M: Well they say they have moved on you know they have moved on and I think went to the TRC processes, but like my learned friend said, we are given a docket, it is not our responsibility to take decisions on those ones, our job is to investigate and if we are getting resistance in that regard we go back to the NPA and they give us advice as to how we can be able to deal with it. So it's not easy, you know, it's not like people would want, if you are dealing with a docket, they would say now let's go ahead, but some that are the families actually not taking it lightly, I mean they don't want to actually [indistinct] investigation been done.

JOANNE JOSEPH: Alright. I want to ask you as well about capacity and I know that with 15 people you're probably very very stretched at looking, if you have to look at as many as 300 cases, however, I have witnessed the work of people like Madeleine Fullard and her team, the missing person's task team at the NPA. They're four or five people. They do all of the research, the investigation, every aspect of it, the exhumation of the bodies, the location of the bodies, the reburial of the bodies, that tiny team, because they are so committed and so sufficient managed to get so much done. Now over a 1000 people are estimated to have disappeared, Madeleine and her team have found a 100 of those bodies as far as I know, just over a 100. You have a team of 15, a stretched team no doubt, but a team of 15 people and you are looking at 300 cases, could you not be a little bit more efficient and competent in the task that's been set for you?

HANGWANI M:

Well we are being competent, you know that's why I'm saying that people would think that nothing's been done, there is a lot of work that needs to be done. Take for instance, we are talking about cases that have happened 20, 30 years ago. Where will you get the documents in that regard? There are some documents that are even, they are missing, you know the archives that we have to go through we have to do our own, what you call it, affidavits so it's not as easy as that. It's not like that there is nothing that is been done. There is a lot of work that is been done and we got a special team, it's not a task team, you rightfully say, we've got the crimes against [indistinct] that has been given that responsibility to deal with these cases. [indistinct] Mahlangu and his team, they are, as I said, they are working full steam. It is unfortunate that some of these cases will go on to get all these hiccups because of the issues of people who have already passed away or people who are reluctant to co-operate with the investigations. The commendation that I have been talking about that is missing that we now have to search for it in other archives who also need to go back and speak to former members of the TRC if they can be able to assist with whatever information. So it's not like people are sitting in offices. These things they have them all over the nine provinces.

JOANNE JOSEPH:

Yes I understand that and that is why I used the NPA task team as an example, because they are facing the same challenges

sometimes more challenges than you are. And that's why I thought it is a fair comparison of effort and success rate.

HANGWANI M:

I think it is a bit unfair to compare us because we are dealing with investigations you know that is where now the core of these things will be finalised until such time we are have to take it back to the NPA and I said we've got people that are sitting overseas. We have to search for those people, because some of them we don't even know where they are and hence the result those are the delays. It does not necessarily mean that there's nothing that is been done.

JOANNE JOSEPH:

Alright can I just ask you one last question which I'm also going to put to Luvuyo Mfaku. Has there, in any, throughout the years of investigation that you've been involved in, has there ever been any effort by political entities to scupper your investigations into these apartheid cases?

HANGWANI M:

I don't remember because I don't, I don't even think that will ever happen. We are a political, we don't confine ourselves to any political beliefs, our job is to investigate and I don't think it's even, I heard that there are people who are making those allegations and if they've got any any proof to that effect, they are more than welcome to bring it to the public space, but .....

JOANNE JOSEPH:

Alright it is in the public space in the form of affidavits from Vusi Pikoli and Anton Ackerman.

HANGWANI M:

Well I don't know where it is coming from and I don't want to speculate on things that are not.....

JOANNE JOSEPH: No no no, it is not speculation. You should go and read it actually, those affidavits are really interesting. They are publicly available.

5 HANGWANI M: Ja I'm talking on behalf of what I'm saying now, I haven't seen those documents hence I am saying, that's why I'm saying speculation. So that is something, there is no that thing that I know of that revolves us in any political interference.

10 JOANNE JOSEPH: Alright. Thank you very much for your time Hangwani. Let's go back to Luvuyo from the NPA for a moment here. I just want to pick up on that one point Luvuyo. These allegations contained in affidavits submitted in Imtiaz Cajee's court papers saying Vusi Pikoli and Anton Ackerman are alleging that former justice minister Brigitte Mabandla and late former police commissioner Jackie Selebi actively interfered in investigations which hampered them. Is that true?

15 LUVUYO MFAKU: I will never contest that. Remember Adv Pikoli was the head of NPA and Ackerman was the head of priority crime unit which was since with the investigation of the, the guiding of the investigations in respect of the TRC matters. If they are saying  
20 that there was that interference then they have exclusive knowledge of what was happening. I would never contest that. But what I can assure you after their tenor when Shaun Abrahams took over he actually engaged with the head of the Hawks to ensure that they dedicated capacity of investigators  
25 that are solely dedicated to dealing with TRC matters. You have

alluded to how the TRC I mean the commission task team operates which is under [indistinct] as well, but the difference is that, they've got investigators researches who are dedicated, they do not have other responsibilities, you get an investigating officer who work on the TRC cases, who work on other matters so they, their plates are full.

5

JOANNE JOSEPH: Well that's clearly a problem with the way it was configured. But Luvuyo I just want to go back to this original question of 300 cases. Do you know of a list that was handed over from the TRC containing a list of 300 cases that could either be investigated or prosecuted, that number 300, is it accurate?

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LUVUYO MFAKU: I, when this thing came up I engaged with Chris MacAdam, he actually, he confirmed the figure of 300 or more that was forward to the NPA which in turn referred to the police for investigation.

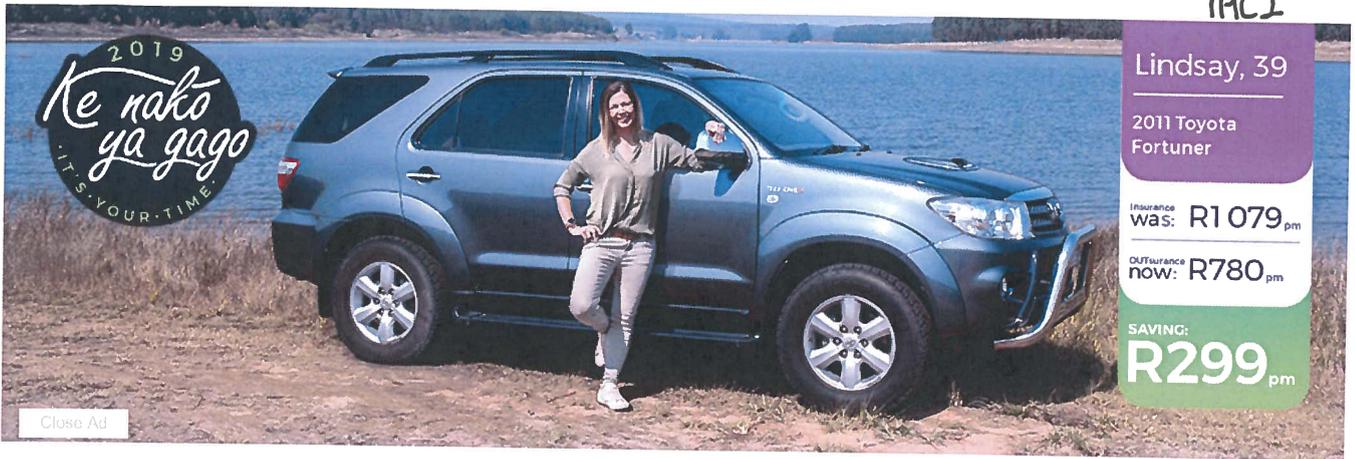
15 JOANNE JOSEPH: Sorry I didn't quite hear the name, who gave you that information?

LUVUYO MFAKU: Chris MacAdam who have been, with guiding investigations in respect of TRC matters from the beginning.

20 JOANNE JOSEPH: Right Luvuyo thank you for making the time to speak to us, Hangwani Mulaudzi, spokesperson of the Hawks thank you similarly. Great speaking to the both of you.

25

"IAC2"



# NPA official tells #MokgoroInquiry cases were dropped due to political pressure

BOTHO MOLOSANKWE 2 days ago



© Provided by Independent Media Retired Constitutional Court Justice Yvonne Mokgoro (middle) and her panelists advocate Kgomotso Moroka (left) and advocate Thenjiwe Vilakazi (right). Photo: Brenda Masilela / ANA

Pretoria - A senior National Prosecuting Authority (NPA) official has revealed that there were instances where they were forced to drop some of the cases they were working on because of political pressure.

Senior deputy Director of Public Prosecutions (DPP) Advocate Chris MacAdam revealed this on Tuesday on the second day of the commission of inquiry into the fitness to hold office of NPA top officials Advocate Nomgcobo Jiba as well as Advocate Lawrence Mrwebi.

Jiba, deputy National Director for Public Prosecutions (NDPP), and Mrwebi, special director of public prosecutions, are currently on suspension.

MacAdam's revelations came after the commission chair, retired Constitutional Court Justice Yvonne Mokgoro, asked him if there had been times when prosecutors had to decide whether to investigate or not due to either economic or political pressure.



MacAdam said he "certainly" experienced that when he was in KwaZulu-Natal at the time the NPA was probing political killings.

He said as soon as they would start an investigation targeting a particular politician, the former NDPP, Shaun Abrahams, would call and say they had to drop the case because the leader of the party had ordered that the investigation be halted.

In some instances, he said, prosecutors would also be accused of being politically biased and only pursuing a prosecution just to target certain politicians.

The commission continues.

The Star

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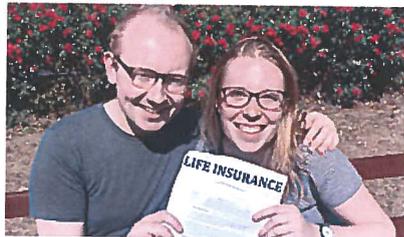
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