

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

CASE NUMBER: 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

THE MINISTER OF POLICE

Third Respondent

FILING SHEET

DOCUMENT: Replying affidavit in response to second respondent's
answering affidavit

Nature: Opposed Motion

Filed by:

**BEN MINNAAR ATTORNEYS
ATTORNEYS FOR THE APPLICANT**
190 Melt Marais Street
Wonderboom AH X1
Pretoria
E-Mail: benjaminnaar@gmail.com
TEL:082 4462644
REF: BM 01/09/18

**TO: THE REGISTRAR OF THE
HIGH COURT
PRETORIA**

AND TO: THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS
First Respondent
C/O State Attorney
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

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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 POLICE
Third Respondent
C/O State Attorney
316 Thabo Sehume Street
SALU Building
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**REPLYING AFFIDAVIT IRO SECOND RESPONDENT'S ANSWERING
AFFIDAVIT**

I, the undersigned,

JOAO RODRIGUES

do hereby declare under oath as follows:


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1.

- 1.1. I am an adult pensioner presently residing at 835 Eleventh Avenue, Wonderboom South, Pretoria, Gauteng. I have been residing at the address for the past 54 years.
- 1.2. The facts contained in this affidavit fall within my personal knowledge unless stated to the contrary, and are both true and correct.

AD ANSWERING AFFIDAVIT: SECOND RESPONDENT:

2.

AD PARAGRAPHS 1 AND 2 THEREOF:

Apart from denying that the legal submissions made in the affidavit are correct in all regards, I take note of the further allegations contained in these paragraphs.

3.

AD PARAGRAPHS 3 AND 4 THEREOF:

- 3.1. It is correct that the initiation of a Prosecution and the conduct of a criminal trial is the prerogative of the First Respondent.



- 3.2. I have, however, been advised that the Second Respondent, as the Minister of Justice and Correctional Services, had an interest in the matter as the Cabinet member responsible for the administration of Justice.
- 3.3. I am further advised that the First Respondent has to determine prosecution policy and issue policy directives but he has to do that with the concurrence of the Second Respondent. This is provided for in section 21(1) of the National Prosecution Authority Act, Act 32 of 1998 ("NPA Act").
- 3.4. I am further advised that the First Respondent has to advise the Second Respondent on all matters relating to the administration of criminal justice as provided for in section 22(4)(a)(iii) of the NPA Act.
- 3.5. I am also advised that section 33 of the NPA Act provides that the Second Respondent shall, for purposes of section 179 of the

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Constitution, exercise final responsibility over the Prosecuting Authority in accordance with the provisions of the NPA Act.

3.6. I therefore deny that the relief sought against the Second Respondent in this application is ill conceived either as alleged or at all.

4.

AD PARAGRAPH 6 THEREOF:

I deny that all the facts set out in Annexure "PMM1" are correct in all respects. I am, however, advised that I am not relying on the decision to re-open the inquest as part of the grounds for the relief sought. As is set out in the founding papers the application is based on the long delay since 1971 to institute a prosecution and the fact that the Prosecution ignored findings by the re-opened inquest without any basis therefore.

5.

AD PARAGRAPH 13 THEREOF:

5.1. I am advised that it is correct that this application is indeed an application in terms of section 35 of the Constitution and not an application in terms of section 342A of the Criminal Procedure Act.


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5.2. It is not my case that there was an unreasonable delay caused by the Prosecution after the decision was taken earlier this year to prosecute me. The basis for my complaint is the material delay in the Prosecution prior to the present decision to prosecute me.

6.

AD PARAGRAPH 15 THEREOF:

I deny that this Court is not the proper forum to resolve the present issues raised in the application papers. Legal argument will be addressed to the Honourable Court at the hearing of this matter in this regard.

7.

AD PARAGRAPH 21 THEREOF:

I deny that the findings of the re-opened inquest have been incorrectly stated. The full judgment will be available during the hearing of this matter and the Honourable Court will be referred to it insofar as it may be relevant.

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8.

AD PARAGRAPH 30 THEREOF:

I refer the Honourable Court to what I have already stated in this regard hereinbefore.

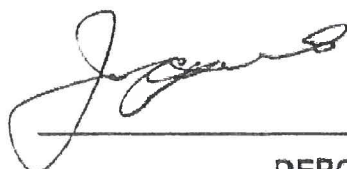
9.

AD PARAGRAPH 32 THEREOF:

It is correct that the approach that a Court should follow when considering a permanent stay of prosecution has been formulated previously by our Courts. I am advised that a proper case has indeed been made out in the founding papers for the relief sought. I am further advised that this issue will be fully addressed during argument of this application.

10.

I therefore persist with the relief set out in the notice of motion.



DEPONENT

SIGNED and SWORN to at PRETORIA on this 03 DECEMBER day of DECEMBER 2018 by the Deponent who stated that:


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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.

[Handwritten signature]

COMMISSIONER OF OATHS

*Thou B. PHAPA
 PTP 1:00 T SAPP
 17th Avenue 536
 Rietfontein
 0021*

FULL NAMES:
 BUSINESS ADDRESS:
 AREA:
 DESIGNATION:

