

25/10/17

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

Case Number: 65757/2017

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES/NO. ☒ YES ☐ NO

(2) OF INTEREST TO OTHER JUDGES: YES/NO. ☒ YES ☐ NO

(3) REVISED. ☒

25/10/17

DATE

10/10/17

SIGNATURE

In the matter between:

MKUSELI APLENI

APPLICANT

And

PRESIDENT OF THE REPUBLIC  
OF SOUTH AFRICA  
MINISTER OF HOME AFFAIRS

1<sup>ST</sup> RESPONDENT2<sup>ND</sup> RESPONDENT

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JUDGMENT

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**Fabricius J,**

1.

This urgent application was set down for 3 October 2017. It is dated 23 September 2017, and was filed with the Registrar of this Court on 26 September 2017. On the same day, the Respondents who intended to oppose the application were required to deliver a Notice of Opposition, and then file their Answering Affidavit on or by 27 September 2017. The Applicant would then reply by 28 September 2017. First Respondent filed a Notice of Intention to Oppose on 27 September 2017, and Second Respondent on 26 September 2017.

2.

The Director-General in the Presidency, filed an Answering Affidavit on behalf of First Respondent on 28 September. On behalf of the Second Respondent, the Acting Director-General in the Department of Home Affairs, Mr J. McKay, filed an Answering Affidavit dated 28 September.

3.

The application was not heard during the week of 3 October in the Urgent Court, but was referred to the Deputy Judge President for the allocation of a special date. His allocation is dated 5 October 2017, and sets the application down for hearing as a special motion on 17 October. Direction was given as to the filing of further affidavits. On 13 October, the Second Respondent then filed an Answering Affidavit.

4.

The relief that the Applicant seeks on this urgent basis, is that:

"2. It is declared that the Second Respondent lacks authority to suspend the Applicant;

3. It is declared that the suspension of the Applicant by the Second Respondent is unconstitutional, invalid and of no force and effect.

4. The decision by the Second Respondent to suspend the Applicant is set aside".

A cost order against the Second Respondent was also sought. No relief was sought against the First Respondent.

## 5.

The Applicant is the Head of the Department of Home Affairs ("the Director-General") in terms of the provisions of s. 12 of the *Public Service Act 103 of 1994* as amended, ("*PSA*"). He had been re-appointed as the Director-General for a period of five years commencing from 1 April 2015. On 18 September 2017, the Second Respondent placed him on precautionary suspension, as it was put. He alleged in the Founding Affidavit that this precautionary suspension was invalid and unlawful, because the Minister acted outside of her authority. The Minister had no power to suspend him. In any event, so it was alleged, that even if the Minister had the power to suspend him:

1. The Minister's reasons for such suspension were irrational. The Minister did not have a justifiable reason to believe, *prima facie* at least, that he had engaged in the serious misconduct alleged.

2. The process followed by the Minister in putting into effect his precautionary suspension was procedurally unfair.

3. The Minister had failed to show any objectively justifiable reason to deny him access to the workplace based on the integrity of any pending investigation into the alleged conduct, or some other relevant factor that would place the investigation or the interest of the affected parties in jeopardy.

6.

As far as the First Respondent was concerned, he was sited in his official capacity as Head of the Government of the Republic of South Africa and the Head of the National Executive in terms of s. 83 (a) of the *Constitution*. In terms of s. 12 (1) of the *Public Service Act*, the appointment and other career incidents of the Heads of Department in the case of a National Department shall be dealt with by the President.

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**Urgency:**

As far as urgency was concerned, the Applicant relied on a legal argument, and a number of arguments pertaining to facts which have been disputed in the two Answering Affidavits by or on behalf of the Second Respondent, and upon which, in these proceedings, one is unable to make a finding. The point of law is that the Second Respondent has no power to suspend him from his position as Director-General. Only the First Respondent can do so. Ministers do not appoint Directors-General as these appointments are done by Cabinet. Ministers therefore also do not have the powers to suspend, implied or otherwise. These powers are vested in the President. It was alleged in the Founding Affidavit that the only instance where a Minister could take a decision to suspend a Director-General was where the power is implied in the general power of a Minister or has been delegated by the President. Neither applies here.

8.

He also alleges that the application was brought to vindicate the Rule of Law, to ensure that the power is exercised by the correct repository of the power. As such, the application is founded on s. 1 (c) of the *Constitution*, and it was his contention that the decision of the Minister infringed upon the principle of legality, and that as a result, the application was inherently urgent.

9.

The Applicant dealt with a number of factual situations which according to him indicated that the decision of the Minister was manifestly irrational. A number of these relate to cases of litigation pending in this Court, which Applicant says the Second Respondent intends to settle, despite there being no lawful grounds therefore. The Minister has denied this, and stated that such decisions would not be taken without advice from their legal representatives.



10.

Apart from those issues, the Applicant also relies on urgency, with reference to specific examples, by stating that the suspension of a Director-General has a substantial negative effect on service delivery and critical projects that the Government Department was carrying out. Certain of those critical functions require experience and institutional knowledge, and are not functions that should be fulfilled by someone acting in the position of Director-General. It is that context also that Applicant alleges that it was critical that the unlawful and irrational suspension be set aside as a matter of urgency. There were significant projects that were being delayed and hampered because of the instability that his suspension has caused. He also alleged that the Minister was abusing her powers, and was clearly attempting to remove him from his position so that she could influence the operational decisions of the department. I hold that the application is urgent. Where allegations are made relating to abuse of power by a Minister or other public officials, which may impact upon the Rule of Law, and may have a detrimental



impact upon the public purse, the relevant relief sought ought normally be urgently considered.

11.

**The precautionary suspension:**

It was alleged that in placing the Applicant on precautionary suspension, the Minister exercised a power reserved for the President which had not been delegated to her.

According to s. 12 of the *Public Service Act*, the appointment and other career incidents of the Heads of Department shall be dealt with, in the case of a Head of a National Department, by the President. His contract of service between him and the Government of the Republic also makes it clear that his appointment as Head of the Department of Home Affairs is in terms of s. 12 of the *Public Service Act of 1994*.

The Minister is not the Applicant's employer, it was said, and therefore the particular provisions of the Public Service Handbook, which relate to the powers of the "employer", do not apply to him.

The extension of his employment contract was signed by the Minister of Public Service and Administration and the Minister of Home Affairs. In both letters the Ministers state that Cabinet approved the extension of the employment contract. In terms of the Constitution, the President is the Head of Cabinet. Even in respect of the extension of his term of Office, the Minister as the Executive Authority only acted after he obtained Cabinet approval for such extension. The only way in which the Minister would have been empowered to suspend him and exercise the power she purported to exercise, was if she had a proper and lawful delegation from the President, which has not occurred. The precautionary suspension was therefore unlawful and the Minister acted *ultra vires*.

12.

**First Respondent's Answering Affidavit:**

The Director General in the Presidency made an affidavit and stated that he did not intend to address the merits of the allegations of misconduct levelled against the Applicant as these were not within his personal knowledge. Because of the time

strictures to which the Applicant had subjected the Respondents, he could not be apprised of the complete facts in this regard. It was also obvious that no relief was sought against the President. He disputed the urgency of the application. As far as the dispute about delegation was concerned, he relied on certain provisions contained in Chapter 8 of the *Senior Management Service Handbook of 2003* ("the *SMS Handbook*") which makes provision for employment of Heads of Department.

Clause 18 of Chapter 8 of this handbook provides as follows:

"18. SUSPENSION

18.1 The suspension of HoD's is covered in Chapter 7.

18.2 The EA may suspend a HoD on full pay if:

1. She/he is alleged to have committed a serious offence; and
2. The EA believes that the presence of the HoD at the workplace might jeopardise an investigation into the alleged misconduct, or endanger the well-being or safety of any person or State property.

18.3 The suspension of this kind is a precautionary measure that does not constitute a judgment and must therefore be on full pay.

18.4 When a HoD is suspended, a disciplinary hearing must be held within 60 days. The Chair of the hearing must then decide on any further postponement and/or further suspension."

It was said that the "EA" referred to in clause 18.2 of Chapter 8 of the SMS Handbook is the executive authority, mainly the Minister. That is the meaning of "executive authority" in the *Public Finance Management Act, 1 of 1999* in relation to a National Department, and there was no reason to deviate from that here. This was reinforced by Clause 2.8 (ii) of Chapter 7 of the *SMS Handbook*.

Clause 2.7 (2) of Chapter 7 of the *SMS Handbook* provides as follows:

"(2) Precautionary suspension or transfer

(a) The employer may suspend or transfer a member on full pay if –

- The member is alleged to have committed a serious offence; and
- The employer believes (I underline) that the presence of a member at the workplace might jeopardise any investigation into the alleged

misconduct, or endanger the wellbeing or safety of any person or state property”.

Clause 2.8 of Chapter 7 of the *SMS Handbook* defines “employer” as:

“employer” means —

- i) In respect of all members (excluding heads of department in their capacities as employees), the head of department or any member of his/her department designated to perform the specific action; and
- ii) In respect of heads of department, the relevant executing authority”.

13.

The deponent then referred to Clause 2 of Chapter 8 which deals with “Employment of Heads of Department” and provides for a delegation by the President.:

“2. DELEGATION OF POWERS:

2.1 The Public Service Act, 1994 (3 (B) (I)) entrusts —

(1) The President has the power to undertake and manage the appointment and career incidents of Heads of Department of National Departments and organisational components; and

(2)...

2.2 The Act (s. 3 (B) (4)) further stipulates that the President/Premier may delegate:

(1) The power to appoint a HoD as well as;

(2) Any other power regarding the career incidents of HoD's.

(2.3) The President has delegated his powers to the Deputy President and Ministers. (s. 3 (B) (4) of the Act). Letter of President dated 8 October 1999 – Annexure A). This chapter has been drafted on the assumption that EA's have been awarded the power to manage the career incidents of HoD's".

The letter of the President reads as follows:

"8 October 1999

Dear Colleague



DELEGATION OF POWERS ENTRUSTED TO THE PRESIDENT: HEADS OF  
NATIONAL DEPARTMENTS

As you are aware, a new regulatory framework to effectively manage human resources within the Public Service has come into operation with effect from 1 July 1999.

Section 3B of the *Public Service Act*, 1994 entrusts me as President with the power to undertake and manage the appointment and other career incidents of heads of national departments. These powers include, *inter alia*, the appointment, deployment, performance management, salary increases, secondments and extension and termination of employment contracts of heads of departments in the national sphere of government.

In view of the fact that Ministers and their Departmental heads actively and continuously work together to optimise departmental functioning contribute towards effective service delivery. I have delegated, in accordance with section 3B (4) (a)

of the *Public Service Act*, 1994, the powers entrusted to me as described in the first column of the attached Annexure, to Ministers. Please note that the deployment of heads of departments in terms of section 3B (2) (a) of the Act, is not delegated. I will exercise this power together with you and other Executing Authorities in Cabinet, as envisaged in the said section, read with section 85 (2) of the Constitution, 1996. The application of the delegated powers listed in the Annexure is, besides the conditions laid down therein, also subject to the relevant provisions of the *Public Service Act*, 1994, the new Regulations and other instructions.

The Minister for the Public Service and Administration will gladly render support and give advice to the application of delegated powers, if required.

Kind regards.

T. M. MBEKI

Dr E. G. Pahad

Minister in the Office of the Presidency

Room 223B

Tuynhuys

CAPE TOWN"

It will be noted that this particular copy, the only one which is before me, was not signed by President Mbeki and by another Cabinet member envisaged by the provisions of s. 101 (1) and (2) of the *Constitution* of the Republic.

14.

In that regard he drew attention to the fact that s. 3 B of the *Public Service Act* was repealed by s.5 of *Act 30 of 2007* with effect from 1 August 2008. Section 42 A

(3) of the *Public Service Act* however provides that:

“(3) The executive authority referred to in s. 12 (1) may, in the case of –

(a) The President, delegate to the Deputy President or a Minister any power

conferred on the President by s. 12; or

(b) ...”

15.

On 10 October 2017, the Applicant filed a second Supplementary Affidavit referring to a press statement issued by the Presidency on 5 October 2017. In that press

statement it was stated that “the President’s position with regard to this question (the Minister’s authority to suspend the Applicant) (my insertion) is that the authority was delegated to the Minister of Home Affairs. This was apparent from Chapter 8 of the *Senior Management Service Handbook, 2003* (“the *SMS Handbook*”).

16.

On 13 October 2017, the Second Respondent filed an Answering Affidavit. She took issue with the urgency of the application. She stated that the haste with which the application had been launched and pursued, impacted upon her rights as Minister of Home Affairs to access to Court as contemplated in s. 34 of the *Constitution*. This right includes the right to consult adequately, gather evidence and prepare argument. This was also recognised in international instruments such as the *African Charter on Human and Peoples’ Rights, 1986*. I do not intend to deal with this Charter in these proceedings.

I agree that the question of urgency could justifiably have been debated on 3 October 2017. It is however accepted law that even where a Respondent is given strict time constraints, it must comply therewith as best it can, or take the consequences. See: *Republikeinse Publikasies (Edms) Bpk v Afrikaanse Pen Publikasies (Edms) Bpk 1972 (1) SA 773 (AA) at 782 D*.

After the new date had been determined by the Deputy Judge President, all relevant affidavits had been filed by 13 October 2017 and in the interests of considerations relating to the Rule of Law, I decided to hear the application as being urgent for present purposes.

#### 17.

I do not however agree with the assertion by the Minister that she can justifiably directly rely on the provisions of s. 34 of the *Constitution* of the Republic. The section does not say that a person is constitutionally entitled to "Access to Court" irrespective of relevant provisions of substantive or procedural law. Access to Court and related matters, both of a substantive and procedural nature are now regulated

by the *Superior Courts Act No. 10 of 2013*, the *Uniform Rules of Court*, and relevant Practice Manuals and Directions relating to urgency. A party cannot justifiably rely on the provisions of s. 34 of the *Constitution* to demand time to consult, gather evidence or prepare argument. Were it otherwise, this article in the Constitution could be used (and abused) to prevent or delay almost any urgent application. The principle of subsidiarity prohibits such an approach. This means that where legislation gives effect to constitutional rights, it is not permissible to go behind that legislation by relying on the *Constitution* directly. The rights in s. 34 are given effect to, *inter alia*, by the *Uniform Rules of Court*.

See: *Giesecke & Devrient Southern Africa (Pty) Ltd v Minister of Safety and Security 2012 (2) SA 137 (SCA) at par. [24]*. It is clear that a litigant who seeks to assert a constitutional right should in the first place base his or her case on any legislation enacted to regulate the right, not the Constitution.

See: *South African National Defence Union v Minister of Defence and Others 2007 (5) SA 400 (CC) at par. [52]*.



**The delegation:**

Counsel for Applicant argued as follows:

1. There was no delegation by President Zuma. That is common cause;
2. From an evidentiary point of view, there was no delegation that complied with the provisions s. 101 of the *Constitution* inasmuch as the letter by President T. M. Mbeki that formed part of the *SMS Handbook*, had not been signed by him, nor countersigned by another Cabinet member of the particular National Department concerned. It was merely a case of the name of Dr E. G. Pahad, Minister in the Office of the Presidency, being mentioned beneath the name of T. M. Mbeki.

In that context, that delegation could not be regarded as being lawful;

3. Quite apart from that, s. 3B of the *Public Service Act* of 1994, upon which President Mbeki ostensibly relied and in terms of which he purported to act, had been repealed by s. 5 of the *Public Service Amendment Act* No. 30 of 2007, with effect from 1 August 2007.

An Annexure to this particular purported delegation states as following:

“2. DELEGATIONS

2.1 The President delegates the powers assigned to him in terms of s. 3B (1)

of the *Public Service Act, 1994* (*Proclamation 103* of 3 June 1994), to

the extent indicated in the Annexure and subject to the conditions as set

out thereunder, in terms of s. 3B (4) of the *Public Service Act, 1994* to

Ministers as indicated”.

The Annexure to this submission refers amongst others to the appointment to the post of Head of Department, the Minister who was the “Executing Authority” under the 1994 *Act*, and the provisions of s. 12 (1) of the 1994 *Act*. Those particular provisions, applied also to the suspension of a Head of a Department. The “Notes” to this particular letter with the Annexures mentions the fact that the President was exercising his Executive Authority together with the “other members of Cabinet”, as per s. 85 (2) of the *Constitution of 1996*.

It was argued that it was a well-established principle that the repeal of an enabling statute of power in turn repeals a Regulation or By-law made thereunder unless it is preserved by some or other provision. In this context reference was made to *Blaikie-Johnston v D Nell Developments (Pty) Ltd and Another* 1978 (4) SA 883 (N) at 889 B to E, *Hatch v Koopoomal* 1936 AD 190 at 197 and in particular *R v Madine* 1961 (3) SA 29 at 30 H to 31 A, where it was held where a particular enabling power had been repealed, and there had been no preservation of certain *Regulations*, a particular *Proclamation* ceased to have any validity, as well as a certificate issued in terms thereof. It was contended that the position was in fact very clear: any delegation done pursuant to a statute that was repealed, lost its force, unless saved by the repealing provisions. In this particular instance, the power to delegate was now contained in the 2007 *Act* by way of the provisions of s. 42A (3), which stated that the Executive Authority referred to in s. 12 (1) may, in the case of the President, delegate to a Minister the powers conferred on the President by s. 12.

Section 12 of the 2007 amending *Act* deals with the appointment of Heads of Department and career incidents and states that such, in the case of a Head of a National Department, shall be dealt with by the President. In *Masethla v President of the Republic of South Africa and Another 2008 (1) SA 566 (CC) at par. 147*, it was held that “career incidents” was a wide enough phrase to include other matters relating to the career of a head of a department including terms and conditions of employment. This would in my view then include the power to suspend such a head.

20.

I was also referred to a relevant dictum in *Pharmaceutical Manufacturers Association of South Africa and Another: In re Ex parte President of the Republic of South Africa and Others 2000 (2) SA 674 (C) at par. 12*, where it was said that it was well-established that delegated powers must be exercised within the limits of the authority that was conferred. Therefore, the repeal of a legislative provision must in turn revoke any power to exercise that provision including a power in terms of a delegation of authority.

In this case there was also no preservation. The *Public Service Act* has a repeal of laws and savings provision in s. 43. Section 43 (2) provides that “anything done under any law repealed by subsection (1) and which could be done under provision of this Act, shall be deemed to have been done under that provision”. The repeal of s. 3B of the *Public Service Act* by the *Amendment Act 30 of 2007*, is not included in the list of laws that are saved by s. 43 (2). It was therefore not open to the First Respondent to argue that the delegation and power provided for in s. 3B was now catered for in s. 12 (1) and s. 42A (3) of the amending *Act*. Had it been the intention of the legislature to preserve anything done under the repealed s. 3B, it would have expressly stated so. In that context I was referred to the unreported decision in *Roy Ramdaw Incorporated v Amajuba District Municipality and Others* 2003 JTR 0180 at p. 10, where P. Combrinck J said the following: “Once a delegation of powers was effected under existing legislation, such delegation is not rendered void or invalid simply because the *Act* giving them power to delegate has been repealed. The resolution passed by the Council was passed legitimately under



existing legislation and in my view, Executive Committee's power to act in terms of such delegation did not fall away once the *Act* was repealed". No authority was given for this statement and I do not agree with it. It is clearly wrong. The provisions of s.12 (1) and (2) of the *Interpretation Act* 33 of 1957 as amended also do not assist Respondents as s. 3B was not specifically saved, as I have said.

22.

It is also clear that in terms of the provisions of s. 84 (2) (e) of the *Constitution* of the Republic, the powers and functions of the President include the making of appointments required by the Constitution and legislation. The *Public Service Act* as amended is the legislative instrument that gives effect to this function and more particularly, by way of provisions of s. 12 (1).

23.

As far as the question is concerned whether or not President Mbeki's "letter" complies with the provisions of s. 101 (1) (b) of the *Constitution*, it was argued on



behalf of the President that the relevant delegation was indeed in writing. Mr Ngalwana SC also submitted that the delegation by President Mbeki was “akin” to an administrative decision, but was not an executive decision merely because the President had made it. The *Public Service Act*, by way of the provisions of s. 42A (7) (a) merely required that any delegation of a power to perform a duty in terms of that section had to be in writing.

24.

It therefore needs to be decided whether or not the particular delegation herein was an executive decision. A number of authorities were put before me in this context and it is clear that at least the following considerations pertain:

1. The definition in the *Promotion of Administrative Justice Act No. 3 of 2000* (“*PAJA*”) of “administrative action” has various features amongst which are that such decision must adversely affect the rights of any person, but does not include the executive powers or functions of the National Executive, including certain powers and functions specifically mentioned in the definition

section. I was not told which rights of any person would be affected by the particular delegation and I cannot think of any rights being adversely affected in this particular instance;

2. The nature of the public power is important to determine its true character;
3. The source of the power must be considered, as well as its purpose;
4. The question whether or not the exercise of a public duty is involved and how closely such would be related to policy matters;
5. A distinction must be drawn between the functionary and the particular function. The mere fact that a power is exercised by a member of the Executive is not in itself determinative. Executive powers are, in essence, high-policy or broad direction-giving powers.

See: *Minister of Defence and Military Veterans v Motau* 2014 8 BCLR 930

(CC) at par. [33] and further.

6. Each case must be determined on its own merits.

25.

It is clear from the actual delegation and certain provisions contained in the Annexures thereto which I have mentioned, that President Mbeki's letter is more closely related to policy matters in terms of all relevant provisions of the *Public Service Act*. It is clearly envisaged that the optimum departmental functioning is a consideration as well as effective service delivery. These are matters that pertain to the executive and in my view are not administrative functions, nor "akin" to an administrative act.

See: *The Minister of Home Affairs and Others v Scalabrini Centre and Others* 2013 (6) SA 421 SCA at par. [48] to [57], and the cases referred to in those paragraphs.

26.

In my opinion, the letter of President Mbeki is an executive act and accordingly it had to comply with the provisions of s. 101 (1) (a) of the *Constitution*. From an evidentiary point it did not: there is no evidence before me that President Mbeki

signed such delegation or that it was signed by a Cabinet member as envisaged by the mentioned section. On that basis, I therefore cannot find that it was a lawful delegation in terms of s. 101 (1) (a) of the *Constitution*.

See: *Masetlha v President of the Republic of South Africa and Another 2008 (1)*

*SA 566 (CC) at par. 15*, where it was unsurprisingly held with reference to the Constitution that a decision by the President, if it is to have legal consequences, must be in writing. As I have said, apart from the letter annexed to the Handbook, no other delegation was put before me, despite a request in terms of Rule 35 (12) having been made by the Applicant, and despite sufficient time having been afforded to the Respondents to produce it.

27.

In my opinion, the purported delegation was in any event rendered ineffective by the repeal of the provisions of s. 3B of the *Public Service Act* for the reasons stated.

No delegation in terms of the amended *Public Service Act* exists. The result is that

the Second Respondent, the Minister, had no lawful authority to suspend the Applicant.

28.

In the light of this finding it is not necessary to deal with other arguments pertaining to whether her decision was rationally connected to the purpose for which it was made, and whether that test had to be made on a subjective basis as seemingly envisaged by the Handbook, or on an objective basis as eloquently contended for by Applicant's Counsel, Mr Mokhari SC and Mr T. Ngcukaitobi.

29.

During the hearing it came to my notice that the Second Respondent had been replaced by a new Minister and had been deployed to another department. After an appropriate adjournment, I was told that this Cabinet re-shuffle did not impact upon the present proceedings and that they ought to continue. (Obviously without any reference to the consideration that a relationship of trust ought to exist between a

Minister and a Director-General). On 19 October 2017, I was informed by the Attorneys acting on behalf of the Applicant that the new Minister would not interfere with this Court process and that she would prefer to await my judgment before taking any particular decision.

30.

In the light of all of the above, the following order is made:

1. It is declared that the Second Respondent, the Minister of Home Affairs, lacked authority to suspend the Applicant;
2. It is declared that the suspension of the Applicant by the Second Respondent is unconstitutional, and of no force or effect;
3. The precautionary suspension imposed by the Second Respondent is set aside.
4. The Second Respondent is ordered to pay the costs of this application, including costs of two Counsel.



A handwritten signature in black ink, appearing to read 'H.J. Fabricius', written over a horizontal line.

**JUDGE H.J FABRICIUS**

JUDGE OF THE HIGH COURT GAUTENG DIVISION, PRETORIA

Case number: 65757/17

Counsel for the Applicant:

Adv W. Mokhari SC

Adv T. Ngcukaitobi

Adv L. Zikalala

Instructed by: Hogan Lovells (South Africa)

Counsel for the 1<sup>st</sup> Respondent:

Adv V. Ngalwana SC

Adv F. Karachi

Instructed by: State Attorney

Counsel for the 2<sup>nd</sup> Respondent:

Adv G. Hulley SC

Adv A. Mofokeng

Instructed by: State Attorney

Date of Hearing: 17 October 2017

Date of Judgment: 25 October 2017 at 10:00