

Short Notes on:

## **POLITICAL INTERFERENCE AND YOUR RIGHT TO A FAIR TRIAL**

### ***Introduction***

Every accused has the right to a fair trial in terms of sections 12 and 35 of the Constitution of the Republic of South Africa Act 108 of 1996 (the “Constitution”). Do lengthy delays caused by political interference infringe on the right to a fair trial?

*Rodrigues v National Director of Public Prosecutions of South Africa and Others*<sup>1</sup> is an appeal matter in which the applicant submitted an application for leave to appeal on the basis that there was an alleged political interference that took place, which caused a delay that affected his right to a fair trial.

### ***The Facts of The Case***

The applicant, an ex-police officer, was indicted for the murder of the late Ahmed Timol, a political activist as well as a member of the South African Communist Party (SACP). On 22 October 1971, Mr Timol was arrested for being in possession of pamphlets from the SACP. While in detention on 27 October 1971, he passed away.

In 1972 an inquest was held, in which the applicant gave testimony that Mr Timol opened and jumped out of a window on the 10<sup>th</sup> floor of John Vorster Square. The Presiding Magistrate then concluded that it was a suicide, and no other person was responsible for the death of Mr Timol.

After recommendations were made to the Minister of Justice and Correctional Services, in 2017, a second inquest was held. In October 2017, Mothele J concluded that Mr Timol's death was not a result of a suicide and that he had been pushed out of the window; subsequently, 47 years after the death of Mr Timol, on 30 July 2018, the applicant was arrested and charged for the murder of Mr Ahmed Timol. He was later released on bail, which amounted to R1000.00.

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<sup>1</sup> *Rodrigues v National Director of Public Prosecutions of South Africa and Others* (76755/2018) [2019] ZAGPJHC 159; [2019] 3 All SA 962 (GJ); 2019 (2) SACR 251 (GJ) (3 June 2019).

The applicants first trial appearance was on 18 September 2018. The applicant has since submitted an application for leave to appeal on the grounds that the applicant's rights in terms of section 35(3) and section 12 of the Constitution of the Republic of South Africa Act 108 of 1996, will be infringed upon. Namely to have a fair trial, one that began and concluded without unreasonable delays, in which he can adduce and challenge evidence effectively. As well as the right against self-incrimination.

The applicant also alleged that there was an agreement that stated that he would not be prosecuted and that he had been granted amnesty. Finally, to support the aforementioned grounds, the applicant argued that National Prosecuting Authority (NPA) deliberately decided to delay prosecuting him because of interference by the State President and the Executive.

The applicant sought a permanent stay on the proceedings in terms of the charge of murder but did request it for the charge of obstructing justice. In determining whether to grant leave to appeal and the remedy sought by the applicant, the court evaluates the relevant factors that need to be considered when granting a permanent stay. Factors such as the nature of the crime, the impact on the rights of all the relevant parties, and the public's interest, to name a few.

In terms of the delay in prosecution and the alleged interference by the Executive and the State President, the court weighed the conduct of both the prosecution and the accused as well as examining the length of the delay and the impact of the interference by the Government.

## **Conclusion**

The court concluded that there is no evidence that the delay would have corrupted the fairness of the trial. Furthermore, due to the lack of detail regarding political interference, there is no evidence indicating that it has impacted the fairness of the trial. Therefore, the court concluded that no infringement on the right to a fair trial was proven and that a valid case for a stay of prosecution was not made.

In conclusion, although legislation provides that there be no Government interference in court proceedings, just the simple existence of interference is not sufficient on its own to deduce that a trial has been tainted and cannot be fair. For any of your legal needs, contact our experts at Schoeman Law today.