

SOUTH AFRICA / JUDGMENT

Ndlovu v S (268/2022) [2023] ZAMPMHC 24; 2023 (2) SACR 358 (ML) (14 July 2023)

[2023] ZAMPMHC 24

COURT

Middelburg High Court, Mpumalanga

BEFORE

Legodi JP

CASE / FILE NUMBER

268/2022

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IN THE HIGH COURT OF
SOUTH AFRICA
MPUMALANGA DIVISION
MIDDLEBURG (LOCAL SEAT)
CASE
NUMBER 268/2022

(1)

REPORTABLE: YES

(2)

OF INTEREST TO OTHER JUDGES: YES

(3)

REVISED

DATE: 14/07/2023

SIGNATURE: LEGODI JP
In

the matter between: ALPHUS
NDLOVU
APPLICANT
AND
THE
STATE
RESPONDENT

JUDGMENT

LEGODI JP

[1] An order that was made on 20 July 2018 by Acting Judges Semenya and Nhemuravate sitting as a court of appeal at the Middleburg Local Seat resulted in the present application in terms of which the applicant (Mr Alpheus Ndlovu) in the main, wants a permanent stay of the criminal proceedings on a charge of rape. In terms of appeal order of 20 July 2018, his conviction and sentence imposed by the Regional Court sitting at Ermelo, were set aside and the matter was remitted to the trial court to proceed on certain terms set by the court of appeal. In terms of the appeal order, the proceedings in the court a quo were to resume within 30 days from the date of the order.

[2] The relief that is sought by the applicant is crafted as follows:

“1. A declaratory order that the criminal proceedings instituted against the applicant under Piet Retief Regional Court case PSH64/16 constitutes an unfair trial against the applicant, as envisaged in section 35 (5) of the Constitution of the Republic of South Africa, Act 108 of 1996.

2. A declaratory order that the criminal proceedings instituted against the applicant constitutes an infringement of his fundamental rights to a fair trial as it provided for in section 35(5) of the Constitution read with section 342 A of the Criminal Procedure Act, Act 51 of 1977.
 3. That the applicant is granted a permanent stay of that criminal proceedings pending in the Piet Retief Regional Court under case no: PSH64/2016.
 4. That the respondent and the Director of Public Prosecution are prohibited from proceedings with the criminal proceedings in question”.
- [3] In an attempt to comply and substitute the relief sought, the applicant in his founding affidavit of 20 January 2022 dealt with “undue delay” and alluded to the followings: That there has been unreasonable delay in the prosecution of the case after the appeal order of 20 July 2018. I say so because what had happened before 20 July 2018 is not relevant or material to the determination of the of the issues raised in these proceedings. It was further contended that the state “has not even bothered to comply with the order of the appeal court handed down on 20 July 2018”, as

the date on which the appeal order was to be complied with has passed. There is no merit to this contention as it would appear

later in this judgement.

[4] Under the heading “Right to a speedy trial” the applicant alluded to the provisions of section 35(3)(a) of the Constitution. That is, every accused person has the right to a fair trial which includes the right to have trial begin and conclude without unreasonable delay.

- [5] There is a procedure in the Criminal Procedure Act that is designed to afford an accused person a remedy where there is an allegation of unreasonable delay in the finalisation of a case. In terms of section 342A, a court before which criminal proceedings are pending, shall investigate any delay in the completion of the proceedings which appears to the court to be unreasonable and which could cause substantial prejudice to the prosecution, the accused, or a witness in the proceedings.
- [6] In considering the question whether any delay is unreasonable, the court shall consider inter alia, the following factors:
- (a) the duration of the delay; (b) the reason advanced for the delay;
 - (c) whether any person can be blamed for the delay; (d) the effect of the of the delay on the personal circumstances of the accused and witnesses; (e) the seriousness, extent or complexity of the charge or charges; (f) actual or potential prejudice caused to the state, or the defence by the delay including weakening of the quality of evidence, the possible destruction or disappearance or non-availability of witness; problems regarding the gathering of evidence and consideration of costs; (g) the effect of the delay on the administration of justice; (h) adverse effect on the interest of the public or the victims in the event of the prosecution being stopped or discontinued; and any other factor which in the opinion of the court ought to be taken into account.
- [7] Subsection (3) of section 342A deals with the kind of orders that could be made. Of relevance, in terms of paragraph (c) thereof, the court may order that where the accused has not yet pleaded to the charge, that the case be struck off from the roll and the prosecution not be resumed or instituted de novo without the written instruction of the attorney-general. This is in essence the application before me and it is, in my view, misconstrued as the applicant had already pleaded in the court a quo.
- [8] Furthermore, the court may in terms of paragraph (d) make an order where the accused has pleaded to the charges and the state or defence, as the case may be, is unable to proceed with the case or refuse to do so, that the proceedings be discontinued and disposed of as if the case for the prosecution or the defence, as the case may be, has been closed. The ace card or argument made on behalf of applicant in these proceedings was that the state is unable to proceed with the case as the state is unable to tender the evidence of Dr or Mr Brown as so ordered by the appeal court in paragraph 2.2
- (i) of its order of 20 July 2018. According to the order of the appeal court, the Doctor was to explain whether the medical findings

that the complainant's hymen was annular, that she conceived following the alleged rape and miscarried the baby, are consistent

with the complainant's account of the alleged rape.

- [9] In paragraph 14 of the applicant's written heads of argument, a submission is made as follows:

"The hearing did not resume within 30 days before Magistrate Hallet. Instead the matter was postponed repeatedly as the state sought direction from the Judge President- for directions as to what must be done in view of the State's inability to secure Dr Bronwyn. The matter only resumed before Magistrate Hallet on the 24 March 2022, almost four years after the Appeal Court had ordered that the trial resume. On the 24 March 2022, Magistrate Hallet recused himself from the proceedings. This means that a trial will have to commence de novo".

- [10] I deal later with the lack of context in the statement. It suffices for now to mention that the present application was launched before 22 March 2022. To be more precise, the present proceedings were instituted on 21 January

2022. The grounds for the relief sought are essentially still as per notice of motion dated 20 January 2022. The issue at hand to the statement quoted above, is that for the purpose of section 342A (3)(d), there is no legal basis to terminate the proceedings simply because the Doctor in question cannot be traced. First, the Doctor is not the only witness that state would be entitled to call in terms of the court order. The state as per paragraph 2.2 (v) 'should a need arise to call other witness in relation to any relevant issue, that trial is not precluded from calling and hearing such evidence'. Secondly, it would be seeking to go behind section 342A (3) (d) by granting the relief sought as quoted in paragraph (2) of this judgement. That is impossible. One should also be mindful of the provisions of section 342A (4)(a) which provides that an order as contemplated in sub-section (3) (d) shall not be issued unless exceptional circumstances exist and all other attempts to speed up the process have failed and the defence or the state, as the case may be, has given notice beforehand that it intends to apply for such an order.

- [11] The applicant has given such a notice, but the facts of the case are far from showing that circumstances exist to justify an order as contemplated in section 342A (3) (d). Simply put, neither this court nor the trial court has the authority to prohibit the state from proceeding with the case in terms of section 35 (5) of the Constitution or as envisaged in section 342A of the Criminal Procedure Act. As indicated in paragraph (8) of this judgement, the court can only discontinue criminal proceedings by way of directing the prosecution to proceed with the case where an accused person has already pleaded and only when the prosecution fails to do so, will the court then be entitled to deal with the matter as if the prosecution's case is closed. This is the import in section 342A (3) (d) of the Criminal Procedure Act. This can be done only when the state is unable to proceed with the case or refuses to continue with the case. In those circumstances, the trial court will be entitled to order the proceedings to be continued and be disposed of as if the case for the prosecution or the defence as the case may be, has been closed.

[12] In the present case, the prosecution while not in a position to tender the evidence of the Doctor as so ordered by the appeal court, it is willing and ready to proceed with the case by leading the evidence of other witnesses as sanctioned in terms of the order of the appeal court. The trial court was on more than one occasions correctly so in my view, not willing to consider the applicant's application in terms of section 342A because the accused (applicant) had already pleaded and evidence was led. I say so because the appeal court did not invalidate the proceedings in the court a quo. Instead,

the appeal court remitted the matter for the to start where it ended before conviction and sentence.

[13] Seeking to throw in section 35(5) of the Constitution into the proceedings as it has been raised in this application, in my view, was an exercise in futility. The section provides that evidence obtained in a manner that violates any right in the Bill of Rights must be excluded if the admission of evidence would render the trial unfair or otherwise be detrimental to the administration of justice. Look at it this way, in the founding affidavit deposed to on 20 January 2018, there is no reference at all to connect section 35 (5) of the Constitution to the facts of the present case. Understandably

so because the applicant apparently pleased with the fact that his conviction and sentence has been set aside, decided not to appeal

against the order made by the appeal court. Instead, the contention is that, the order in question has not been complied with because the trial did not start leading further evidence within 30 days from the date of the order of 20 July 2018. That shows the irony in seeking to invoke section 35 (5). Ask these questions: Which evidence is suggested will be obtained in a manner that violates the applicant's Constitutional rights? Which evidence is suggested would render the trial unfair or otherwise detrimental to the administration of justice? Nothing. Any evidence that the prosecution may want to tender is to be in accordance with paragraph 2.2 (i) and (v) of the order of the appeal, which order still stands.

[14] Reference to section 35 (3) (d) of the Constitution is unhelpful to the applicant as it has to be read with the imperative in section 342A of the Criminal Procedure Act, which in a way is a national legislation designed to advance the Constitutional right of an accused person enshrined in section 35 of the Constitution. The submission therefore ought to die on its dead body.

Alleged failure to resume th proceedings within 30 days.

[15] In paragraph 34 of his founding affidavit, the applicant states that the appeal court was cautious of the enormous delay in the prosecution of the case, expressly alleged that the trial must resume in 30 days of the appeal court ruling which was 20 July 2018. Then a further statement is made as follows:

“The Appeal court, conscious of the enormous delay in the prosecution of the case, expressly ordered, that the trial must resume in 30 days of the appeal court ruling. This, the Prosecution simply ignored. I was summoned to appear in court almost a year later. This is a clear indication of the nonchalant and dilatory manner in which the Respondent conducted its prosecution. The proceedings, currently convened, contrary to the Appeal Court order, outside the 30 days’ period from the date of that order, is unlawful”.

[16] Look at the facts of the case this way: On 13 August 2018 at 14:19 the Regional Court Prosecutor sent an email to the applicant’s attorneys of record in these proceedings. In the email it was confirmed that the proceedings will resume on 17 August 2018 as directed by the High Court. In the email, it was also recorded that the availability of the Doctor cannot be confirmed at that stage as the investigating officer was still experiencing difficulties to secure his attendance. The applicant’s attorney then elected to have the case postponed as the applicant did not place his attorney in funds. This was after the applicant’s attorney in an email of 7 August 2018 requested the prosecution to confirm if the case will proceed on 17 August 2018. Something which was confirmed in the email of 13 August 2018 save to have stated that the attendance of one witness being the Doctor could not be confirmed at that time. So, the matter could not proceed on 17 August 2018 as the applicant’s

attorneys indicated their unavailability for reasons already indicated herein.

[17] Therefore, the suggestion that the proceedings could not resume within 30 days has a context to it. The prosecution was ready and the defence was not ready. Effectively therefore, the proceedings as per the appeal order resumed on 17 August 2018 being within 30 days as per the appeal court order. Evidence could not be tendered on the date in question as the applicant’s legal representative could not attend.

[18] On the 17 August 2018 the case was postponed to 10 September 2018 as per agreement between the prosecution and the defence. On the latter date, the defence argued that the matter cannot proceed without the Doctor in question. This argument was made despite paragraph 2.2 (ii) of the appeal order which entitled the trial court to record evidence regarding the resumption of the prosecution. Paragraph 2.2 (v) the appeal court order entitled the prosecution and or the defence to call other witnesses in relation to any relevant issues. The trial court was not precluded from calling and or hearing any such further

evidence. When the Doctor in question could not be traced, another Doctor or witness was arranged to provide clarity on the

contents of J88 form.

- [19] Despite all this information being furnished to the applicant's legal representative, he still argued vehemently so is said, against the calling of other expert. Of course that was not for him to decide. The prosecution as the dominus litis was entitled to call any witness and it was up to the trial court to decide whether or not the calling of such witness or witnesses was contrary to the appeal court order. That was the nature of reopening the proceedings in terms of the order of 20 July 2018 which order still stands.
- [20] In paragraph 30 of deponent in the opposing affidavit, is stated that all the witnesses that the state was going to call to provide evidence in accordance with the order of 20 July 2018, including the Doctor were present on 10 September 2018. Subsequent thereto, the matter was referred to the Regional Court President for guidance. This of course should have not been done. But, it was a decision to which the defence supported and agreed thereto. In paragraph 32 of the opposing affidavit, it is indicated that on 8 October 2018 the applicant's attorney of the record agreed that the matter should be sent back to the high court for clarification in the light of the Doctor's absence. This too was unnecessary also seen in the context of the fact that according to the appeal court order, any other witness would be called to give evidence in the proceedings. The calling of witness was not restricted to the Doctor in question. For this, the applicant was the cause and originator of the delay.
- [21] The office of the Judge President was not prepared to get entangled in providing legal advice so to put it. It was for the reason that the office of the Director of the Public Prosecution as the dominus litis in the matter was told that the buck stops with it as to what to do. It is stated in paragraph 36 of the opposing affidavit that the Director of Public Prosecution then decided to proceed with a trial without the evidence of the Doctor in question as he cannot be traced and directed that another expert be called as per the Law of Evidence Amendment Act 45 of 1988.
- [22] On 17 September 2021 the applicant's attorney requested a postponement of six months in order for the attorney to be placed in funds. The letter from the applicant's attorney was sent some few days before 20 September 2021 which was the date during which the case was on the roll. On this latter date, the applicant appeared unrepresented. The prosecution was ready to proceed with the trial. But the applicant was not. The applicant asked for postponement. The matter was then postponed to 25 October 2021 as the presiding officer refused to postpone the matter for six months.
- [23] On 25 October 2021, one Mr Karolia appeared for the applicant. He asked for the matter to be removed from the roll as contemplated in section 342A of the Criminal Procedure Act. As indicated previously in this judgement, the presiding officer declined to entertain the application. In my view, correctly so. The matter was then postponed to 24 January 2022 for the trial presiding officer, Mr Hallat.

[24] Subsequent to the proceedings of 25 October 2021, the applicant approached the court on an urgent basis on 15 March 2022. The urgent application was instituted on 18 February 2022. In paragraph (iii) of the notice of motion a relief was sought as follows:

“Staying the proceedings in the Piet Retief Regional Court under case number PSH64/16 pending the finalisation of the application for permanent stay dated 20 January 2022 under the aforesaid case number”.

[25] Just to recap, the urgent application was preceded by the current application having been instituted on 21 January 2022 with the relief sought as quoted in paragraph [24] of this judgment. That urgent application was struck off the roll presumably due to lack of urgency or urgency having been found to have been self-created. But look at the delay strategy of the applicant and their attorneys of record this way: On 25 October 2021 the case was postponed to 21 January 2022 for the trial presiding officer. Few days before 21 January 2022 the applicant instituted the present proceedings.

[26] In paragraphs 22 and 23 of the opposing affidavit deposed to by the Deputy Director of Public Prosecutions, Mr Mpolweni, a statement is made as follows:

“22. On every occasion that the state was ready to proceed with the trial it was the applicant who requested a postponement. Even on the 24th of March 2022 the applicant requested a postponement because they were again not ready to proceed after the ruling of the presiding

officer that the matter should continue, leading to the presiding officer’s recusal.

23. On the 24th of January 2022 there was a whole argument by the applicant’s attorneys why the matter should not be set down for trial and be postponed sine die. It was further reiterated that the presiding officer Mr Hallat would not be able to finalise the matter on another day due to the fact he was relocating to Cape Town at the end of March 2022”.

[27] I tend to share the concerns raised in the quotation above. By the way, the applicant who was in custody for some time, was released on warning on 7 December 2018. It therefore serves him well to delay finalisation of the proceedings while he remains outside without trial proceeding. This appears further from these facts: On 24 January 2022 the case was postponed to 24 March 2022 for the trial presiding officer. Despite having deposed to an affidavit on 17 February 2022 to be used in an urgent application, the “urgent application” was enrolled on the urgent roll for hearing on 15 March 2022. Again, some few days before hearing of 24 March

2022. This should have been a calculated move just to disrupt the matter from proceeding on 24 March 2022. The 18th February 2022, that is, the date on which the urgent application was instituted, was a Friday. The matter therefore could have been enrolled on the urgent roll of Tuesday 22 February 2022 as per paragraph 10 of this Division Practice Directive dated 9 January 2020.

[28] The delay strategy persisted on 24 March 2022. The witnesses were there and the trial presiding officer was also there. But deliberately in my view, the defence elected to frustrate the resumption of the proceedings as per the order of 20 July 2018. That stretched the patience of the trial court too far. I deal later in this judgment with the recusal of Mr Hallat. It suffices for now to state that on page 44 of the transcribed record of the proceedings for 24 March 2022 the trial court expressed itself inter alia, as follows:

“The witnesses are here. I am here, everybody is ready to proceed, expect you all of a sudden now you cannot proceed. I am sorry that my learned colleagues said something and he wrote something different here, but as I said I cannot read his – a part of his handwriting, I cannot read that”.

[29] Then the prosecution placed it on record as follows:

“...The state intends calling two witnesses, different witnesses to testify on two different aspects. The state is going to call the current investigating officer to come and explain to the court why there was that delay for 14 years in disposing of this matter”.

[30] The prosecution also indicated that it will call a professional nurse only to come and express an opinion regarding the findings in relation to the J88 and that the defence was already having a copy of the J88. The prosecution having put this information on record about the calling of two witnesses, the trial court then commented and indicated to the defence that he was of the view that it was going to be a very short hearing. After this, Mr Omar who appeared for the accused asked the court to allow him to take instructions. Having done so, Mr Omar indicated that more time will be needed to consider their position. However, he did not indicate how much time was needed and how long it will take to prepare for trial more so that they did not know the nature of the evidence to be led. I assume, because they did not have statements of witnesses intended to be called.

[31] Apparently, out of frustration, the trial court then made these remarks:

“I am almost three years and a few months in retirement, now I must come back. I got an assurance from Prosecutor that everything is ready, the witnesses are here. The case will be finalised today. Precisely the same arguments that you and your attorney were busy with in 2018, or 2017 or 2018 I cannot remember really, are being brought before this court and repeated before this court, the same arguments. You are not interested in seeing this being finalised”.

[32] As indicated in this judgment, the applicant was charged and convicted on a charge of rape and was convicted as charged on 6 February 2017. On 6 February 2017 he was sentenced to life imprisonment. The conviction and sentence were set aside by the appeal court on 20 July 2018 and both the state and defence case were re-opened as per paragraph 2.2 (iii) and (iv) of the appeal court order.

- [33] There is no merit to the applicant's case and the application out to be dismissed with costs. The applicant since his released from prison in December 2018, did not show any interest in the finalisation of the case in accordance with the appeal order of 20 July 2018. The applicant frustrated all efforts to bring the case to finality. Consequently, he cannot escape an order of costs. In now turn to deal with another thorny issue.

Recusal by the trial court

- [34] During the proceedings of 24 March 2022, the trial court Magistrate Mr Hallet remarked as follows:

"Decision. That you made an informed decision about this. So Thank you, you will not see my face again. The court will adjourn. Maybe you got more than you bargained for today".

- [35] Ultimately the trial court recused itself inter alia having cited the fact that he has relocated to Cape Town and he had not been paid for his expenses. I want to assume that he was referring to his accommodation and travelling expenses. This then brings me to the legal principle and requirements for recusal by a judicial officer.
- [36] The recusal right is derived from one of a number of rules of natural justice designed to ensure that a person accused before court of law have a fair trial[1]. The right to a fair trial has now been entrenched in our Constitution. Section 35(3) of the Constitution which deals with criminal proceedings provided that "every accused person has a right to a fair trial[2]. Judges have jurisdiction to determine for their own recusal. If a judge of first instance refused an application for recusal and the decision is wrong, it can be corrected on appeal[3].
- [37] Whilst I do not make a final determination as the trial court had no opportunity to place its side of the story in these proceedings, I think its recusal mero motu has serious repercussions not only for the accused (the applicant in the present proceedings), but also to the state witnesses including the victim of crime if the matter was to start de novo. This will not only infringe the accused right to a fair trial, but will also not be in the best interest of justice and will severely be prejudicial to the prosecution and those witnesses who testified some of whom may no longer be available and also taking into account that the offence was committed many years ago.
- [38] Again, without making a final determination, I do not think that the trial court was entitled to mero motu recused itself from the case taking into account the reasons for the recusal. The recusal appears to have been a fatally wrong decision. A cornerstone of any and just legal system is the impartial adjudication of disputes which come before the courts and other tribunals. This applies of course, to both criminal and civil cases as well as to quasi-judicial administrative proceedings. Nothing is more likely to impair confidence in such proceedings, whether on the part of litigants or the general public, than actual bias or the appearance of bias in the official or officials who have the power to adjudicate on disputes[4]. In the present case, there was no allegation of bias made against the Regional

Court Magistrate, Mr Hallat. He just mero motu recused himself when the case could not proceed on 24 March 2022 and did so for the reasons already mentioned in this judgment.

[39] In the matter of BTR Industries South African (Pty) Ltd and others v Metal and Allied Workers' Union ad Another[5]. Hoexter JA put it this way:

"...I conclude that our law the existence of a reasonable suspension of bias satisfies the test; and that an apprehension of a real

likelihood that the decision maker will be biased is not a prerequisite or disqualifying bias".

[40] I do not have to go into the details of the circumstances in which a case may be made for recusal. As I said, in the present case, there was no any allegation that the trial court was bias or that there was reasonable apprehension of bias. The trial court recused itself in my view for reasons that did not justify recusal in law. But as I said, I do not make a final determination. Instead, the order I make herein will be to give the retired Magistrate, Mr Hallat to consider recalling his order for recusal mero motu. Should he do so, the state will have to pay for his travelling and accommodation costs.

[41] Of course the next question is what should happen in the event the trial court refuses to recall the recusal order. Section 22 of the Superior Courts Act deals with the "grounds for review of proceedings of Magistrates Court". Sub-section (1)(c) thereof provides that the grounds upon which the proceedings of any Magistrates' Court may be brought under review before a court of a Division are inter alia, "gross irregularity in the proceedings". It would be up to the prosecution as the dominus litis and the affected party in the matter whether or not to invoke the provisions of section 22(1)(c).

[42] Before I make an order hereunder, I need to apologise to the parties and the victim of crime for the delay in the handing down of judgment herein. Immediately after judgment was reserved, a draft was prepared which draft was typed and brought for editing and corrections. All the time one was under the impression that the judgment has long been handed down. It was only brought to my attention this week that apparently the judgment was never handed down and this is deeply regreted.

[43] Consequently an order is hereby made as follows

43.1 The application is hereby dismissed with costs.

43.2 It is hereby ordered that the criminal proceedings should proceed in the Regional Court as per the appeal order of 20 July 2018, subject to what is ordered hereunder.

43.3 The proceedings shall so proceed in accordance with paragraph 42.2 subject to the presiding officer having considered the recalling of his recusal order as hereunder directed.

43.4 The presiding officer, retired Regional Court Magistrate Mr Hallet is hereby directed to consider by not later than 31 July 2023 whether he agrees to recall his order of recusal.

43.5 The prosecution is hereby directed to indicate by not later than 21 July 2023 whether the state will be willing to pay Mr Hallet's traveling and accommodation expenses for the purpose of proceeding with the trial as per the appeal order of 20 July 2018.

43.6 Should Mr Hallat decline to consider and recall his order of recusal, the National Director of Public Prosecutions is hereby directed to consider by not later than 30 August 2023 whether to invoke the provisions of section 22 of the Superior Courts Act or to consider whether to start the matter de novo before another judicial officer.

DATE OF JUDGMENT: 06 OCTOBER 2022 DATE HANDED DOWN: 14 JULY 2023 FOR THE APPLICANT: ZEHIR OMAR ATTORNEYS 95 SEVENTH STREET SPRINGS, 1560 MIDDELBURG TEL: 011 815 1720 FAX: 011 362 5588 EMAIL: admin@zehiromarlaw.co.za C/O GFT PISTORIUS INC 9 JOUBERT STREET MIDDLEBURG REF:IRENE/ZP33i FOR THE RESPONDENT: THE STATE C/OTHE DIRECTOR OF PUBLIC PROSECUTION MIDDELBURG 16A DR BEYERS NAUDE STREET REF: ADV L ERASMUS

- [1] Council of Review, South African Defence, and others v Monning and Others 1992(3) SA 482 (A) at 491E-F
- [2] Director General of the National Department of Sport and Recreation v South African Rugby Football Union & others (SARFU) CCT16/98 on 7 May 1998 and Delivered on 4 June 1999, para [28]
- [3] See SARFU para [31]
- [4] See SARFU at para [35]
- [5] 1992(3) SA 673 (A) at 690A-695C

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