

SOUTH AFRICA / JUDGMENT

Pennington and Another v Minister of Justice and Constitutional Development of the Republic of South Africa and Others (47599/2016) [2022] ZAGPPHC 93 (26 January 2022)

[2022] ZAGPPHC 93

COURT

North Gauteng High Court, Pretoria

BEFORE

Nyathi

CASE / FILE NUMBER

47599/2016

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IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION PRETORIA

- (1) REPORTABLE: NO
- (2) OF INTEREST TO OTHER JUDGES: NO
- (3) REVISED: NO
- (4) Date of hearing: 21 January 2022

CASE NO: 47599/2016

In the matter between:

FRANKLIN D PENNINGTON First Plaintiff

GAIL JACKSON PENNINGTON Second Plaintiff

And

THE MINISTER OF JUSTICE AND

CONSTITUTIONAL DEVELOPMENT First Defendant

OF THE REPUBLIC OF SOUTH AFRICA

THE MINISTER OF POLICE OF Second Defendant

THE REPUBLIC OF SOUTH AFRICA

THE MINISTER OF HOME AFFAIRS OF

Third Defendant

SUPPLEMENTARY REASONS FOR ORDER

NYATHI J

A.

INTRODUCTION

[1] Further to the reasons that I handed down on 24 January 2022, I have been requested by counsel for both the Applicant (Defendant) and the Respondent (Plaintiff) to make a supplementary ruling on the Defendant's prayer 2.3, namely that:

"2. According to the provisions of Uniform Rule 33(4) the following questions will be decided separately before any evidence is led . . . 2.3 The question whether any of the Defendants can be held liable for the alleged malicious prosecution of the First and/or Second Plaintiffs, due to the fact that the Plaintiffs did not join the National Prosecuting Authority and/or the National Director of Public Prosecutions as a party or parties to the action."

(My emphasis).

[2] On behalf of the Plaintiff, reference is made to Section 179(6) of the Constitution of the Republic of South Africa which provides as follows:

"The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority."

[3] Further reference is made to Section 33(1) of the National Prosecuting Authority Act 33 of 1998, which provides as follows:

"The Minister shall, for purposes of section 179 of the Constitution, this Act or any other law concerning the prosecuting authority, exercise final responsibility over the prosecuting authority in accordance with the provisions of this Act."

[4] The above provisions could not be any clearer in so far as to the functionary who bears responsibility for the actions of the prosecuting authority. At any rate what is pleaded is that the clerk of the court ("the appeals clerk at the Johannesburg Regional Court") was unable to compile a record for purposes of prosecuting the intended appeal by the Plaintiffs.[1] The clerk of the court also resorts under the Minister of Justice.

[5] I am not persuaded that the complaint relating to non-joinder is based on legal substance.

[6] Accordingly, the Applicant/ Defendant's prayer 2.3 is dismissed. Costs are reserved.

J.S. NYATHI

Judge of the High Court

Gauteng Division, Pretoria

Date of Supplementary reasons: 26 January 2022

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[1] Particulars of claim, Par 30 and 31

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CASE PAGE <https://chat.esheria.ai/case-law/south-africa/unknown-plaintiff-v-unknown-defendant-malicious-prosecution-agpphc-2022-47599-2016>

Prepared on 12 October 2026 · Esheria