

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

CASE NO: 40805/15

In the matter between:

MZOXOLO MAGIDIWANA

First Applicant

**ASSOCIATION OF MINEWORKERS AND
CONSTRUCTION UNION**

Second Applicant

and

(1)	<u>REPORTABLE:</u>	<u>YES / NO</u>
(2)	<u>OF INTEREST TO OTHER JUDGES:</u>	<u>YES / NO</u>
<u>12/06/15</u> DATE		 SIGNATURE

THE PRESIDENT OF THE REPUBLIC OF SA

First Respondent

THE MARIKANA COMMISSION OF ENQUIRY

Second respondent

SOCIO ECONOMIC RIGHTS INSTITUTE

Third respondent

LEGAL RESOURCES CENTRE

Fourth Respondent

JUDGMENT

Tuchten J:

- 1 The first applicant is a labourer employed by Lonmin Mining Company plc at its mine in Marikana in the North West Province. He is a member of the second applicant (AMCU), a trade union. A number of those who have an interest in the outcome of this application are

members of AMCU and have asked AMCU to join in this application. The standing of the applicants to bring this application is not in dispute.

- 2 The applicants applied urgently for orders directing the first respondent (the President) and/or the second respondent (the Commission) immediately to release a report submitted to the President by the Commission and for certain other relief. Counsel for the applicants no longer press for this other relief. No relief was sought against the third and fourth respondents, who were cited merely because they might have interests in the outcome of the application. The third respondent (SERI) is an organisation established not for gain. SERI represents the families of certain deceased persons. These families are said to have certain interests in the outcome of the present application. The fourth respondent (the LRC) is similarly an organisation established not for gain. It too is said to have an interest in the outcome of this application and to represent the family members of a deceased person whose rights are said to be affected by this application.
- 3 The application is opposed by the President. The Commission has given notice that it abides. SARI has submitted an affidavit and given notice that it intends to make submissions at the hearing. The LRC

abides. Both SERI and the LRC appeared at the hearing before me and made submissions.

- 4 This application is a sequel to the events that took place in Marikana during the period 11 to 16 August 2012 (the Marikana events), during which a number of people died, a number were injured, and property was damaged or destroyed. These events led to great expressions of emotion throughout South Africa and beyond its borders. I intend to avoid any expressions of sentiment in this judgment because this case, like every other, must be decided on the facts and the law applicable. Sympathy for the human predicament of a litigant may not translate into a finding which is unsupported by the facts and the law.
- 5 The President reacted promptly to the Marikana events. The President and a member of his cabinet signed Proclamation no. 50 of 2012 on 26 August 2012. The Proclamation was published in Government Gazette no. 35680 on 12 September 2012.

- 6 Invoking s 84(2)(f) of the Constitution,¹ the President appointed the Commission to

investigate matters of public, national and international concern arising out of the tragic incidents at the Lonmin Mine in Marikana, in the North West Province from Saturday 11 August to Thursday 16 August, 2012 which led to the deaths of approximately 44 people, more than 70 persons being injured, approximately 250 people being arrested and damage and destruction to property, with the terms of reference attached hereto

- 7 A retired judge of appeal was appointed to chair the Commission. Two senior lawyers were appointed as its additional members. The terms of reference of the Commission were broad. The Commission was directed to "inquire into, make findings, report on and make recommendations concerning" a number of topics. These topics included, in relation to the Marikana events, the conduct of Lonmin, which operated the Marikana mine, the conduct of the South African Police Services, the conduct of AMCU, the roles played by the SA Department of Mineral Affairs and other government departments and agencies and the conduct of individuals and loose groupings.

¹ Section 84(2)(f) reads: The President is responsible for appointing commissions of inquiry.

- 8 The first applicant was shot and seriously injured during the Marikana events. He spent some months in hospital but fortunately by 26 February 2013 he was well enough to testify before the Commission. In addition to his injuries, the first applicant was arrested with about 270 others and charged with the murders of some 34 of their comrades who, the undisputed evidence before me establishes, were killed by members of the SAPS. These charges were however withdrawn in 2014.
- 9 The Commission was directed by the terms of reference to submit to the President interim reports and recommendations and, ultimately, a final report. The Commission received a great deal of evidence and heard submissions from its own evidence leaders and the representatives of other interested persons. The Commission submitted its final report (the report) to the President on 31 March 2015.
- 10 After the report was submitted, constant public calls were made upon the President to make the report public. There is evidence that an NGO, one not before this court, stated that it regarded a reasonable time for the President to deal with the report was one month. The President is said to have broken his silence on the issue in a media statement released on Sunday 10 May 2015. The President said in

effect that he was still processing the report but would release it publicly in due course.²

11 The first applicant enjoys the support of many of those who were similarly affected by the Marikana events. In certain unspecified earlier litigation, the first applicant was certified as the class representative in a class action.³ The first applicant asks that he be again so certified and there is no opposition to this request. He represents some 300 persons affected by the Marikana events. I take account of the circumstances of and submissions made on behalf of all such persons as if they were parties to this application in their own names. Throughout the first applicant has acted in both his personal and his representative capacities.

12 In May 2015, the first applicant approached a member of Parliament from the Marikana area to take up in Parliament the question of when the President was to release the report. A question was put to the President in the National Council of Provinces on 14 May 2015. The first applicant says, and his evidence is unchallenged, that the

² The applicants have put up the text of a statement made on behalf of the President but it is one made on 15 May 2015 and does not bear upon the subject in question.

³ In *Children's Resource Centre Trust and Others v Pioneer Food (Pty) Ltd and Others* 2013 2 SA 213 SCA, the SCA developed the common law to identify the factors which a court must consider when asked to certify a class action. The suitability of the proposed class representative is one of those factors.

response of the President was noncommittal and along the same lines as that given in the press release of 10 May 2015.⁴ On the same day, at an informal public meeting in the Constitutional Court precinct, the first applicant was given a mandate by the public there gathered, who included many people who had been injured or arrested arising from the Marikana events, to accelerate the release of the report, including by litigation.

13 I think one must take a step back here and consider what was in issue at this stage. The President had publicly stated that he intended to release the report. The first applicant has said that he does not trust the President to honour his undertaking but there is nothing before me which justifies any skepticism in regard to the unequivocal word of the head of the South African state on the present question. All that was in issue, therefore, was the timing of the release.

14 A number of considerations led the first applicant and those he represents to believe that the President was carrying out

... a deliberate ploy to reduce the known impact of the report by the [President] for political and other unknown reasons.

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Unfortunately the newspaper article said to be based on "that interaction" does not bear upon the subject.

15 Certain of the considerations mentioned by the applicants do seem eccentric but there is no need to analyse them. As I shall show, it is not in dispute that there has been a delay in the release of the report because the President was and is considering, amongst other things, the political impact of the report. On 22 May 2015, the applicants' attorneys delivered a letter of demand to the President, asking whether the President was prepared to release the report before 31 May 2015. On 25 May 2015, the Presidency responded to the letter of demand, promising to give a more detailed report in due course.⁵

16 However, on 26 May 2015 and in the National Assembly, the President announced during question time, upon questioning by opposition parties, that the President would release the report

... before the end of June 2015.⁶

⁵ The letter of 25 May 2015 is not before me.

⁶ In the President's answering affidavit, there is some inconsistency as to whether the commitment was to release the report *by* or *on* the last day of June 2015. I am satisfied that the commitment was to release the report *by* the date mentioned and that the inconsistent references were purely typographical errors, arising from the haste in which the affidavit was prepared.

17 The President's response in Parliament on 26 May 2011⁵ did not satisfy the applicants. By notice of motion bearing the date stamp of the Registrar of this court of 1 June 2015, they gave notice of an urgent application for the following relief:

- 2 Declaring that the decision of the [President] not to release the report ... (and/or not to give a specific date therefor) to the affected victims and/or to the public is irrational, unlawful and unconstitutional;
- 3 Reviewing and setting aside the aforesaid decision for non-compliance with the rule of law and legality;
- 4 Ordering the [President] and/or the [Commission] to ensure the public release of the report ... immediately and/or within 24 hours of the granting of the order;
- 5 Declaring the [President's] conduct in insulting and casting aspersions on the applicants' motives for requesting the ... report to be inconsistent with his constitutional obligations as President.

18 During the debate before me, the issue crystallised. Counsel for the applicants did not press for the relief in prayers 2, 3 and 5 of the notice of motion. The sole issue for me to determine is whether, as a matter of law, the President and/or the Commission should be required immediately to release the report.

19 Counsel for the applicants correctly characterised our democracy as one in which all those who exercise public power are required, when called upon to do so in a court of law, to justify their actions. Conduct by a public actor which in this sense is unjustified will not be rational. The rationality of the position adopted by the President is in dispute. As it was put in *Pharmaceutical Manufacturers Association of SA and Another: in re ex parte President of the Republic of South Africa and Others*:⁷

Rationality in this sense is a minimum threshold requirement applicable to the exercise of all public power by members of the Executive and other functionaries. Action that fails to pass this threshold is inconsistent with the requirements of our Constitution and therefore unlawful. The setting of this standard does not mean that the Courts can or should substitute their opinions as to what is appropriate for the opinions of those in whom the power has been vested. As long as the purpose sought to be achieved by the exercise of public power is within the authority of the functionary, and as long as the functionary's decision, viewed objectively, is rational, a Court cannot interfere with the decision simply because it disagrees with it or considers that the power was exercised inappropriately. A decision that is objectively irrational is likely to be made only rarely but, if this does occur, a Court has the power to intervene and set aside the irrational decision. [footnotes omitted]

20 This matter was argued before me on 8 June 2015. So the time in issue is some three weeks. What is said to render this matter so urgent that justice will not be done if the release of the report is delayed for three weeks? The first set of factors relate to the dignity of those affected by the Marikana events. They say that they live with anxieties arising from the Marikana events. The applicants and those whom they represent believe that the President has had enough time to study the report. They feel that any further delay in releasing it is an insult to them and to the memories of their departed loved ones. In short, they say in effect, their grief will be lessened by the release of the report.

21 The papers demonstrate that the President had regard to the grief caused to those affected by the Marikana events. In the Proclamation constituting the Commission, the President described the events as "tragic incidents". I was told from the bar that the President cut short a state visit and went to Marikana soon after the events. The President acted promptly in appointing the Commission. It is not really in dispute that President took into account, as one of the factors grounding his decision, the grief of those affected when he made his decision to delay the release of the report. But, the applicants say, the President did not accord this factor the weight it deserved. Moreover,

they say, the President has not approached the matter with the appropriate urgency.

22 But this is what the President says in paragraph 19 of his affidavit:

It is also important to note, contrary to what [the first applicant] states in the founding affidavit that I did not require three months merely to "read" the Report. I can only release it after I have studied it, come to grips with the issues raised in it, and had an opportunity to consider and consult on its implications. It is the applicants' case that the contents of the Report will have far-reaching effects not only on the lives of hundreds or potentially thousands of people in South Africa but indeed, for the country as a whole. These anticipated political ramifications require that I fully understand the consequences of the Report, least of all because I will have to address the public, if not the nation, on its contents and answer important (and difficult) questions on its meaning and impact. This is not a job done by me in isolation. I have a team of trusted and responsible officials to assist me in this task.

23 The President also states that studying and dealing with the report is but one of the many duties of the head of state. Addressing the report is not the only task which the President has to undertake. He needs the extra time, says the President, properly to consider the report and its implications. Not only is this evidence convincing but these being proceedings on motion for final relief, the rule in *Plascon-Evans*

applies. This means that where there is a dispute of fact, the respondent's version must prevail.

24 Counsel for the applicants has submitted that in the absence of any disclosure of the facts relating to the issues that have caused the President to delay making the report public, there is no room for a finding that such issues in fact exist. I disagree. The terms of reference of the Commission demonstrate that, depending on the findings of the Commission, a number of complex and interrelated questions of a political nature might well arise requiring action on the part of the President and his government. It is conceivable, even probable, that the publication of the findings of the Commission will give rise to heated public debate. The Marikana events are of course a source of personal grief to those affected. But they are also of a highly sensitive political nature. I wish to say no more than that it would not be irrational for a head of state to decide, in the interests of the country, to make certain preparations in the period before that potentially stormy debate begins.

25 I think that this is also the answer to the submission of counsel for the applicants that the President can take such action as he deems necessary after the publication of the report and that publication would not prejudice any such action. In my view, it is not irrational for a

President to utilise the calm before an anticipated change in the political weather to make his dispositions.

26 Counsel for the applicants further criticise the President's conduct on the ground that the President should have afforded his consideration of the report a higher priority than he in fact did. If he had done his work properly, so runs the argument, those affected by the Marikana events would not have been put through the suffering they have had to endure in the period between the submission of the report to the President and the date of its ultimate release. Perhaps there is merit in that criticism. Perhaps there is none. It is impossible to make a finding in this regard on the papers. And in any event, if the argument is correct (on which I express no opinion), all it would show would be that the President could better have managed his time. It would not show irrationality.

27 I proceed to consider the position of the Commission, which, as I have said, abides the outcome. Counsel for the applicants pointed out that the Commission had not advanced any reason why it should not be ordered to release the report. While that is so, an important purpose of the establishment of the Commission and of the report is to enable the President to take executive action to address matters arising from the Marikana events and the report itself. The applicants seek

constitutional relief. Under s 172(1)(b) of the Constitution, a court may when deciding a constitutional matter, make any order which is just and equitable. I have found that the President is within his rights to defer the release of the report until the latest date fixed by the President himself, 30 June 2015. An order directing the Commission immediately to provide a copy of the report to the applicants would frustrate the effect of this finding and would therefore not be just and equitable.

28 The second leg of the applicants' claim for immediate release of the report is that their claims for damages arising from what was done to them during the Marikana events will prescribe during August 2015. They say that they and their lawyers need more time than from July to, say, early August 2015 to prepare themselves to issue and prepare summonses commencing their actions for redress. This, they say, adversely affects their access to the courts which is guaranteed by s 34 of the Constitution.

29 I view this submission with some skepticism, for a number of reasons. Firstly, s 12(1) to (3) of the Prescription Act, 68 of 1969 provide as follows:

When prescription begins to run

(1) Subject to the provisions of subsections (2), (3), and (4), prescription shall commence to run as soon as the debt is due.

(2) If the debtor wilfully prevents the creditor from coming to know of the existence of the debt, prescription shall not commence to run until the creditor becomes aware of the existence of the debt.

(3) A debt shall not be deemed to be due until the creditor has knowledge of the identity of the debtor and of the facts from which the debt arises: Provided that a creditor shall be deemed to have such knowledge if he could have acquired it by exercising reasonable care.

30 It is therefore not certain that, on the applicants' analysis, prescription has indeed begun to run at all. If any one of the affected persons can show that the report is of such significance that he or she could not, without sight of the contents of the report, have acquired the necessary knowledge of the identity of his or her debtor or of the facts from which the debt arises, any recourse to prescription will be defeated.

31 I think, moreover, that the significance of the report in this context has been somewhat overstated. The report is simply an expression of opinion. Its reasoning may be persuasive in certain instances but can never bind a court to come to the same conclusions. The report was compiled on the strength of evidence taken at a commission of

enquiry. The Commission was not bound to the relatively strict laws of evidence by which courts of law must conduct proceedings before them. The evidence in a particular court case may be less, or more weighty than or quite different from that which served before the Commission. But what will no doubt be useful to those who represent persons affected by the Marikana events in bringing damages claims will pre-eminently be the evidence which served before the Commission. That evidence was given in open hearing and has been routinely made available to all interested persons.

32 And finally, I am simply not prepared to accept that some five weeks to study the report, on top of all the other preparation which access to the evidence will afford, will not be adequate to enable a reasonably competent lawyer to prepare a summons for damages for bodily injuries allegedly unlawfully inflicted or for malicious or unlawful prosecution and imprisonment.

33 I am therefore unable to agree that the President's decision to delay the release of the report until, at the latest, the end of June 2015 is irrational or affected by an improper motive.

34 I must now turn to an analysis of the legal foundation of the applicants' claim for early release of the report. The applicants rely on reg 15 of the Regulations establishing the Commission. These Regulations derive from Item 6 of the Terms of Reference which I mentioned above. Item 6 reads:

Regulations will be made in terms of the Commissions Act, 1947 and shall apply to the Commission to enable the Commission to conduct its work and investigation in a meaningful and proper way and to facilitate the gathering of evidence by conferring on the Commission such powers as are necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.

35 Reg 15 itself reads:

No person shall, except in so far as it shall be necessary in the execution of the terms of reference of the Commission, publish or furnish any other person with the report or any interim report of the Commission or a copy or a part thereof or information regarding the consideration of evidence by the Commission for publication before the expiration of a period of 14 days after it has been submitted to the President: Provided that the President may authorise publication of any such report before the expiration of that period.

36 The regulation in terms imposes restrictions on persons other than the President. It is silent on any obligation on the part of the President to release the report. Reg 15, in my view, does not advance the applicants' case.

37 Is the President under a legal obligation to release the report? And if he is, when must he do so? These important questions were not really addressed in the affidavits. It was for this reason that when the case was called before me, I asked counsel to address me on the significance, if any, of the Promotion of Access to Information Act, 2 of 2000 (PAIA).

38 The applicants correctly sourced the foundation of their case in s 32 of the Constitution which provides:

- (1) Everyone has the right of access to
 - (a) any information held by the state; and
 - (b) any information that is held by another person and that is required for the exercise or protection of any rights.
- (2) National legislation must be enacted to give effect to this right, and may provide for reasonable measures to alleviate the administrative and financial burden on the state.

39 PAIA was the statute contemplated in s 32(2) of the Constitution and is the national legislation enacted to give effect to the right to *any information held by the State*. The office of President is of course an organ of state and the report is thus held by the state as contemplated by s 32(1)(a).

40 PAIA regulates how access to information in the hands of the state may be achieved. For the purposes of PAIA, the office of President is a “public body” and the report is a “record”.⁸ The objects of PAIA include giving effect to the constitutional right of access to information held by the state, to promote effective, efficient and good governance and to promote transparency. Section 11(1) of PAIA reads:

- (1) A requester must be given access to a record of a public body if-
 - (a) that requester complies with all the procedural requirements in this Act relating to a request for access to that record; and
 - (b) access to that record is not refused in terms of any ground for refusal contemplated in Chapter 4 of this Part.

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For the definitions of *public body* and *record*, see s 1 of PAIA.

41 No request under PAIA for access to the report was ever made by the applicants. PAIA itself contains provisions empowering the deferral of access under certain circumstances⁹ and even the complete refusal of access.¹⁰ *Bato Star Fishing (Pty) Ltd v Minister of Environmental Affairs and Others*¹¹ is authority for the proposition that where national legislation is passed to codify the manner in which a constitutional right is to be invoked, a litigant seeking to enforce that constitutional right must do so under the national legislation, not by direct access to the Constitution.

42 *Bato Star* dealt with the position in relation to s 33 of the Constitution (right to just administrative action) and the national legislation enacted to codify the law in relation to judicial review. In my view, the same, by parity of reasoning, applies to s 32 and PAIA.

43 Counsel for the applicants submitted that PAIA is of no application in the present instance. I am unable to agree. The applicants' claim is for documentary information. The *reasons why* the applicants seek the information, that its non-production infringes their right to dignity or their right to have access to the courts, do not change the case. There

⁹ Section 24 of PAIA

¹⁰ Chapter 4 of PAIA

¹¹ 2004 4 SA 490 CC para 25 n42

was nothing which prevented any of those affected by the Marikana events from making a request for access to the report 15 days after it had been submitted to the President. I was referred by counsel for the applicant to para 62.2 in Chapter 62 of *Constitutional Law of South Africa* by Woolman *et al.* The authors make the argument that there might be scope for a direct application of s 32(1) in the case of information excluded by the provisions of PAIA from disclosure. I need not consider the correctness of this argument because, in my view, the report is manifestly a record for the purposes of PAIA and its production is not in issue; only the timing of its production is in issue. It is, I think, fair to say that if the applicants had availed themselves of their rights under PAIA, the present urgent application would either not have been necessary at all or would have taken a radically different form. No basis has therefore been established for permitting (if that is legally competent) the applicants to rely directly on the Constitution.

- 44 Counsel for the applicants submit that in addition to the applicants' right to information under s 32 of the Constitution, they enjoy a right to information under s 16(1)(b), which reads:

Everyone has the right to freedom of expression, which includes freedom to receive or impart information or ideas.

45 It seems to me that s 16(2)(b) deals with a person's right to receive, as part of the right to freedom of expression, information which another person wishes to impart to him. Section 32, however, relates to the right of a person to receive information which another person might wish to withhold. It is that latter category of information which is in issue in the present proceedings. I think that the applicants' case must therefore be sourced under s 32 rather than s 16(2)(b).

46 It is accordingly impermissible to seek, as the applicants do, to ground an application for information directly on the Constitution and ignore PAIA. On that ground alone, the applicants cannot obtain the relief they seek.

47 There remains for consideration the submission of the President that this court lacks jurisdiction to entertain the present claims by reason of s 167(4)(e) of the Constitution, which reads:

Only the Constitutional Court may decide that Parliament or the President has failed to fulfil a constitutional obligation.

The President submits that the conduct of which the applicants complain constitute constitutional obligations within the meaning of s 167(4)(e).

48 This subsection was examined in *Women's Legal Centre Trust v President of the Republic of South Africa and Others*.¹² Paragraphs 20 and 23 of the judgment make clear that the decisions of the President which are not susceptible to the jurisdiction of the High Courts are those taken by these two actors alone, ie not in conjunction with other state actors. But s 167(4)(e) must be read together with s 172(2)(a) of the Constitution which provides:

The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity has no force unless it is confirmed by the Constitutional Court.

49 It has been held that s 167(4)(e) must be given a narrow interpretation. What does this mean? In *Women's Legal Centre Trust*, the Constitutional Court held that the High Court had jurisdiction to scrutinise and review the conduct of the President in *appointing* a commission under s 84(2)(f) of the Constitution.¹³ This view was confirmed in *Daniel v President of the Republic of South Africa and Another*.¹⁴ It would seem artificial to find that while the High Court may

¹² 2009 6 SA 94 CC

¹³ Para 13 of the judgment

¹⁴ (CCT 34/13) [2013] ZACC 24; 2013 (11) BCLR 1241 (CC) (27 June 2013)

consider the President's conduct in relation to the appointment of a commission, only the Constitutional Court has the power to consider the President's conduct flowing from that appointment; ie when the commission so appointed has done its work and submitted its report, as commissions will do more often than not, to the President who appointed it. However, in *Doctors for Life International v Speaker of the National Assembly and Others*,¹⁵ the court found that the nature of the issue (*a crucial political question*) justified the reservation of the issue for the attention of the Constitutional Court alone. But then the same court found, at paras 23 and 24, that the ambit of s 167(4)(e) should require an investigation of whether the decision was likely to disturb the comity between the judicial branch of government and the other branches of government and its likely impact on the sensitive areas of separation of powers.

50 I think that a pointer towards answering the present question is that s 78 of PAIA, which regulates the right to ask a court (including a high court) to order access to a record, has no specific reservation in relation to records in the possession of the President. It seems to me that unless and until s 78 is declared to be in conflict with the Constitution, I should treat its provisions as reflecting the true

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2006 6 SA 416 CC para 21

jurisdictional position in relation to claims for access to information in the possession of the President.

51 However, in my view, *Daniel* has settled the position. In paragraph 12 of the judgment, the Constitutional Court held:

... “obligation” in section 167(4)(e) means a duty specifically imposed on the President to perform specified conduct. Examined in this context, section 84(2)(f) does not impose a duty on the President but a power which may be exercised at his discretion. Accordingly, the President’s failure to appoint a Commission of Inquiry does not amount to a failure to fulfil a constitutional obligation.

52 There is no provision in the Constitution which imposes an obligation specifically on the President to provide information. That obligation is imposed on all state actors equally by s 32(1)(a) of the Constitution. I therefore find that this court does have jurisdiction to entertain the applicants’ contentions.¹⁶

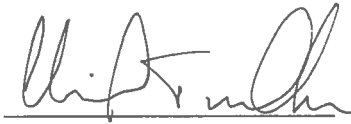
53 Costs do not arise for consideration. Counsel for the President did not ask for costs.

¹⁶

See also generally in relation to s 167(4)(e), *King v Attorneys Fidelity Fund* 2006 1 SA 474 SCA and *Von Abo v President of RSA* 2009 5 SA 345 CC.

54 There is one final matter which I wish to mention. Counsel for SERI described how the uncertainty surrounding the date upon which the report is to be released is prejudicially affecting the families of certain persons killed during the Marikana events. They, the applicants and those whose interests the applicants represent have asked that the President give them at least two days notice of the date upon which the President decides to release the report so that they may prepare themselves emotionally to receive its contents. While I do not say that the President is under any legal obligation to do so, I would hope that the President finds himself in a position to accede to this request.

55 I make the following order: The application is dismissed.


NB Tuchten
Judge of the High Court
12 June 2015

For the applicants:
Adv D Mpofu SC and Adv R Tulke
Instructed by Nkome Inc
Pretoria

For the first respondent:
Adv H Epstein SC, Adv K Hopkins and Adv T Mabuda
Instructed the State Attorney
Pretoria

For the third respondent:
Adv DB Ntsebeza SC and Adv SD Stuart Wilson
Instructed by Kathleen Hardy
Johannesburg

For the fourth respondent:
Adv LK Siyo
Instructed by the Legal Resources Centre
Pretoria