

**IN THE HIGH COURT OF SOUTH AFRICA,
FREE STATE DIVISION, BLOEMFONTEIN**

Appeal No.: 2648/2013

In the matter between:

MOHLOUA ISAAC SEOE
VIRGINIA MOSEIA

1st Applicant
2nd Applicant

and

**THE DEPUTY DIRECTOR OF PUBLIC
PROSECUTIONS OF FREE STATE**

Respondent

JUDGMENT BY: JAJI, AJ

HEARD ON: 13 MARCH 2015

DELIVERED ON: 25 JUNE 2015

INTRODUCTION

- [1] This is an application for leave to appeal against the whole Judgment and order of the High court in Bloemfontein (High Court), dated 27 November 2014.
- [2] The leave to appeal is premised on the grounds enunciated in the Notice of Application for leave to appeal dated 12/12/2014.
- [3] The grounds for leave to appeal are as follows :-

A. that there is a reasonable possibility that another court may find that the court a quo erred and / or misdirected itself by:

(a) dismissing the application of the second applicant without having considered, studied, taken into account, analysed, discussed or pronounced upon the second applicant's case for the required relief;

(b) finding that the reasons advanced by the applicants for their trial prejudice are speculative;

(c) incorrectly applying the judgment in the case of **Zanner V Director Of Public Prosecutions** 2006(2) SACR 45 (SCA) to the facts of the present case, which facts however differ substantially and materially from the facts of the **Zanner** case;

(d) incorrectly applying the test enunciated in the **Zanner** case to the facts of the case,

(e) indicating in its judgment that the grounds relied upon by the first applicant should be ventilated in trial court and not in the above court which finding:

(i) violates and renders the provisions of Section 38 read with Section 35(3)(d) of the constitution inoperative;

- (ii) closes the doors of the court to the applicants,
and;
 - (iii) denies the applicants recourse to a competent
court;
- (f) ordering the applicants to pay costs of the application,
as a punitive measure, for allegedly:
- (i) bringing the applications piece-meal,
 - (ii) not heeding the warning by the respondent of an
adverse cost order;
 - (iii) the challenges and negative impact of the
present application on the arranged trial date;

B. That there is a reasonable possibility that another court
may find that:

- (a) the applicants have probably suffered significant
irreparable trial prejudice as a result of the delay;
- (b) the combination of factors in this case constitute extra-
ordinary circumstances justifying a permanent stay of
prosecution,

- (c) the respondent was at fault, without justification, for the inordinate delay, and therefore the balance should shift decisively against him;
 - (d) the reasons the state assigns to justify the lengthy and inordinate delay are inadequate and unacceptable.
 - (e) the applicants showed definite (and not mere speculative trial-prejudice);
 - (f) the applicants showed in what specific manner missing witnesses would have aided their defence and identified such missing witnesses by name;
 - (g) no order of costs should be made, having regard to the nature of the proceedings where the claimants seek to enforce a constitutional right;
- C.** that there are also other compelling reasons as contemplated in Section 17(1)(a)(ii) of the Superior Courts Act, 10 of 2013, why the appeal should be heard to wit that;
- (a) the curtailment of fundamental rights under the constitution warrant judicial scrutiny and consideration;
 - (b) the rights of other accused are depended upon the determination of this application;

(c) the matter is substantial and paramount importance in itself, for the parties;

(d) considerations of legal and public policy, coherence and consistency dictate that the Supreme Court of Appeal should hear the matter.

[4] The applicant has asked for an order directing that the appeal be heard by the Supreme Court of Appeal, alternatively by a Full Bench of the Free State High Court, Bloemfontein.

FACTUAL BACKGROUND

[5] The matter came to engage the attention of the high court under the following circumstances:

- (i) The applicant sought a permanent stay of prosecution on charges contained in the indictment amongst others, tender fraud, racketeering, corruption and money laundering;
- (ii) The applicant relied on the provisions of section 35(3)(d)(h) and (i) of the constitution of South Africa, sec 342 A of the Criminal Procedure especially factors to Be considered by a court before which criminal proceedings are instituted in investigating inter alia any delay in the completion of proceedings which may be unreasonable in given circumstances.

- (iii) The applicant relied further on the legal principles involved as laid down in case law i.e. **Sanderson v Attorney General, Eastern Cape** 1998(2) SA 38 CC; **Director Of Public Prosecutions And Another v Phillips** 2012(4) ALL SA 513 (SCA), Unreported judgment of **John Robbs And Others v Deputy Director Of Public Prosecutions** for the province of KwaZulu Natal, case no 13510/201.
 - (iv) They relied to facts regarding allegations and circumstances giving rise to the charges which occurred a decade ago from 2001-2013;
 - (v) Applicants relied on compliance with legal principles especially the inordinate delay to prosecute, effect of delay, trial prejudice and legal consequences resulting from the effects of the above principles.
 - (vi) The applicants contended that the critical issue, was the determination of reasonableness of time taken to prosecute. The conduct of the prosecution and accused had to weighed and balanced. They contended that a permanent stay of prosecution was appropriate when there was prejudice.
- [6] The application for permanent stay was opposed by the respondent. The issue was whether the court should grant a permanent stay of persecution on the basis as set out in

applicant's affidavit and whether the applicants would suffer irreparable trial related prejudice if the matter proceeded to trial. The respondent contended that:

- (i) The arguments by the applicant be made in trial court;
- (ii) The delay was occasioned also by the applicants bringing five other applications which were similar in nature whilst aware of the imminent trial date, which was already available.
- (iii) Respondent contended that there was no basis for the alleged prejudice by the applicants.
- (iv) It submitted that the application was not an appropriate case for stay of prosecution. It submitted that a stay of prosecution is relevant when there was clear trial prejudice. It explained the delay and raised dispute of facts relating to inherent contradictions in the applicant's papers

- [7] The matter was finally disposed by the Judgment of the court delivered on the 27 November 2014 dismissing the application with costs on a normal (party and party) court scale.

THE APPLICATION TO THIS COURT

[8] The summary of the applicant's submission could be tabled as follows:-

- (i) the court *a quo* had erred in some respects, misdirected itself in other respects and that there is a reasonable possibility that another court may find that a permanent stay of prosecution is justified due to infringement of fundamental rights which included the right to have a trial begin and continue without reasonable delay;
- (ii) that it appeared from the judgment that the court did not address the case of the second applicant;
- (iii) that it appeared from the judgment that the court *a quo* was of the view that the proceedings were brought in an incorrect forum;
- (iv) that it was stated in court *a quo* that the issue specifically regarding trial prejudice, should have been rather ventilated in the trial court.
- (v) that regarding the delay in forensic report, it appeared as if the court *a quo* deemed it an administrative matter and accordingly elected or decided not to apply its mind to the facts;

- (vi) that the weight of compelling authority would justify leave to appeal and costs order was unjustified and inappropriate and against the weight of authority.

[9] The respondent submitted as follows in opposing the application:-

(a) The application should be refused because authority state that the court is entitled to grant leave only if it is persuaded that the appeal would have a reasonable prospect of success not a reasonable possibility. It also argued that there are no conflicting judgements on the permanent stay of prosecution. The applicant had argued that other compelling reasons why the appeal should be heard included conflicting judgments. The respondent contended that the highest court in the land, **Bothma v Els** (CCT 21/09) ZACC 27, 2010(2) SA 622(CC) 2010(1) SACR 184(CC) 2010 (1) BCLR 1(CC) (8 October 2009) laid out criteria to be considered in granting or refusing a permanent stay of prosecution.

(b) The constitutional court stated that the following factors had to be weighed as a balancing act:-

- (i) The nature of the offence,
- (ii) The length of, the delay;
- (iii) The reasons given for the delay, and

(iv) The potential prejudice to the accused.

The seriousness of the crimes spoke to the reason that is proffered by the respondent for the delay. The respondent has been frank and candid with the court as to why there was a delay. The court a quo had also taken into account public policy dimensions in the balancing exercise and dealt extensively with the nature of the offence in its judgment. The court did not deal with only the length of the delay, it dealt with the four factors that **Bothma v Els** says. The respondent challenged the applicant to convince the court that **Bothma v Els** has not been taken into account

(c) Harms volume 4, 3rd edition (2012) was quoted by the respondent

“ leave to appeal can only be granted if the applicant has a reasonable prospect of success on appeal. The matter should be decided without reference to the wishes of the parties. Leave is granted not in respect of the reasons for the judgment or order but in respect of the judgement or order itself. The success must relate to the outcome of the case and not an argument that does not dispose of the case in favour of the applicant. In other words, objection cannot be levelled at the faulty reasons only”.

- He went on further

“ it cannot be levelled as a faulty reason only. It is the consequences of such reasoning that may be subject of an appeal. The importance of a matter is also not on its own a justification for granting leave to appeal”.

The respondent contended that they were not dealing with reasonable possibility but what the prospects of success were.

(d) The applicant's case that another court might find that they were prejudiced by the court *a quo*'s indication that the grounds relied upon should be ventilated in a trial court. The court in its judgement addressed the reasons for such a conclusion. The respondent submitted that indeed they conceded that a court *a quo* is competent to hear the matter but was not the appropriate court. The

applicant conflated competence and appropriateness. The motion court would have to deal with matters that were irresolvable because they were on affidavit and yet in trial court which would also be a competent jurisdiction, matters would be able to be dealt with. The respondent argued that the court did not close the door to the applicant by refusing a permanent stay but has opened another door, which is an appropriate court, the trial court. The gravamen of reasoning in **Bothma v Els** is that the court will grant a permanent stay only if it is manifest that the prejudice to the accused person is so material that it cannot be cured by a lesser manner of dealing with the problem raised by the applicants.

- (e) The respondent submitted that from 2013, the applicant could have raised the same issues in the trial court. They were arguing in 2015 a matter they claim is being delayed or inordinately delayed. The court has referred to the contradictions on papers and stated that only the trial court can deal with them. The court cannot deal with it on papers. The court clearly was aware that when the applications for stay were made, the matter was trial ready, and that was the forum where the applicants would have raised the issues. The respondent submitted that the court cannot be faulted for the reasoning that the trial court was the appropriate forum to deal with the contradictions.

(f) The respondent submitted that in line with the case of **Sanderson v Attorney General Eastern Cape** 1998(2) SA 38 CC, the court a quo on balance held that a permanent stay was not an appropriate order. It was not all about taking one factor and isolating it and holding higher than all other factors. The court further dealt with the dead witnesses. Even if they were alive, they would have to deal with the contradiction in the tender documents. Again the court stated that the trial court was best placed to deal with that issue because on the papers it was impossible to resolve it. The trial court would have to deal with whether or not there has been unfairness in the manner in which the order of the court is alleged to have violated section 35 of the constitution.

(g) The applicant submitted that the court misapplied the **Zanner** judgment (**Zanner v Director Of Public Prosecution** 2006 (2) SACR 45 (SCA)). The court recognised a very critical criterion which had to be considered in an application for a permanent stay of prosecution. It was some form of additional criterion, namely the nature of the offence. The court used the language of **Zanner**, i.e. what was being sought to be addressed in the case like **Zanner**, was merely speculative. The court was saying it could not interrogate motion court papers, they say what they say and an appropriate court to resolve issues that arise from the papers, is the court that will be able to deal with cross-examination and the matters that arise there from.

- (h) The delay has been exacerbated in the case by the present application. The respondent submitted that the case law on aggregate was more on the side which will refuse the permanent stay for all the reasons given in cases including **Naidoo's Case (S v Naidoo** 2012(2) SACR 126 (WCC). The case held that it was not easy to establish trial prejudice because it borders on the impossibility for a court other than trial court to determine the impact of the loss of a witness or the effect of the lapse of time on the reliability of the recall events by witnesses. The respondent submitted that the court stated that the state faced the same prejudice and the extent of the prejudice can only be properly measured by the trial court hearing all the relevant evidence.
- (i) The respondent argued that a permanent stay, any other court will hold, can only be justified in extraordinary circumstances and those extraordinary circumstances are when the accused person can demonstrate that it can no longer be afforded a fair trial because the accused has suffered material trial related prejudice which cannot be cured by a lesser remedy. The respondent argued that no other court understanding that there was an application on motion for a permanent stay and that the application was refused because the court weighed all the four factors indicated, not one, seemingly reasons for the delay, weighed all of them. It further argued that no court can find differently to what the court found on whether or not it can

be said that the applicants have suffered such material trial related prejudice which cannot be cured by a lesser remedy. It referred to **Bothma's** case where it was stated that irreparable prejudice had to amount to something more than a disadvantage caused by loss of evidence. The irretrievable loss of some evidence, even if it is associated with a delay, was held (**Bothma's** case) not to be determinative of irreparable trial prejudice.

(j) It was submitted that in essence the court was asked not to look at the prejudice to the state if it has to weigh that there was so much of prejudice to the accused without resolving the dispute which was on the papers. The court was referred to **Zanner's** case where it was held that prejudice is not only that of the accused, the prejudice is also that of the state. It was contended that the applicant had to show whether the refusal to grant permanent stay in itself meant that the accused persons have been prejudiced beyond repair.

(k) Regarding the allegation that the court did not consider and address the second's applicant's case. The respondent submitted that she (second applicant) did not put a separate case. Her fullest contribution to the case was by way of confirmatory affidavit. She associated herself with everything that has been said by the first applicant.

(l) The issue of costs. The court did not only address the issue of costs on the basis that the applicants have been warned. The court dealt with the letter warning the applicant as well as the piecemeal dealing by the application of the case. The conduct of setting down for the same date and time of voluminous papers especially when the applicants knew already of the trial case. The applicants refused to take one of the applications as a test case when requested to do so by the respondent. The respondent responded to all six applications and filed answering affidavits. This all was time consuming. The applicants decided to take one of the applications instead of the six to see what would transpire out of it. This the respondent referred to as conduct that contributed to the delay. In any event the court did not order a punitive costs order, it awarded party and party costs. The court of an appeal would have to show that the court a quo did not exercise its discretion judicially.

The contention by the applicants that by awarding costs against litigants raising constitutional issues against state entities would have a chilling effect. The applicant conceded that this was a general rule and as all general rules there are exceptions. The respondent argued that the court did not err in awarding the costs order especially when one has regard to the conduct of the applicant's in the present case. The applicant referred to the case of **Biowatch Trust v Registrar Genetic Resources And**

Others (CCT 80/08)[2009] ZACC14 2009(6) A 232 (CC) 2009(10) BCLR 1014 (CC) (3 June 2009). It argued that the case at hand required the court to order costs against the party that has lost even if the issues that have been raised were constitutional. Where a matter is either frivolously raised and/or vexatiously raised, the conduct of the applicant's warranted a cost order. In any event, the respondent submitted that all the cases that go to constitutional court will never have a costs order because every case that ends in the constitutional court raises a constitutional issue.

SHOULD LEAVE TO APPEAL BE GRANTED?

[10] It is trite that the existence of reasonable prospects of success on appeal is paramount in an application for leave to appeal. The test is the same in both criminal and civil cases. (see **Mthirara v Landmark Mthatha** (Pty) Ltd (607/2007) [2007] ZA ECHC, **Van Wyk v S, Galela v S** (20273/2014, 20448/2014 ZASCA 152 [2014] 4 ALL SA 708 (SCA); 2015(1) SACR (SCA) (29 September 2014).

“The issue to be determined is not whether the appeal against conviction and sentence should succeed but whether the high court should have granted leave which is in turn depend upon whether the applicant could be said to have reasonable prospects of success on appeal”.

S v Matshona 2013(2) SACR 126 (See also **S v Kriel** 2012 (1) SACR (1) SCA paragraph 11-12, **S v Smith** 2012 (1) SACR 567 (SCA) paragraph 2-3.

PROSPECTS OF SUCCESS

[11] Prospect of success, are they so strong that refusal of leave to appeal would probably result in a manifest denial of justice? The application for leave to appeal must succinctly set out the respects in which it is alleged the high court erred and the judgment must be subjected to a critical analysis, either as to the findings of facts or as to the exposition and application of law. NB A generalised attack on the findings of the high court is insufficient, as is reliance on the notice of appeal, or a recitation of the grounds of appeal. The existence of reasonable prospects of success on appeal has been held in a long line of cases to be paramount. (See **R v Baloyi** 1949 (1) SA 523 (A) at 524, **R v Nxumalo** 1939 AD 580 at 582, **R v Ngubane & others** 1945 (AD) 185 at 187, **Capital Building Society v De Jager & Others, De Jager and Another Capital Building Society** 1964 (1) SA 247 (A), **Afrikaanse Pers Bpk v Olivier** 1949, (2) SA 890 (O) at 892 - 893, **S v Ackerman en 'n Ander** 1973 (1) SA 765 (A) and **S v Sikosana** 1980 (4) SA 559 (A) at 562.

[12] Judicial Authority enjoins the courts to reflect dispassionately upon court's decision and decide whether there is a reasonable prospect that the appeal court may disagree with the decision. The applicants have argued that there was a

reasonable prospect that another court, on the grounds advanced in support of the application, coming to a different conclusion. The respondents disagreed and submitted that there was no such reasonable likelihood of another court coming to a different conclusion from that of the court a quo. In **Cameron Mclaggen v The state**, case no CC 70/2011 delivered on the 4/10/12, quoting **Songono v Minister of Law & Order** 1996 (4) SA 384 (E) application for leave, Leach J (as he then was) set out applicable principles at (385F-368B)

“Rule 49 (3), is concerned, it has been held that the grounds of appeal are bad if they are so widely expressed that it leaves the appellant free to canvass every finding of fact and every ruling of law made by the court a quo, or if they specify the findings of fact or rulings of law appealed against so vaguely as to be of no value to either the court or respondent.....”.

Leave to appeal will be granted where there is reasonable possibility that another court may come to a different conclusion either on the facts or law or both. It is not for the court to give appellant a second opportunity to reargue its entire case.

“The essential function of an appeal court is to determine where the court below came to a correct conclusion...”

(See **Quartermark Investments (Pty) Ltd v Mkhwanazi & Another** (2013) ZASCA 150, 2014 (3) SA 96 (SCA) at para 20.

- [13] The court a quo has raised the contradictions which amounted to dispute of facts. In **USA vs Tao Ying Metal Industries & Others** (2008) ZACC 15, 2009 (2) SA 204 (CC), 2009 (1) BCLR (1) CC at para [68], the court said:

“where a point law is apparent on the papers, but the common approach of the parties proceeds on a wrong perception of what the law is, a court is not only entitled, but is in fact also obliged, *mero motu*, to raise the point of law...”

- [14] The court in **Shaik v Minister of Justice and Constitutional Development** 2003 ZACC 24, 2004 (3) SA 599 (CC) 2004 (4) BCCR 333 (CC) at para [16] stated that:

“This court will only grant leave to appeal if it considers it to be in the interest of justice to do so. The prospects of success are important in deciding whether or not to grant leave to appeal, but they are not the only issue to be considered when the interests of justice are being weighed. There are a number of factors that are relevant to this enquiry. They have to be assessed together”.

It was held in the matter of **BLOSE v Ethekewini Municipality** (2005/14) ZASCA 87 that:

“the achievement of justice should not be hampered by excessive adherence to printed form of legislation without regard to its significance and what it seeks to accomplish.”

- [15] The Applicant in the application to appeal conceded that indeed that the contradictions on the papers in respect of

charges 7 -12. "There may be some controversy about that but not in respect of court 2 and in respect of court 4" (Submissions by applicant counsel).

- [16] In the notice of application for leave to appeal p 4 para B (a) (grounds for appeal) the applicants state clearly that there was a reasonable possibility that another court may find "the Applicants have **probably** suffered significant irreparable trial prejudice as a result of the delay".

The applicants went further at page 5 of the notice especially at para B (c)..... and therefore the **balance** should shift decisively against him.

Clearly the applicants argue on the basis of probabilities and balance of probabilities shifting to the respondent in respect of trial prejudice caused by the delay. The alleged prejudice is not definitive but speculative based on probabilities arising from the applicants own papers. The alleged trial prejudice complained of is not definitive but probable. The applicants are not even sure of this alleged prejudice.

- [17] The applicants have contended in the papers and in submissions that the second applicant's case had not been separately addressed. The respondent correctly argued that the second applicant's case was based on confirmation of what the first applicant was saying in his founding affidavit. It did not raise anything different. Upon perusal of the notice of motion the following is glaring:

- (i) It is stated that the abovementioned **applicants** intend tofor an order
- (ii) **permanent stay of prosecution** on the charges contained.....
- (iii) Grounds for the application (its applicant refers to) i.e. para [13]. **The applicants**.....
- (iv) Effects on family life (**referring to the second applicant**) Para153,154,155,156 &158.
- (v) **Impaired memory**
Para 211 & 214.
(referring to the second applicant.)

Now, upon further perusal of the founding affidavit of the second applicant whose case is alleged not to have been addressed and different from the first applicant. She actually raised the same issues as the first applicant i.e.

- (i) Purpose of the application. **The applicants seek injuncture relief**..... (referring to both applicants).
- (ii) Para (13) at p 203 (record). The applicants contendsec 35(3) of the constitution (**same issue raised by first applicant**).
- (iii) para 15 at p 204 (record) “I have read the founding affidavit deposed to by the first applicant and I confirm the contents.....” (**confirmation by the second applicant**)
- (iv) Para 16.3 p 204 (record) (**second applicant alleges that she suffer the same damages as applicant number one and in the same respects as set forth in the paragraphs 164 to and inclusive of paragraph 247.**

- (v) **Para 17 at p 205 (record)** “paragraphs 15 to and inclusive of paragraph 80 of the founding affidavit and confirm the contents hereto” **The second applicant confirming the contents of the first applicants affidavit.**
- (vi) Para 20 at p 205 (record) **“I confirm in this regard the contents of paragraphs 153 to paragraph 162 of the first applicant’s founding affidavit.”**

From the above, clearly the grounds of appeal of the two applicants are confirmed. The constitutional rights raised by the second applicant are the same as those raised by first applicant albeit in summary. The affidavit of the first applicant is confirmed from pages 15 - 80, 153 -162,164 -- 247. The case of the second applicant is clearly not different from the first applicant’s as confirmed by the second applicant. It is not clear on what basis is it alleged that it should have been addressed separately.

The court a quo therefore could not be said that it failed in its duty to traverse in its judgment evidence before it. It is trite that in motion proceedings, the affidavits constitute both the pleadings and the evidence (see **Minister of Agriculture, Land and Weveel Trust & Others** (2007) SCA 153 RSA at para 43). The court in dismissing the application for leave to appeal in this case held that prospects of success were not demonstrably strong.

COSTS

[18] The conduct of the applicants in this matter has already been highlighted by the respondent. The following quote becomes therefore relevant in the circumstances:

“In its legal sense “vexatious” mean a frivolous, improper, and instituted without sufficient ground to serve solely as an annoyance to the defendant”.

Vexatious proceedings would also no doubt include proceedings which although properly instituted, are continued with the sole purpose of causing annoyance to the defendant, “abuse” connotes “misuse an improper use, a use mala fide, a use for an ulterior motive”.

In Re Alluval Greek Ltd CPD 532 at 535, Gardiner J said in the context of a punitive costs order:

“Now sometimes such an order is given because of something in the conduct of a party which the court considers should be punished, malice, misleading the court and things like that, but I think the order may also be granted without any reflection upon the party where the proceedings are vexatious, and by vexatious I mean where they have the effect of being vexatious, although the intent may not have been that they should be vexatious. There are people who enter into litigation with the most upright purpose and a most firm belief in the justice of their cause, and yet whose proceedings maybe regarded as vexatious when they put the other side to unnecessary trouble and expense which the other side ought not to bear.”

The manner or piece-meal dealings with six applications of voluminous nature by the applicant where the respondent had to file in each of them answering affidavits falls squarely in the category stipulated by Gardiner J. Subsequent to the tedious exercise, the applicants did not proceed with the applications. Clearly the court could not close its eyes on this conduct. It had to demonstrate its displeasure at this kind of litigation.

It follows therefore that there is no warrant for interfering on appeal with the discretion exercised by the court a quo regarding costs. In **Agriculture, Land & Wevell Trust, 2007 (SCA) p 153 at 51** "...that even if the application was not intended to be vexatious, if it had that effect, a punitive cost order would be justified".

CONCLUSION

[19] All the grounds for appeal as laid down by the applicants have no merit at all. The court agreed with the submissions of the respondent to the extent that they did not contradict the contentions of the court a quo's judgment. The appeal is premised from wrong inferences and deductions. The applicants infer from the judgment of the court a quo unjustified conclusions. The glaring assumption that has been put forward is that the court a quo inferred that the applicants were in a wrong forum where it the proper reading of the judgment was that the motion court was not an appropriate court to resolve dispute of facts. The respondent

correctly dealt and belied this improper reading and interpretation of the judgment. The applicants did not show and explain the prejudice to be caused by arguing the alleged prejudice in the trial court which is also a competent court like motion court albeit an appropriate court in the circumstances. The trial court could hear all the evidence relating to the delay from both sides. In fact, given the long history of the matter and the time lapse since the charging of the applicants, it is in the interests of all affected parties that the court brings finality to the matter. There are no prospects of success and the interests of justice demand that leave to appeal be refused with costs.

ORDER

[20] I, therefore make the following order:

20.1 Leave to appeal is refused; application for leave to appeal is dismissed with costs.

N.P. JAJI, AJ

On behalf of the Applicants:

Adv C. Ploos Van Amstel
Adv.G Langenhoven
Instructed by:
Bezuidenhout Inc.

BLOEMFONTEIN

On behalf of the Respondent:

Adv. D. Ntsebeza
Adv. R. Rathidile
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