

IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION : MTHATHA

**CASE NO. 2874/11 and
2875/11**

In the matter between:

SAKHUMZI MVOKO

1st Applicant

ODWA SITHOLE

2nd Applicant

and

MINISTER OF CORRECTIONAL SERVICES

1st Respondent

CAPTAIN MALUNGELO DIKO

2nd Respondent

MINISTER OF POLICE

3rd Respondent

JUDGMENT

GRIFFITHS, J.:

[1] As a matter of extreme urgency the two applicants applied for various orders which, in essence, amounted to a review of a decision by the second respondent ("prison officials") to the effect that whilst testifying in their

criminal trial the applicants were to remain handcuffed and to wear prison clothing.

[2] The trial in this matter, in which the first applicant is accused two and second applicant is accused three, is a criminal trial which is presently being prosecuted before my brother, White J, in the Mthath High Court. This matter apparently commenced during June this year and has continued, I am given to understand, without significant interruption until these applications were launched. According to the application papers, on Tuesday, 22 November 2011, the first applicant was due to take the witness box in order to present his testimony in the trial. After completion of his evidence, the second applicant was likewise due to testify. According to the papers and subsequent evidence to which I shall refer later, an application was brought by the applicants before the criminal court prior to commencement of such testimony for them to have their handcuffs removed during the course of thereof. After various discussions had been held, White J came to the conclusion that it might be prejudicial to the applicants should he hear a formal application in this regard and he accordingly indicated that should the applicants wish to pursue such application, they were to do so before the duty judge.

[3] Because I was the duty judge concerned, the matter thereafter served before me during the course of late Wednesday morning, 23 November 2011. Upon seeing the papers and having heard Mr. Gabavana (who appeared for both applicants) and Mr. Hinana (who appeared on behalf of the respondents), and because the matter was of a very urgent nature given the fact that the trial was being delayed by these applications, it was agreed

between counsel that oral evidence would be heard during the course of that afternoon and I ordered accordingly. Oral evidence was thereafter proceeded with after which I heard argument and at 7:45 p.m. on Wednesday evening I dismissed the applications without reasons.

[4] Subsequent thereto, applications for leave to appeal have been delivered on behalf of both applicants together with a request for reasons for such order. These are those reasons.

[5] At the outset of the application Mr. Hinana argued *in limine* that these matters ought not to be heard as matters of urgency, let alone extreme urgency, by virtue of the fact, in his submission, that such urgency was self created by the applicants themselves. In this regard he argued that as the matter had been running for many months in the criminal court it must have been patently obvious to all concerned that there would be more than a likelihood that the applicants might, in the long run, be obliged to enter the witness box in order to testify. In the circumstances, and in his submission, no reason had been advanced as to why this application could not have been launched and prosecuted to finality during the course of the early stages of the trial. Mr. Gabavana, in turn, raised various aspects, *inter alia* the fact that, in his submission, the applicants had already participated in a trial within a trial dealing with the admissibility of certain evidence and had been allowed to remove their handcuffs whilst testifying during those proceedings.

[6] Although it ultimately emerged that there is a dispute of fact with regard to whether or not the applicants were so allowed to remove their

handcuffs during the course of those proceedings and although Mr. Hinana made out a compelling argument in this regard, the fact that they may have been allowed to remove their handcuffs in the trial within a trial coupled with the fact that had I ordered that the matter not be heard as an urgent application this would have resulted in the matter being dealt with on the ordinary application roll and thus seriously delaying completion of the main trial, I ruled that the matter should proceed as an urgent application despite the protestations of Mr. Hinana.

[7] Both applicants testified and described what had happened the previous day before the criminal court. When he was requested to take the oath, the first applicant stated that he could not do so as he was handcuffed, which he demonstrated by raising both his arms. I informed him that for these purposes it was necessary for him to nonetheless take the oath, which he proceeded to do. I asked him to explain the reasons as to why he should testify without handcuffs and he indicated, firstly, that he believed that whilst in the witness box he should be regarded as a witness in the same manner as any other witness and, secondly, that when he had given evidence during the course of the trial within a trial, his hands had been released. Later during evidence he also alluded to the fact that, in his belief, the trial court might not give proper credence to his demeanor whilst in the witness box due to the fact that he could not move his hands as freely as he might otherwise have done because of the restrictive nature of the handcuffs. It also appeared from his affidavit that the trial Judge had suggested that his handcuffs be removed and that, in order to ensure security, a number of the security personnel from correctional services and SAPS be delegated to stand in a circle around the witness box to prevent him from escaping. He

testified that accused one had completed his testimony without being handcuffed as had an awaiting trial prisoner who had testified for the state. The clothing which he was wearing, which appeared to be in the form of a tracksuit type of outfit, darkish maroon colour, he understood to be prison clothing worn by juveniles. His view was this would create a stigma in the mind of the presiding judge.

[8] Under cross-examination he conceded that he is presently serving three years imprisonment for escaping from lawful custody. He denied that the type of prison clothing that he was wearing is what is referred to as "release clothing" within the correctional services parlance. It was put that, in accordance with a document handed in as an exhibit, these are clothes given to prisoners who do not have suitable private clothes when attending court and are not the clothing normally worn in the type of prison where the applicants are detained, namely a "Closed Maximum Prison" ("CMax"). He denied this. It appeared that both he and the second applicant are, for the duration of this trial, being detained in the CMax prison, Kokstad. It was furthermore put to him that, in accordance with a further document handed in, he is in fact facing a further five charges of escaping from lawful custody, which he also denied save for one of which where he indicated that the charges had been withdrawn during 2011. It was also put to him that he had not in fact testified during the course of the trial within a trial without handcuffs on. Under re-examination he stated that he had never escaped from lawful custody during the course of his giving testimony in a court.

[9] The second applicant confirmed the evidence of the first applicant as also being applicable to himself and added that the prison authorities had

strapped onto both his and the first applicant's backs a device which, when operated remotely by the correctional services authorities, would electrocute him should he try to escape. Under cross-examination however it was put to him that this was a fallacy and that in fact this device, which was indeed operated by remote, merely emitted a loud noise when activated. The device would be activated if a prisoner were to escape in order to assist in tracking him down.

[10] He also confirmed that he was serving three years imprisonment for escaping from lawful custody and that this had in fact occurred whilst the main criminal trial in this matter was underway. It was put to him that there are a further three charges of escaping from lawful custody pending against him. He admitted to two of them but denied any knowledge of the third. It was also put to him that he, like the first applicant, was a serious flight risk in that he had, *inter alia*, managed to escape from Mthatha Maximum Prison which enjoyed a high degree of security. He again denied that he had escaped from that prison. It was also put to him that it would be extremely dangerous to remove his handcuffs and to have him surrounded, in substitution, by a number of security personnel whilst he testified. His response was one of surprise, in that he had, according to him, testified in the trial within a trial without such handcuffs. He agreed that both he and first applicant are facing a large number of charges in the criminal case which involves three armed robberies and allied charges of attempted murder and unlawful possession of firearms and ammunition, all of which he agreed are serious in nature.

[11] It emerged during the course of this evidence that the "handcuffs"

which had been referred to in this application are in fact not "handcuffs" in the traditional sense of the word. Neither of the applicants had their wrists handcuffed together by the device normally used for this purpose by the police and security personnel. In fact, their wrists were linked on either side of the body to a chain which surrounded the waist and which gave them a fair degree of lateral and vertical movement. During the course of their testimony, I particularly observed that they had a reasonable degree of movement of both their hands and arms such that if one's attention had not been called to the fact that they were so chained, one would probably not have noticed. They were required under cross examination to look at, and read, certain documentation placed before them which they did with ease. They admitted to the fact that they are able to perform various other necessary functions, such as eating, whilst linked with this restraining device. They did say however that it is restrictive, but in my view such limitation and restriction in movement as there may be is nowhere near as restrictive as a pair of handcuffs.

[12] The respondents called two witnesses, namely warrant Officer Mdepa, the investigating officer in the criminal trial and one Ralls, from Correctional Services, who is in charge of the security of, *inter alia*, the applicants.

[13] Warrant Officer Mdepa confirmed in testimony that the accused are facing a large number of serious charges as described earlier. The firearms involved include prohibited firearms and two rifles. He confirmed that the applicants are in fact facing further charges both in Mthatha and elsewhere. He had prepared the document, exhibit "B" (which had been handed in

during the course of cross examination of the applicants), which reflected the five charges of escaping from lawful custody pending against the first applicant together with the conviction for the same offence, and the three pending against the second applicant and his similar conviction. He confirmed the correctness of what is stated in this document which had been prepared by himself and other members of his office. He also confirmed the most recent pending charge, that being escaping from lawful custody from Mthatha Maximum Prison, that it involved the shooting of a prison official and the robbery of his vehicle, and that these facts form the basis of further pending charges against both applicants. In this regard, after they had escaped on 20 March 2011, both applicants were rearrested almost 2 months later, on 18 May 2011 in Gauteng.

[14] Under cross-examination he conceded that a court order existed against him interdicting him from assaulting the first applicant. It was also put to him that it is quite coincidental that the document, exhibit "B", had been prepared at the time when the applicants had launched this application. He agreed that it was coincidental as he did not know at the time when he prepared the document that the application was to be moved. He however denied that the purpose of preparing this document was merely to deprive the applicants of their rights. He confirmed that he had the dockets relating to the escaping charges in his possession but he had not brought such to court as he had not known that this was necessary.

[15] Mr. Ralls testified that he is part of an emergency team from Empangeni in KwaZulu Natal who, amongst others, was specifically brought in by Head Office, Correctional Services, to deal with the security

of the applicants in this matter because his team is regarded as being the most highly trained within the Correctional Services sphere in dealing with serious and violent criminals, into which category the applicants fall. He testified that the Kokstad CMax prison is a prison which houses prisoners charged with serious crimes, escapees, potential escapees and violent prisoners. The applicants are classified as "high risk inmates". It was for this very reason, that is the applicants' high-risk category, that his highly skilled and qualified team had specially been imported from Empangeni. Security at the Kokstad prison is regarded as extremely good and one of the best, if not the best, in this regard on the continent. The maximum-security prison in Mthatha does not have the same level of security as that which exists in Kokstad. When the accused in this matter first appeared in the Magistrates' court in Mthatha, the streets surrounding the area had to be closed off and the general public was removed from the first floor of the court in order to ensure maximum security and control because of the dangerous nature of the applicants. This increased security was and is, in his view, absolutely essential in view of the applicants' dangerous nature and propensity for escaping as evidenced by their pending charges and, in particular, by the nature and manner of their escape from Mthatha prison earlier this year.

[16] Ralls also explained more fully that the type of "handcuffs" used on the applicants is referred to as a "belly chain". This chain surrounds the waists of the applicants and, as indicated earlier, their wrists are cuffed by separate chains to this belly chain on the left and right sides of their waists giving them some freedom of movement whilst, at the same time, providing some restriction for the purposes of security. They are able to use their hands, but there is a limitation. The essential purpose thereof is to prevent

the applicants from obtaining dangerous objects from other people and to ensure their security. As compared with traditional handcuffs, a belly chain is more user friendly to the prisoner concerned.

[17] This witness also honestly conceded that the applicants may well have been informed by a Correctional Services official that the devices strapped to their backs were in fact capable of electrocuting them as described by them. However, this was not in fact so as the purpose of this device is to emit a noise as described earlier. He denied that the applicants had testified without the belly chain during the course of the trial within a trial. He was adamant that the suggestion of removing the belly chains and having security personnel surround the witness box whilst the applicants give evidence would seriously compromise security. Such unfettered freedom of movement with dangerous accused of this nature, could well result in their stretching out and taking hold of a firearm from one of the security personnel, which would have obvious and serious consequences.

[18] As regards the clothing worn by the applicants, these are "release clothes" as described earlier. Normally inmates wear bright orange clothing and the Correctional Services officials are of the view that should they appear in court in such clothing this might be prejudicial to them. The somewhat toned down clothing worn by the applicants has as its purpose to reduce this risk of prejudice by making it less obvious that they are wearing prison garb. He however added that it is essential that they do wear such clothing as this assists in identifying the applicants should they escape. Thus such clothing is, in his view, absolutely essential for security purposes. It was his view that for these reasons the belly chains and release clothing

should not be removed.

[19] This witness also added that during the course of the criminal proceedings one of the security personnel found a sharpened piece of wire under the accuseds' seat. This piece of wire could be dangerous and could have been used to open the locked belly chains. This was an additional factor, in his view, which clearly supported his contention that every means possible should be employed to secure the applicants so as to prevent them from escaping.

[20] Under cross examination he intimated that he had not brought the fact of this piece of wire to the attention of the court or the legal representatives as the court is not part of his security detail. He admitted that he was not always present in court and that he might not have followed the trial within a trial proceedings fully, but that many of his security personnel are ever present in court and that they had reported to him that the belly chain had not been removed. It should further be mentioned that it is common cause that both the applicants have been subjected, during the course of the main trial, to wearing leg restraints.

[21] Mr. Gabavana argued that, based on this evidence, both the belly chain and the prison clothing of the applicants ought to be removed whilst they testify as the applicants have a clear right not to be treated in a cruel, demeaning or inhuman manner and that their right to equality and a fair trial will, should such order not be made, be infringed. He further argued that a proper case has been made out for the removal of the belly chains as long as an additional condition is imposed that security not be compromised. As I

understood his argument, he persisted in the contention that should the belly chain be removed and, in substitution, the security personnel be ordered to surround the witness box to prevent escape, this would suffice for the purposes of security. His submission was to the effect that, should the applicants not have been given such leave, they would be emotionally unprepared to give evidence which would result in an unfair trial.

[22] Mr. Hinana in turn argued that by virtue of the provisions of sections 26 and 29 of the Correctional Services Act (No. 111 of 1998 – “the Act”), the rights accorded an accused in a criminal trial in this regard are not absolute and are thus subject to the reasonable limitations reflected therein. On this basis, and on the evidence tendered by the respondents in this matter, he has submitted that it is clear that the rights of the applicants in this regard must necessarily be curtailed within reason so as to ensure the safety and security of all court staff, inclusive of the presiding judge and counsel.

[23] Having regard to these sections of the Act it seems to me that Mr. Hinana's submission that the applicants' rights in this regard cannot be absolute and stand to be limited within reason, is clearly correct. Section 26 of the Act reads as follows:

"26 Safe custody

(1) The right of every inmate to personal integrity and privacy is subject to the limitations reasonably necessary to ensure the security of the community, the safety of correctional officials and the safe custody of all inmates.

(2) In order to achieve these the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, a correctional official may-

- (a) search the person of an inmate, his or her property and the place where he or she is in custody and seize any object or substance which may pose a threat to the security of the correctional centre or of any person, or which could be used as evidence in a criminal trial or disciplinary proceedings;
- (b) take steps to identify the inmate;
- (c)
- (d) apply mechanical means of restraint; and
- (e) use reasonable force.

(3) In order to achieve the objectives referred to in subsection (1) and subject to the limitations outlined in sections 27 to 35, the National Commissioner may classify and allocate accommodation to inmates."

Section 29, reads as follows:

"29 Security classification

Security classification is determined by the extent to which the inmate presents a security risk and so as to determine the correctional centre or part of a correctional centre in which he or she is to be detained."

[24] As regards the "*limitations outlined in sections 27 to 35*" to which the objectives in subsection 26(1) are subject, it appears for the present purposes that it is only sub-sections 31(1) and 31(2) which have any relevance. These subsections read as follows:

" 31 Mechanical restraints

(1) If it is necessary for the safety of an inmate or any other person, or the prevention of damage to any property, or if a reasonable suspicion exists that an inmate may escape, or if requested by a court, a correctional official may restrain an inmate by mechanical restraints as prescribed by regulation.

(2) An inmate may not be brought before court whilst in mechanical restraints, unless authorised by the court."

[25] "Mechanical restraints" are, in turn, defined in section 1 as follows:

" 'mechanical restraints' means a device which limits or prevents freedom of physical movement;"

[26] It seems to me that the belly chain referred to in evidence and which is used to restrain the applicants is clearly a "mechanical restraint" as defined in the Act.

[27] These sections of the Act have not been declared unconstitutional and there is no attack on their constitutionality in these proceedings. It seems to me that it is safe to accept that these limitations are reasonable taking into

account the provisions of section 36 of the Constitution (No. 108 of 1996).

[28] The rights of a convicted person are necessarily curtailed. This is clearly recognized by the provisions of the Act. Corbett JA in a dissenting judgment delivered prior to the passing of the present Constitution, aptly expressed this necessary limitation as follows¹:

" It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties (using the word in its Hohfeldian sense) of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed. Of course, the inroads which incarceration necessarily make upon a prisoner's personal rights and liberties (for sake of brevity I shall henceforth speak merely of "rights") are very considerable. He no longer has freedom of movement and has no choice in the place of his imprisonment. His contact with the outside world is limited and regulated. He must submit to the discipline of prison life and to the rules and regulations which prescribe how he must conduct himself and how he is to be treated while in prison. Nevertheless, there is a substantial residuum of basic rights which he cannot be denied; and, if he is denied them, then he is entitled, in my view, to legal redress. I would emphasize the use of the words "basic" and "denied" in this connection because I do not wish to convey the impression that every alleged infraction of a prisoner's rights should be allowed to be a cause for legal action. If that were permitted, the position of the prison authorities could become intolerable and the proper administration of gaols exceedingly

¹ Goldberg and Others v Minister of Prisons and Others 1979 (1) SA 14 (A) p 39c-d

difficult. In terms of the regulations prisoners who have complaints about their treatment in gaol are given the opportunity to voice them and the regulations also prescribe how such complaints are to be dealt with (see reg 103 and also reg 104). This should be the remedy for complaints not amounting to a denial of basic rights."

[29] In the case of **Minister of Correctional Services and Others v Kwakwa and Another**² Navsa JA referred to this dictum with approval when he said:

" In the Conjwayo case (at 62C - D) Gubbay CJ referred with approval to the dissenting judgment of Corbett JA in *Goldberg and Others v Minister of Prisons and Others* 1979 (1) SA 14 (A) which was decided at a time when the Legislature was supreme and where the transgression of human rights was not susceptible to constitutional challenge. In the *Goldberg* case (at 39C - D) the following appears:

'It seems to me that fundamentally a convicted and sentenced prisoner retains all the basic rights and liberties . . . of an ordinary citizen except those taken away from him by law, expressly or by implication, or those necessarily inconsistent with the circumstances in which he, as a prisoner, is placed.'

This dictum has become known as the residuum principle and has been endorsed in subsequent decisions of this and other Courts."

[30] With regard to the provisions of section 31(2) of the Act referred to above, it seems to me that when a prisoner is brought before a court in some

² 2002 (4) SA 455 SCA at page 468, paragraph 25

form of mechanical restraint and neither the court nor the prisoner's counsel, or indeed the prisoner himself, object thereto, it must be accepted that the court has, for the purposes of this subsection, authorized the application of such mechanical restraint. This is clearly the position in the present matter in that the applicants have remained in mechanical restraints both in the form of leg restraints and the belly chains for the duration of the trial save, perhaps, whilst they were giving evidence in the trial within a trial, a matter to which I shall return later. The only question, which White J correctly felt that he was constrained not to deal with due to the potential for prejudice, was whether or not the applicants were entitled to an order that the belly chain restraints be removed whilst they give evidence. Having regard to the relevant provisions of the Act and the above-mentioned dicta, it is my view that this question must be answered by considering whether or not, in all the circumstances of this case, it may be said that such limitation is reasonable and in the interests of justice.

[31] In my view, the evidence in this matter is overwhelmingly in favour of the applicants remaining so restrained for the duration of the trial, including during the course of their testimony. My essential reasons for saying so are set out hereunder.

[32] As to the factual question as to whether or not the applicants were so constrained during the course of their evidence during the trial within a trial, I do not believe that it is necessary to decide this question. It is possible on the evidence of Ralls that he may have been mistaken in this regard. However, in my view this does not make a difference to the potential security risk involved.

[33] The fact that the two applicants are regarded as both dangerous and a high security risk is reflected in the presence of a large contingent of security personnel, both from Correctional Services and from SAPS, who have apparently been ever present during the course of the main trial and who were present during the course of this hearing. Not only are such security personnel ever present, but the security personnel involved are specialists who have been specifically imported from elsewhere in order to deal with the applicants, as they are regarded as the best in their field. The applicants are housed in what has been referred to as one of the most secure prisons on the continent, that being the CMax prison at Kokstad. All of these factors clearly support the contention that the Correctional Services personnel have determined that anything less for the applicants will almost certainly result in disastrous consequences for not only them, but for the court staff and any member of the public who may find him or herself in the vicinity of the courts. It is clear that the security staff attached to Correctional Services are possessed of the necessary expertise with regard to the handling of security matters of this nature and that when they reach such a determination, it should not be lightly disregarded. I was most impressed in this regard with Ralls as a witness. He struck me as being a person who was both fair but firm. He made concessions wherever they were necessary but was adamant that the applicants are persons who are both dangerous and a severe flight risk. This is again underscored by the fact that an object was found where the accused sit in court which could have been utilized for the purposes of releasing the restraints. Whilst Mr. Gabavana has argued that there is no evidence that the applicants themselves were responsible for this, the fact that they may well have been is sufficient to underscore the seriousness with

which the Correctional Services personnel regard the security of the applicants.

[34] It is also clear that the applicants themselves, as represented by Mr. Gabavana in these proceedings, have clearly accepted that such security is in fact necessary. At no stage since the commencement of this trial have they applied for any of the two sets of restraints, leg or arm, to be removed until it became necessary for them to testify in the main trial. Had they, for one moment, believed that their rights in this regard have been seriously violated, one would have expected similar applications at an earlier stage. On the contrary, and despite the provisions of section 31(2) of the Act, no such application has hitherto been launched.

[35] As regards the contention that both their clothing and the fact that their arms are to some extent restrained will prejudice them whilst giving evidence, it is my view that White J, being as he is a senior retired judge of this division, is acutely aware of his duties in this regard and has sufficient experience and training on the High Court bench to disabuse his mind of any potential prejudice. Furthermore, and once again, the fact that the applicants have worn such clothing throughout the trial without an apparent murmur up until this point, is, to my mind, evidence of their lack of belief that such potential prejudice would in fact eventuate.

[36] In this regard it is also apposite to again mention the fact that I have had the opportunity to observe both the applicants in the witness box when giving evidence. As mentioned earlier, after an initial objection by the first applicant to the fact that he was required to raise his right hand for the

purposes of being sworn in, they both relaxed in the witness box and used their arms and hands extensively to gesticulate and enforce their points. They were also given documents to look at and read and had no difficulty whatsoever in this regard. It must be remembered that the application was aimed at removing "handcuffs" and that it is not in fact handcuffs in the traditional sense that are the mechanical restraints involved. The belly chain type of restraint is far less restricting than traditional handcuffs and gives the applicants much more freedom of movement in this regard. In fact, had it not been so that White J has been alerted to the presence of such mechanical restraint, I doubt that, as the judge hearing their trial, he would even have been aware thereof.

[37] As regards the clothing, I have already alluded to the fact that, in my view, there is unlikely to be any prejudice in this regard. This is so particularly because of the fact that the clothing, or "prison garb", that the applicants are wearing is a toned down version of the prison garb normally worn by such prisoners and, once again, had attention not been drawn to the fact that this clothing has been provided by the prison, I would not have realized that this was so. However, of more importance is the fact that Ralls testified that such clothing has far more significance in dealing with the question of security. It was his evidence that this clothing is used for identification in the event of the applicants attempting to escape. In my view, this is a very compelling reason, amongst the various others, for not allowing the applicants to wear their own clothing during the course of the trial.

[38] As mentioned earlier, it was suggested during cross-examination and

in argument that, as an alternative to their having hand restraints in place whilst giving evidence, the security personnel should surround the witness box so as to secure the applicants whilst they are not so restrained. This very suggestion seems, in my view, to be to some extent self-defeating. One of the very purposes which the applicants have expressed for removing the hand restraints whilst giving evidence is to allow them freedom of expression and to prevent the court from gaining a negative view of their demeanor. I would have thought that the very fact of having a number of seriously armed personnel standing in a semicircle around the witness box would, if at all, have had that very same effect. In any event, as Ralls clearly stated in evidence, this amounts to a very clear security risk.

[39] Finally, I was not impressed with the applicants as witnesses. Despite Mr. Gabavana's attempts to argue that there is no proper evidence before this court that the applicants have charges pending against them for escaping, it seems to me to be most unlikely that the investigating officer would compile, in conjunction with his colleagues, a totally spurious and false document in this regard. The investigating officer testified that he had, in his possession at his offices, all the dockets relating to these charges. To disregard this would, in my view, not be in the interests of justice. In the face of such evidence, the applicants' denial simply cannot wash. There were a number of other aspects of their evidence which struck me as most improbable.

[40] It should also be recalled that the applicants have, in both notices of motion, sought a review of the decision by the Correctional Services officials that the applicants ought to be so restrained and that they are to

wear such clothing whilst testifying, and whilst in court. Whilst I am not sure that this is the correct cause of action, given the relevant provisions of the Act, it is my view that, in any event, no case has been made out for a review and setting aside of that decision. In my view, and because of the reasons set out above, it has not been shown that such decision was procedurally flawed or unfair, that it was not authorized by the empowering statute or that it was in bad faith or otherwise. It has also not been shown that it was not rationally connected to the purpose for which it was taken or otherwise as set out in section 6 of the Promotion of Administrative Justice Act (No.3 of 2000). It is also so that the applicants have, by the very nature of their applications, accepted that all formal procedures, such as formal hearings, before such a decision could be made, are not countenanced by the Act for obvious reasons of security.

[41] In all these circumstances I was of the view that the respondents had made out a very strong case for resisting the applications and I accordingly dismissed both applications with costs.

JUDGE OF THE HIGH COURT

HEARD ON : 22 NOVEMBER 2011

DELIVERED ON : 02 DECEMBER 2011

COUNSEL FOR APPLICANTS : Mr Gabavana

INSTRUCTED BY : M. A. Mahlutshana Attorneys

COUNSEL FOR RESPONDENTS : Mr Hinana

INSTRUCTED BY : State Attorney