



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

CASE NO: 2023-011042

DELETE WHICHEVER IS NOT APPLICABLE

(1) REPORTABLE: YES

(2) OF INTEREST TO OTHER JUDGES: YES

26/02/2026

DATE

SIGNATURE

In the matter between:

**NATIONAL COUNCIL FOR CORRECTIONAL
SERVICE**

1st Applicant

MINISTER OF CORRECTIONAL SERVICE

2nd Applicant

**CORRECTIONAL SUPERVISION AND PAROLE
SERVICE**

3rd Applicant

And

OUPA CHIPANE PHAAHLA

Respondet

JUDGMENT IN RESPECT OF THE LEAVE TO APPEAL

TD SENEKE, AJ

Introduction

1. On 4 September 2025, I made an order in favour of the Respondent for him to be released on parole by no later than 3 October 2025.
2. On 2 October 2025, the Applicants (State Parties) filed a notice of application for leave to appeal.
3. On 3 October 2025, I wrote a detailed judgment which formed the basis of the reasons for my order of 4 September 2025.
4. On 24 October 2025, the State Parties filed a notice of supplementary application for leave to appeal in light of the judgment and order that I made on 3 October 2025.

The test for leave to appeal

5. The provisions of section 17(1) of the Superior Courts Act 10 of 2013 provides for the circumstances in which a judge may grant leave to appeal.
6. Section 17 of the Superior Courts Act 10 of 2013 provides that leave to appeal may be granted if the Court is of the opinion, amongst others, that the appeal would have a reasonable prospect of success or the decision on appeal would still have practical effect.
7. In *Zuma v Democratic Alliance*,¹ the Court said that an application for leave to appeal must convince the Court that there is a reasonable prospect of success on appeal and that the success of such an application depends on, among others, the prospect of eventual success of the appeal itself. The Court hearing

¹ [2021] ZASCA 39 of 13 April 2021

the application for leave to appeal must itself be of the opinion that another Court will differ from its judgment.²

8. In *Ramakatsa v African National Congress*,³ the Court said that the prospects of success must not be remote and that “there must exist a reasonable chance of succeeding”.
9. The Superior Courts Act has raised the bar for granting leave to appeal. In *The Mont Chevaux Trust (IT 2012/28) v Tina Goosen and Others*,⁴ Bertelsmann J, held as follows: “It is clear that the threshold for granting leave to appeal against a judgment of a High Court has been raised in the new Act. The former test whether leave to appeal should be granted was a reasonable prospect that another Court might come to a different conclusion, see *Van Heerden v Cronwright and Others*, 1985 (2) SA 342 (T)⁵ at 343 H. The use of the word ‘would’ in the new statute indicates a measure of certainty that another court will differ from the court whose judgment is sought to be appealed against.”

The grounds for application for leave to appeal

10. The grounds for application for leave to appeal are:

“1. *In paragraph 67 of the judgment, the learned judge erred in finding that the decision of the Minister was primarily based on the single report of Sukhdeo dated 31 January 2024 and to the limited extent the report of Buthelezi dated 23 July 2024 and further that the Minister dealt with the report of Sukhdeo in a piecemeal and nitpicking manner to suit his predetermined decision.*

² *The Mont Chevaux Trust v Tina Goosen 18 Others* 2014 JDR 2325 (LCC).

³ [2021] ZASCA 31 of 31 March 2021

⁴ 2014 JDR 2335 (LCC).

⁵ 2014 JDR 2325 (LCC) at para 6.

1.1. *It is submitted by the Applicants that the Court a quo committed gross irregularity by finding as aforesaid as these were not the only reports/factors which the Minister considered when he made the impugned decision. The misdirection of the Court a quo in this regard, is further augmented by the fact that his judgment is littered with contradictions i.e in paragraph 67, the Court a quo found that the Minister considered the report of Buthelezi, but on paragraphs 99-101 of the very same judgment, the Court says the NCCS (and the Minister) did not consider the report of Buthelezi. It is therefore difficult to fathom under what circumstances the Court a quo based its finding that the Minister had preconceived the determination of the Respondent's parole application. It is submitted that that the Court a quo in this regard committed an irregularity that is prone to be set aside by another Court.*

2. *The Honourable Court in paragraph 77 inter-alia found that:*

2.1. *The Minister, by denying parole to the Respondent, treated him unfairly and unjustly because two of his accomplices (Kwaka and Mokwape) were released on parole.*

3. *The Honourable Court in paragraph 93 of the judgment inter-alia found that:*

3.1. *The Phakathi report was produced in 2004, a period of more than 20 years and that this report should have been used to consider the Applicant's parole in 2017 when the Applicant became eligible for placement on parole.*

4. *The Honourable Court in paragraph 93 inter-alia found that:*

4.1. *The NCCS failed to consider the report of Buthelezi in its recommendation of 23 December 2024.*

5. *The Honourable Court in paragraph 109 inter-alia found that:*

6.2. *The Minister has not provided any tangible and substantive reasons for this malicious, outlandish, illogical and unsound recommendation. Frankly, this borders on the Minister being spiteful. Further that the Minister was clearly acting prejudicially and unconstitutionally in this instance.*

7. *The learned judge in paragraph 115 of its judgment erred in finding that the Respondent has been attending the programmes recommended by the Minister in the impugned decision since 2004. The finding of the Court a quo in this regard is not supported by the evidence at the disposal of the Court as the objective evidence suggested that the Respondent could not have attended the recommended 'programmes' since 2004 in light of the fact that the Respondent only qualified for parole in 2017.*

7.2. *It is submitted on the afore-going that there are reasonable prospects that another Court will find that the Respondent could not have attended the recommended 'programmes' since 2004 in light of the fact that the Respondent only qualified for parole in 2017 and the impugned decision was made in 2025. It is clear from a cursory look at the reasoning of the Court a quo above, that the Court once again confused the date of sentence of the Respondent with the date of eligibility for the Respondent's*

parole as the Respondent was sentenced in 2004, and became eligible for parole in 2017.

8. *The learned judge erred by placing reliance in paragraph 115 of its judgment on the judgment of Walus v Minister of Justice and Correctional Services 2023 2 BCLR 224 (CC) and thus reaching the conclusion that the Minister had no intention of placing the Respondent on parole.*

8.2. *In this regard, the Applicants submit that the facts in casu are quite distinguishable from the Walus case as mentioned above because the Respondent exhibited a 'moderate to low' risk of recidivism instead of a low risk of recidivism. It is submitted that there are reasonable prospects that another Court will find that the facts and circumstances in this matter are distinguishable from the Walus matter.*

8.1. *In casu, it must be mentioned that the factors the Minister took into account in are distinguishable from those considered by the Constitutional Court in the Walus matter. This is because, in the present matter, the constant factors relate to possible future events which may possibly occur after the Respondent is released on parole. It is thus submitted that the Court a quo committed gross irregularity in failing to properly assess the evidence at its disposal where a proper assessment thereof would have made the Court properly advised by the evidence to reach a different conclusion.*

9. *The learned judge erred in finding in paragraph 118 of his judgment that the decision of the Minister was irrational. The faulty reasoning of the Court a quo in this regard is exhibited by the failure of the Court to consider objective evidence at its disposal instead to reach conclusions that are not supported by the facts at the disposal of the Court.*

9.1. *In this regard the Applicants submit that there are reasonable prospects that another Court will find that there is connection between the exercise of the Minister's power and purpose of the enacting provision or the information which was before the Minister.*

10. *The Learned Judge erred in paragraph 112 of the judgment in finding that remitting the matter back to the Minister would not guarantee the offender placement on parole. In this regard, the Applicants submit that there are reasonable prospects of success in another Court finding that:*

10.1. *The Court a quo, usurped a power it did not have by ordering the Applicants to release the Respondent without affording the Minister the right to impose such terms and condition as he may deem appropriate. The power to release the Respondent is expressly conferred upon the Applicants by the Correctional Services Act 11 of 1998 Act (and/or any other relevant statute/regulation/policy).*

10.2. *This order served to defeat the provisions of the above statutory enactment.*

11. The learned judge erred in granting the application with costs on party and party including the costs of Counsel on scale C. There are reasonable prospects that another Court will find that no order as to costs ought to have been awarded.”

11. I intend to deal with the grounds as follows:

First Ground

12. During the hearing of the application for leave to appeal, I specifically engaged Counsel for the State Parties on reports of Sukhdeo and Buthelezi.

13. There was no doubt that the Minister primarily relied on the report of Sukhdeo and to a very limited extent on the report of Buthelezi. The reliance on the report of Buthelezi was taken out of context without taking into account the totality of her findings.

14. Her findings support the placement of the Respondent on parole. The Minister simply nitpicked what suited his narrative and simply disregarded the totality of Buthelezi's findings.

15. In paragraphs 99 to 101 of my judgment, I focused on the recommendation of the NCCS and I made a valid point that the NCCS ignored the report of Phakathi. I made a clerical error as to the date of that report. The Phakathi report is dated 4 December 2019. I am indebted to Counsel for the State Parties for bringing the issue of the incorrect date to my attention.

16. When the NCCS considered the recommendations of the parole board to place the Respondent on parole in 2024, it clearly did not consider the reports of Phakathi and Buthelezi dated 4 December 2019 and 23 July 2024, respectively.

17. My criticism with regard to the failure to consider the two reports is solely directed to the NCCS. The attempt to lump the role of the Minister and NCCS has no basis. The findings in paragraphs 67 and 99 to 100 are well supported by the reasoning and findings contained in the judgment.
18. There is no merit to this ground.

Second Ground

19. I was justified in making the findings in light of the five reports which find favourably for the Respondent. There were no adverse findings or records with regard to his incarceration as a convicted inmate since 2004.
20. After engaging Counsel for the State Parties, it become apparent that the Minister heavily relied on the characterisation of the Respondent as having a risk profile of moderate to low. This was contained in the last sentence of Buthelezi's report and was quoted out of context. In fact, Buthelezi used the risk assessment of moderate to low in support of the placement of the Respondent on parole. The full paragraph reads:

"As part of his release plan Mr Phaahla will be staying with his sister in Atteridgeville. In terms of work plan, Mr Phaahla reported that he will utilise the skill acquired during his incarceration of motor mechanic. Based on the assessment and integration of the information listed above, Mr Phaahla does not display any major unresolved criminogenic needs, and his risk of reoffending falls with the moderate to low range for violence offences."
21. There is no merit to this ground.

Third Ground

22. I have indicated that I have made a clerical error in using 2004 as the date of the Phakathi report. The correct date is 4 December 2019. Nothing turns on the fact that I made that clerical error. The reasoning and findings have not been affected by that clerical error.
23. There is no merit to this ground.

Fourth Ground

24. Barring the clerical error, the reasoning and findings are correct. Nothing turns on the fact that I made that clerical error.
25. There is no merit to this ground.

Fifth Ground

26. Paragraph 109 must be read with paragraph 108 of the judgment. In circumstances where the Respondent has not used and abused substances since 1984 or 1985, it is irrational for the Minister to recommend that he must attend programmes to deal with his substance abuse problem. Paragraph 109 buttresses and emphasises the malice, outlandish, illogical and unsound recommendation of the Minister.
27. There is no merit to this ground.

Seventh Ground

28. Baring the clerical error with respect to the date of Phakathi report, nothing turns on this point. The reasons and findings of the judgment have not been seriously challenged.

29. There is no merit to this ground.

Eighth Ground

30. The emphasis of this ground is the “moderate to low” risk of recidivism instead of low risk. This is based on the wrong characterisation of Buthelezi’s report. She used this risk assessment as feather on the cap of the Respondent to emphasise that he should be reconsidered for parole. The Minister has in a cynical way attempted to use Buthelezi’s findings to achieve the outcome that was not intended by that report. It is one of the instances where the glaring attitude of the Minister to deny the Respondent parole at all costs is demonstrated.
31. The judgment has shown instances where the NCCS refused to recommend parole for Respondent without reasons (2022) and where the NCCS recommended that the Respondent must attend further and additional programmes while stating that completion of these programmes would not guarantee that he would be eligible for parole (2024).
32. In all these instances, the NCCS and the Minister were pre-determining the issue of placing the Respondent on parole.
33. The manner in which the Minister ignored the reports of Bopape, Phakathi, Govender and opportunistically nitpicked part of the sentence in Buthelezi’s report that recommended parole for the Respondent is telling.
34. In order to motivate that there is a rational basis to find that the decision of the Minister to put more emphasis on the risk factor of moderate to low to deny the Respondent parole, Counsel for the State Parties has referred me to the case of *Barnard v Minister of Justice, Constitutional Development and*

Correctional Services and Another.⁶ He referred me to this case to support the State Parties' contention that the Court in that matter had determined that a risk factor of medium to low is a proper basis to deny parole.

35. This is not correct. In the *Barnard* case, the Court stated as follows, in paragraph 36:

"[36] The Minister averred that, in addition to these positive factors, he was required to take, and had taken, into account the following negative factors, mitigating against the granting of parole:

...

[36.3] Mr Barnard's noncompliance with his previous parole conditions pursuant to him having been placed on parole on 10 December 1987 (in respect of two previous convictions for murder and other charges), and his murder of Dr Webster while on parole; and

[36.4] Mr Barnard's lack of scholastic, academic or technical achievements while in prison."

36. In paragraph 37

"[37] As regards the sentencing court's comments, the Minister relied on the following (as roughly translated by me from the original Afrikaans):

....

[37.5] Mr Barnard's previous convictions were a particularly notable aggravating factor. He had two previous convictions for murder,

⁶ 2016 (1) SACR 179 (GP)

one of attempted murder, and three for theft, for which he had been sentenced on 10 December 1984;

[37.6] Mr Barnard was released on parole three years later, on 10 December 1987. He had murdered Dr Webster on 1 May 1989, while still on parole; and

[37.7] Mr Barnard was clearly a danger to the community, and it was the court's duty to ensure that the community was protected against any further danger from him."

37. In paragraph 91:

"[91] The psychologist also assessed Mr Barnard's risk for committing violent crimes in the future, were he to be released on parole. He indicated that the risk of Mr Barnard committing politically motivated violent crimes in the future was low. However, he also noted that a complicating factor in Mr Barnard's case is that he had committed other crimes, apart from those committed on behalf of the CCB. The psychologist concluded in this regard: 'The high versatility of his crimes may increase actuarial risk to at least medium risk.' He also noted that it was uncertain to what extent the greed component in Mr Barnard's propensity for criminal conduct had been contained during his incarceration. Furthermore, Mr Barnard's propensity for violence was 'very difficult to pin down'."

38. In paragraph 93:

“[93] Although it was argued before me that the sentencing court was incorrect in finding that Mr Barnard had committed the murder of Dr Webster while he was on parole for his first offences, this submission did not withstand closer scrutiny. This, too, is a factor that the Minister expressly indicates that he took into account in refusing to approve Mr Barnard’s release on parole.”

39. In paragraph 94:

“[94] In light of all of this it does not seem to me that there is any merit in Mr Barnard’s contention that there is overwhelming evidence in support of his being released on parole, and that the Minister acted unreasonably in denying this to him. There are certainly factors in favour of a positive decision, but they are not overwhelming. Mr Barnard is an offender with a seasoned history of violent crime of the most serious kind. He has previously committed murder while on parole, albeit in particular circumstances. He committed a second murder thereafter. In this context, the equilibrium reached by the Minister between the positive and negative factors pertaining to Mr Barnard’s case does not strike me as being unreasonable.”

40. In paragraph 96:

“[96] Mr Barnard contends that it was unreasonable for the Minister to refuse him parole based on negative factors he can do nothing to change. It is so that Mr Barnard cannot change the facts of the past. However, this does not make it unreasonable for the Minister to have taken them into account. On the contrary, the parole policy

and parole manual expressly list his crime history, sentencing remarks by the convicting court, and ambient features of his crimes as being factors that must be considered. Moreover, as I have noted, the psychological assessment raises areas of uncertainty regarding Mr Barnard's risk of reoffending."

41. The case of *Banard* is distinguishable from the case in *casu*.
42. Paragraph 91 deals with the psychologist's assessment of Mr Barnard. The psychologist concluded "the high versatility of his crimes may increase actuarial risk to at least medium risk". The psychologist also noted that it was uncertain to what extent the greed component in Mr Barnard's propensity for criminal conduct had been contained during his incarceration. Furthermore, Mr Barnard's propensity for violence was "very difficult to pin down".
43. In paragraph 93, the Court in *Barnard* said that the Minister has considered that Barnard had committed the murder of Dr Webster (an academic at Wits University and a prominent social justice activist) while he was on parole for his first offences.
44. In paragraph 94, the Court clearly indicated that there are certain factors in favour of a positive decision, but they are not overwhelming. The Court stated that Mr Barnard is an offender with a seasoned history of violent crime of the most serious kind.
45. To counter the reliance on *Barnard* by the State Parties, Counsel for the Respondent referred me to the case of *Van Der Heever v Minister of Correctional Services and Another*.⁷ Paragraph 12 states that:

⁷ (14495/2017) [2018] ZAGPPHC 867 (8 November 2018)

“[12] Dr Swanepoel’s risk assessment described the applicant as a medium to low risk to society. Dr Swanepoel concluded that the applicant no longer possesses a danger to the public and recommended the applicant’s release on parole under strict conditions which should include continued psychotherapy outside prison.”

46. Paragraph 43 states that:

“[43] The respondents’ submissions are not supported by the facts when they contend that, despite the positive facts listed by the relevant experts, the Minister weighed up these factors against the negative factors and concluded that the applicant is not suitable for parole. The so called negative factors are summed up by one consideration and that is the risk factor which clouded the respondents’ consideration. The respondents find support in their reasoning by alleging that they possess the resources to provide psychotherapy and to monitor the applicant whilst being incarcerated. In my view, the respondents have failed to show that their decision was rational on the facts before court..”

47. I concur with the approach in van der Heever. Accordingly, there is no merit to this ground.

Ninth Ground

48. There is no merit to this ground. The judgment has dealt with the reasons and findings that the Minister’s decision is irrational in paragraphs 66 to 166.

Tenth Ground

49. There is no merit to this ground. The judgment dealt with exceptional circumstances in paragraphs 124 to 129. The exceptional circumstances form the basis for the finding that the matter should not be remitted to the Minister.

50. In paragraph 45 of *van der Heever* case, the Court stated that:

“[45] The applicant submitted that if the court does find that the respondents’ decision stands to be reviewed and set aside, the court should rather make an order substituting the respondents’ decision, instead of referring the matter back to the respondents, because:

45.1 the end result is a foregone conclusion;

45.2 it will be a waste of time to order the Minister to reconsider the matter, which is obvious;

45.3 much time has unjustifiably and unreasonably been lost in the process which has prejudiced the applicant, and a further delay that a referral back to the Minister would cause;

45.4 the actions of the Minister show bias and/or incompetence with reference to consideration of the relevant facts and expert records;

45.5 the court is in as good a position as the Minister to make the decision;

45.6 in the light of the fact that he has been incarcerated for a long period of time, time is of the essence in this matter.”

51. In paragraph 47, the Court stated that:

“[47] The court is empowered, in terms of section 8(1)(c)(ii)(aa) of PAJA, to substitute its decision for that of the administrator in exceptional cases. In my view and given the facts, I am of the view that this case warrants an order of court to substitute the decision of the respondents.”

52. In *Walus*, the Constitutional Court stated as follows:

“[86] After the advent of democracy, this continued to be the position. It is important to emphasise that courts only substitute their decisions for those of government functionaries in exceptional cases. It is not something the courts do lightly nor should they. Section 8 of PAJA deals with remedies in judicial review proceedings. In so far as it may be relevant, section 8 reads:

“8(1) The court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders—

(a) directing the administrator—

(i) to give reasons; or

(ii) to act in the manner the court or tribunal requires;

(b) prohibiting the administrator from acting in a particular manner;

(c) setting aside the administrative action and—

(i) *remitting the matter for reconsideration by the administrator, with or without directions; or*

(ii) *in exceptional cases—*

(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or

(bb) directing the administrator or any other party to the proceedings to pay compensation.”

(Emphasis added.)

[87] In Trencon this Court dealt extensively with the circumstances in which it would be justified for a court not to remit a matter to the relevant functionary but, instead, to itself make the decision that the law vests in the functionary. It is not necessary for purposes of this judgment to deal with all those exceptions. It should suffice to refer only to one or two. Khampepe J, writing for a unanimous Court in Trencon, said:

“Pursuant to administrative review under section 6 of PAJA and once administrative action is set aside, section 8(1) affords courts a wide discretion to grant ‘any order that is just and equitable’. In exceptional circumstances, section 8(1)(c)(ii)(aa) affords a court the discretion to make a substitution order.

Section 8(1)(c)(ii)(aa) must be read in the context of section 8(1). Simply put, an exceptional circumstances enquiry must take place in the context of what is just and equitable in the

circumstances. In effect, even where there are exceptional circumstances, a court must be satisfied that it would be just and equitable to grant an order of substitution.”

[88] *This Court also said in that case:*

“In Livestock, the Court percipiently held that—

‘the Court has a discretion, to be exercised judicially upon a consideration of the facts of each case, and . . . although the matter will be sent back if there is no reason for not doing so, in essence it is a question of fairness to both sides.’” (Footnotes omitted.)

[89] *One of the exceptions recognised in Trencon is where the decision is a foregone conclusion. This Court went on to say:*

“To my mind, given the doctrine of separation of powers, in conducting this enquiry there are certain factors that should inevitably hold greater weight. The first is whether a court is in as good a position as the administrator to make the decision. The second is whether the decision of an administrator is a foregone conclusion. These two factors must be considered cumulatively. Thereafter, a court should still consider other relevant factors. These may include delay, bias or the incompetence of an administrator. The ultimate consideration is whether a substitution order is just and equitable. This will involve a consideration of fairness to all implicated parties. It is prudent to emphasise that the exceptional circumstances enquiry requires an examination of

each matter on a case-by-case basis that accounts for all relevant facts and circumstances.

A court will not be in as good a position as the administrator where the application of the administrator's expertise is still required and a court does not have all the pertinent information before it. This would depend on the facts of each case. Generally, a court ought to evaluate the stage at which the administrator's process was situated when the impugned administrative action was taken. For example, the further along in the process, the greater the likelihood of the administrator having already exercised its specialised knowledge. In these circumstances, a court may very well be in the same position as the administrator to make a decision. In other instances, some matters may concern decisions that are judicial in nature; in those instances – if the court has all the relevant information before it – it may very well be in as good a position as the administrator to make the decision.

Once a court has established that it is in as good a position as the administrator, it is competent to enquire into whether the decision of the administrator is a foregone conclusion. A foregone conclusion exists where there is only one proper outcome of the exercise of an administrator's discretion and 'it would merely be a waste of time to order the [administrator] to reconsider the matter'. Indubitably, where the administrator has not adequately applied its unique expertise and experience to the matter, it may be difficult for a court to find that an administrator would have reached a particular decision and that the decision is a foregone

conclusion. However, in instances where the decision of an administrator is not polycentric and is guided by particular rules or by legislation, it may still be possible for a court to conclude that the decision is a foregone conclusion.” (Emphasis added.)

General observations during interaction with Counsel

53. During the hearing of this matter, Counsel for the State Parties attempted to raise a further ground for leave to appeal from the bar.
54. Counsel referred me to paragraph 60 of the judgment. Counsel indicated that the provision of section 78(1) to (4) as quoted therein is incorrect.
55. According to Counsel for the State Parties, the incorrect quotation renders the judgment appealable. Counsel moved from the premise that the reasoning and findings in the judgment were based on section 78(1) to (4).
56. In the first place, it is unfair and prejudicial for Counsel to raise a ground for leave to appeal from the bar without alerting the Court and the Respondent's legal representatives of his intention to do so. This constitutes litigation by ambush and it is frowned upon by the Courts.
57. Secondly, I did not base the judgment on section 78(1) to (4). In paragraph 124, the judgment states that the Court is empowered in terms of PAJA to make an order not to remit this matter to the Minister. This accord with the *van der Heever* and *Walus* judgments.
58. The incorrectness or otherwise of section 78(1) to (4) does not in anyway assist the State Parties' case.
59. Counsel for the State Parties conceded that the additional grounds for the decision of the Minister which were contained in his answering affidavit were

not backed by any expert evidence. The Minister alleged that the Respondent had a tendency to act aggressively and that he has not fully dealt with his substance abuse issues.

60. I debated these issues with Counsel for the State Parties as these additional grounds for the decision of the Minister were repeated in the heads of argument under paragraphs 38 and 65.

61. These additional grounds to support the decision of the Minister were not part of the Minister's record of decision. It is a mischievous, unfair and prejudicial for the Minister to add to the grounds of his decisions in the manner that he did through the answering affidavit.

62. It is even more troubling for the Minister to throw in grounds for his decision which are baseless and not supported by evidence.

Conclusion

63. I would like to quote paragraph 37 of the *Walus* judgment:

“[37] In considering the applicant’s appeal, it is appropriate to refer back to what was said in the first few paragraphs of this judgment. That is that section 36 of the CSA tells us that the objective of the implementation of a sentence of imprisonment is to enable the sentenced prisoner to “lead a socially responsible crime-free life in the future”. On the face of it, this seems to suggest that, where, on all the evidence, the risk of a prisoner re-offending, if he or she were released on parole, is low, the relevant authorities should seriously consider releasing such prisoner on parole because the objective

of the implementation of a sentence of imprisonment would have been achieved.”

64. Accordingly, the application for leave to appeal is dismissed with costs.

In the result, I make the following order:

1. The application for leave to appeal is dismissed.
2. The Applicants are ordered to pay the costs including the cost of Counsel on scale C.



TD SENEKE AJ

Acting Judge of the High Court

Gauteng Division, Pretoria

Appearances

For Applicants : Advocate M.W Dlamini
Advocate R.A Ramuhala

Instructed by : State Attorney, Pretoria

For Respondent : Advocate D.B Melaphi

Instructed by : M.E Makgopa Attorneys