



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

(1) REPORTABLE: NO	
(2) OF INTEREST TO OTHER JUDGES: NO	
(3) REVISED: YES	
<u>17/3/2026</u>	
DATE	SIGNATURE

CASE NO.: 064308/2023

In the matter between:-

JACOBUS MICHAEL PRINSLOO

Applicant

v

THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT Respondent

Heard on: 23 February 2026

Delivered: 17 March 2026 - This judgment was handed down electronically by circulation to the parties' representatives by email, by being uploaded to the *CaseLines* system of the GD and by release to SAFLII. The date and time for hand-down is deemed to be 14:00 on 17 March 2026.

ORDER

It is ordered:-

1. The matter is postponed sine dies.
2. The respondent is ordered to provide the reasons for not granting the petition within a period of 20 days of the granting of this order.
3. In the event that the respondent fails to furnish its reasons, then the applicant is entitled to file his supplementary papers and duly set the matter down for hearing.
4. The respondent is further directed to advance reasons as to why it should not be liable for the costs of the review application, by way of a supplementary affidavit within 30 days of the granting of the order.
5. The applicant is given an opportunity to respond within 30 days of receipt of the respondent's response.
6. The issue of costs are reserved.

JUDGMENT

KOOVERJIE J

- [1] This is a review against the decision of the Minister of Justice (the respondent) in refusing to grant the petition in terms of Section 327 of the Criminal Procedure Act 51 of 1977 ("the Act"). Prior to launching this petition, the applicant Mr Prinsloo had been unsuccessful in his appeals to both the Supreme Court of Appeal and the Constitutional Court. He has thus exhausted all avenues to plead his case.
- [2] The applicant was charged for the murder of his ex-wife, Odelia Prinsloo. The evidence before the court *a quo* as well as the Supreme Court of Appeal, at the time, was that Mr. Prinsloo colluded with the gardener Mr Moloi, to have his ex-wife (the deceased) murdered. Mr. Moloi pleaded guilty for the murder of the deceased. Mr. Moloi was sentenced to 18 months' imprisonment. Mr. Prinsloo was also convicted for the murder of the deceased and was sentenced a term of imprisonment of 25 years.
- [3] The Minister, in this review, contended that it had properly dealt with the petition and found no justification in granting the petition in Mr Prinsloo's favour.

NEW EVIDENCE ON PETITION

- [4] The new evidence that was presented on petition were the affidavits of Mr. Moloi and testimonies of other individuals who supported Mr Moloi's version, which in effect was that Mr. Prinsloo was wrongly implicated in the murder. Mr Moloi's version now is that he murdered the deceased out of revenge and he was coerced

by the investigating officer to implicate Mr. Prinsloo. The said new evidence presented to the Minister for consideration were the following:

- 4.1 Mr. Moloi (affidavit)
- 4.2 Ellie Shongwe (undated statement);
- 4.3 Sello Leslie Mabalela (statement);
- 4.4 Steven Donald Makura (affidavit);
- 4.5 Machandukwa Wilson Mukhwana (affidavit).

THE GROUNDS FOR REVIEW

[5] The review is premised on the following grounds namely that:

- 5.1 no proper consideration was given by the Minister to the new evidence.
- 5.2 The Minister failed to explain the procedure followed in determining whether the evidence contained in the affidavits and statements were credible or not. There is no explanation as to how the evidence was evaluated. The mandatory procedure prescribed by the provision was not complied with. Hence the decision was procedurally unfair, materially influenced by an error of law and that administrative action taken by the respondent was arbitrary and capricious.

5.3 It was further argued that the Minister herself (Minister Simelane), did not have regard to the evidence and neither had she applied her mind to the petition. It was alleged that instead it was the officials who considered the petition.

5.4 Mr Prinsloo pointed out that Mr. Moloi's perjured himself due to his conflicting testimonies. In his initial evidence before the trial court, he testified that Mr Prinsloo contracted him to kill the deceased. He now alleges that he was forced to implicate Mr. Prinsloo. It was contended that the Minister failed to appreciate that Mr Prinsloo may have been wrongly convicted, not because of a mistake by the legal process, but due to the perjured evidence of Mr. Moloi.

THE LAW

[6] Section 327 of the Criminal Procedure Act makes provision for the Minister, on petition, to consider further evidence which, if true, might reasonably affect the conviction and may direct that the petition and the relevant affidavit be referred to the court in which the conviction occurred.

Section 327(1) stipulates:

“(1) If any person convicted of any offence in any court has in respect of the conviction exhausted all the recognized legal procedures pertaining to appeal or review, or if such procedures are no longer available to him or her, and such person or his or her legal representative addresses the Minister by way of petition, supported by relevant affidavit, stating that further

evidence has since become available which materially affects his or her conviction, the Minister may, if he or she considers that such further evidence, if true, might reasonably affect the conviction, direct that the petition and the relevant affidavits be referred to the court in which the conviction occurred."

- [7] Once the Minister refers the matter to court, Section 327(2) makes provision for the court to examine the evidence:

"(2) The court shall receive the said affidavits as evidence and may examine and permit the examination of any witness in connection therewith, including any witness on behalf of the State, and to this end the provisions of this Act relating to witnesses shall apply as if the matter before the court were a criminal trial in that court."

- [8] Section 327(4) allows the court that assesses the new evidence to advise the President of its finding and reads:

"(4) (a) The court shall assess the value of the further evidence and advise the President whether, and to what extent, such evidence affects the conviction in question.

(b) The court shall not, as part of the proceedings of the court, announce its finding as to the further evidence or the effect thereof on the conviction in question."

- [9] Section 327(5) stipulates that the matter should be heard by the court that convicted the accused at the time. It reads:

“(5) The court shall be constituted as it was when the conviction occurred or, if it cannot be so constituted, the judge president or, as the case may be, the senior regional magistrate or magistrate of the court in question, shall direct how the court shall be constituted.”

- [10] Section 327(6) makes provision for the State President, upon the consideration of the finding or advice of the court under subsection (4)-

- (i) direct that the conviction in question be expunged from all official records by way of endorsement on such records, and the effect of such a direction and endorsement shall be that the person concerned be given a free pardon as if the conviction in question had never occurred; or
- (ii) substitute for the conviction in question a conviction of lesser gravity and substitute for the punishment imposed for such conviction any other punishment provided by law.

THE CONSIDERATION OF THE PETITION

- [11] The applicant is of the view that due to issues raised on the competence of the affidavits, it was highly probable that they were not considered. The Minister's office raised issue with the affidavits. It pointed out certain irregularities, with the affidavits *inter alia* that Mr Moloji's affidavit was not properly sworn and attested to by the

commissioner of oaths, in particular, that he failed to initial each page of his affidavit. The applicant, however, in argument, and with reference to authorities argued that these requirements are directory and non-compliance would not invalidate the affidavits. All that is required is substantial compliance with the formalities in a way as to give effect to the purpose of obtaining the deponent's signature to the affidavit.

[12] Mr Prinsloo further took issue with the extensive delay from the Minister's office. He filed the petition in February 2023 and the Minister only provided its response on 30 October 2024. Despite following up with the Minister's office he received no favorable response. The applicant eventually received a response on 24 January 2024 where one of the officials Ms Nieuwoudt advised him that the matter was being dealt with and he would be informed when the Minister considers the petition. By March 2024 the Minister had still not considered the matter. Another official, Mr Rolekwa, advised him that the submissions to the Minister were finalized and the memorandum was routed to the Minister and various senior officials. The applicant waited in anticipation from May to October 2024. In this time the responses he received were to the effect that the Minister had still not attended to his petition.

[13] Since no decision was forthcoming, Mr Prinsloo instituted an urgent application to compel the Minister to attend to his case. The urgent application was instituted on 15 October 2024. The Minister opposed the matter and requested two extensions to file its answering affidavit. Eventually on 30 October 2024, the applicant was informed by way of a letter from the Minister that there were no justifiable grounds to direct the petition to the court to consider the further evidence.

THE MINISTER'S DECISION

[14] The nub of the Minister's response was:

"Considering the petition and the facts of this case, I am of the view that the issues in this case have been thoroughly considered by three superior courts. The judgment in the High Court is well written and considered all aspects of the case which were meticulously dealt with by Judge Mavundla and sound legal principles were applied when considering all evidence. The Supreme Court of Appeal could not find any fault with the Court's assessment of the evidence and Mr. Prinsloo's application for leave to appeal to the Constitutional Court was also dismissed.

Considering this case I am not convinced that the Judgment of the three superior courts ought to be interfered with. Furthermore, the evidence now submitted does not in any way materially impact on Mr. Prinsloo's conviction.

Having fully considered your petition and having applied my mind, I do not find any justifiable grounds to direct that the petition be referred to the court in which the conviction occurred in terms of Section 327(1) of the Criminal Procedure Act."

ANALYSIS

[15] It must be appreciated that the respective court's findings were based on the evidence that was before them at the time. Clearly, they did not have regard to the further evidence that was now placed before the Minister on petition.

[16] Notably the only response regarding the new evidence was, in my view, in the form of a conclusion that “furthermore, **the evidence now submitted does not in any way materially impact on Mr Prinsloo’s conviction**”.

[17] This response caused Mr Prinsloo to conclude that the Minister’s decision was arbitrary, capricious, and procedurally unfair. He took specific issue with the fact that the Minister failed to explain how the evidence was evaluated and what influenced the Minister to refuse the petition.

[18] It is settled law that mere conclusions are inadequate. Mr Prinsloo was entitled to know why the further evidence was rejected. It is accepted that although reasons for a decision need not be specified in detail, they must at least be intelligible and informative. A decision maker is required to explain his/her decision in a manner that enables a person who is the bearer of an adverse outcome, to at least understand why it was not in his favour. Such an explanation would allow him to assess if the decision was based on the correct factual premise and whether there was an error of law.

[19] Our authorities have endorsed the following principles, namely:

19.1 By merely setting out the decision makers’ conclusion will not suffice. The decision maker is required to set out his understanding of the relevant law,

the findings of fact on which the conclusions are based and the reasoning process which led to them.¹

- 19.2 The right to an informative explanation constitutes a crucial component of procedural fairness and rational justice. The reasons gives one something to work with particularly in deciding whether the decision maker has taken irrelevant considerations into account or made an error of law. An explanation would have also safeguarded against arbitrariness and a mechanism for accountability.² In the **Phambili Fisheries** matter the Supreme Court of Appeal expressed at paragraph 40:

“The decision maker should set out his understanding of the relevant law, any findings of fact on which his conclusion depends...and the reasoning process which led him to those conclusions. He should do so in a clear and unambiguous language, not in vague generalities or the formal language of legislation....”

- 19.3 The Constitutional Court in **Gavric**³ endorsed the principle set out in Phambili. It expressed in paragraph 69:

“The Supreme Court of Appeal in Phambili explained the value of giving reason as enabling an aggravated person to understand why the decision went against her and decide whether or not to challenge the decision. It is

¹ Minister of Environmental Affairs and Tourism and others v Phambili Fisheries (Pty) Ltd: Minister of Environmental Affairs and Tourism v Bato Star Fishing Pty Ltd 2004 (6) SA 407 SCA at paragraph 40. See also South African Police Service v Solidarity obo Barnard (POPCRU as amicus curiae) 2015 6 SA 123 CC.

² C. Hoexter and Penfold, Administrative Law in South Africa, third edition, page 627

³ Gavric v Refugee Status Determination Officer 2019 (1) SA 21 CC at paragraph 69

clear from Phambili that the reason should consist of more than mere conclusions and should refer to the relevant facts and law, as well as the reasoning processes leading to those conclusions."⁴

[20] Due to the inadequate explanation, the applicant has requested this court to substitute the decision of the Minister.

[21] In my consideration of the new evidence it cannot be gainsaid that the new evidence contradicts Mr Moloi's previous evidence before the trial court. At the time the trial court relied on Mr Moloi's evidence to the extent that there was corroboration with the other witnesses testimonies. In light thereof, it accepted Mr Moloi's evidence. Now that Mr Moloi presents another version it cannot merely be ignored. Therefore, the Minister's reasoning is necessary not only for Mr Prinsloo to appreciate why the decision was made, but particularly for the court to appreciate how the decision was arrived at.

[22] In these circumstances, the conclusions drawn by the Minister are inadequate.

[23] The Minister's consideration of the petition is an exercise of public power which constitutes an administrative action in terms of the Promotion of Administrative Justice Act⁵ and can be reviewed. The right to administrative justice is enshrined in Section 33 of the Constitution. The requirement of rationality demands that the

⁴ My emphasis

⁵ Promotion of Administrative Justice Act 3 of 2000 (PAJA)

decision itself and the process by which it was taken must be rational. In **Simelane**⁶ the Constitutional Court emphasized:

“we must look at the process as a whole and determine whether the steps in the process were rationally related to the end sought to be achieved and if not, whether the absence of a connection between the particular step (part of the means) it's so unrelated to the end as to taint the whole process with rationality.”

APPROPRIATE REMEDY

[24] In deciding the appropriate remedy, this court is guided by Section 172(1) of the Constitution and Section 8 of PAJA⁷. The remedies imposed must further be just, equitable and effective. Section 38 of the Constitution allows the court to grant appropriate relief. In **Steenkamp**⁸ the Constitutional Court expressed:

“It goes without saying that every improper performance of an administrative function would implicate the Constitution and entitle the aggravated party to appropriate relief. In each case the remedy must fit the injury. The remedy must be fair to those affected by it and yet vindicate effectively the right violated. It must be just and equitable in light of the facts, the implicated constitutional principle, if any, and the controlling law...”

⁶ Democratic Alliance v President of Republic of Suth Africa, Simelane and Others 2013 (1) SA 248 SA CC at paragraph 37

⁷ Section 8 of the PAJA stipulates:

(1) The court... 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...

⁸ Steenkaamp and Other v Provincial Tender Board of the Eastern Cape 2007 (3) SA 121 CC at paragraph 29

[25] As a general rule, courts are cautious not to simply substitute an administrator's decision with its own decision. It will instead remit the matter to the administrator with an instruction to decide the matter again or give other appropriate instructions. Substituting the Minister's decision is the exception rather than the rule. A court can however do so in exceptional cases. Remittal is often the desired and fair course. In ***Tripartite Steering Committee***⁹ the court expressed:

"The default position when administrative action is reviewed and set aside, is for the decision to be remitted to the original decision maker to decide again, with the benefit of the court's findings as to where he/she erred initially."

[26] Courts appreciate the doctrine of the separation of powers and are inclined to exercise deference where it warranted. However, under exceptional circumstances it would be prudent for a court to substitute the decision of the decision maker. Factors which influence substitution *inter alia*: are when the end result is a foregone conclusion and it would be a waste of time to remit the decision to the original maker, when the delay would cause unjustifiable prejudice to the applicant, and where the court is in as good a position to make the decision. In addition, the common law always regards fairness to both sides as an important consideration.

[27] On the facts that were presented in this matter I am inclined to remit the matter to the Minister to particularly furnish her reasoning in rejecting the petition. The Minister has under oath alleged that Mr Moloi's case was deliberated amongst the officials, a memo was prepared for the Minister's consideration, the Minister had

⁹ *Tripartite Steering Committee v Minister of Basic Education* 2015(5) SA 107 EGG paragraph 50

considered the petition, the matter went through different stages before it reached the Minister and more significantly the new evidence was in fact considered by the Minister.

- [28] If these are the true state of affairs, then it demonstrates that she formulated her reasoning and same is readily available. In my view then, a period of 20 days from the date of granting this order would give the Minister more than sufficient time to furnish her reasoning.
- [29] It is fair to direct a truncated time period if consideration is given to the extensive delay. The applicant waited for almost 2 years. No credible explanation was forthcoming for the delay. In these circumstances, Mr Prinsloo is entitled to an expedited response. His liberty and freedom afforded to him in terms of the Constitution remains pending due to the Minister's delay in considering the petition within a reasonable time and the further failure to furnish an adequate explanation. I further deem it appropriate that in the event the Minister fails to abide with the court order, the applicant would be entitled to supplement his papers, set the matter down for hearing before this court and seek the appropriate relief.
- [30] In so far as costs are concerned, it is evident that the Minister has not taken this court into its confidence. In the exercise of his public power, Minister should have appreciated that when adverse decisions are made, the affected parties are entitled to know why the outcome was not in their favour.

[31] This court is inclined to award cost in the applicant's favour. However, since the Minister was not given an opportunity to address the court on my inclination, its office is given an opportunity to respond.

[32] In the premises, the matter is postponed *sine dies*, with the court giving directions. The issue of cost are reserved.


H. KOOVERJIE
JUDGE OF THE HIGH COURT
GAUTENG DIVISION, PRETORIA

Appearances:

Counsel for the applicant:

Adv. LS De Klerk SC

Instructed by:

Rynhart Kruger Attorneys

Counsel for the first respondent:

Mr. I Chowe

Instructed by:

The State Attorney Pretoria

Date heard:

23 February 2026

Date of Judgment:

17 March 2026