IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, MAKHANDA

(SITTING AT BISHO)

CASE NO.: CC40B/21

In the matter between:

THE STATE

Versus

PHUMLANI MKOLO & 13 OTHERS

In re:

THEMBELANI SALI (Accused No.6) **Applicant**

Versus

LEGAL AID SOUTH AFRICA **Respondent**

JUDGMENT REFLECTING REASONS FOR AN ORDER

ZONO AJ:

Introduction

[1] On 11th March 2026 this matter came before court for an order directing the Legal Aid South Africa (LASA) to provide legal representation to Mr Sali, who is Accused No 6 in the criminal case, at state expense. The application was said to be in terms of Section 22 of Legal Aid Act 39 of 2014. After full arguments by all the parties, the application was refused. Here are the reasons.

Background

[2] This matter emanates from a criminal matter that is ongoing between the state and fourteen (14) accused persons. It transpired during the criminal proceedings that the legal representation at the state expense for Mr Tembelani Sali, who is accused No 6 in the criminal matter, was terminated. The main basis for that termination was that Mr Sali gave false declaration in that, when he was completing a legal aid application form he indicated that he does not have immovable property. The completed legal aid application form was attached to the termination notice. The termination of Mr Sali's legal representation was seemingly made on 14th October 2025 by Mr Phumlani Dlamkile, Head of Office (HOO), King Williams Town (Local Office). The termination notice revealed that Mr Sali is the owner of three (3) immovable properties respectively situating at the following addresses: 3[...] Gonubie, East London; No 3[...], Mdantsane and at No 1[...] Petty Dunnottar in Nigel. Those properties were not disclosed in the application for legal representation at state expense. Mr Sali exhausted the internal remedies by appealing the HOO's decision to terminate the legal representation to the Provincial Executive (PE) and ultimately to the Chief Operations Officer (COO). His endeavours were

unsuccessful hence this application. It is observed that the appeals were as if Mr Sali was appealing a decision refusing a Legal Aid Assistance, which was not the case. The Legal Aid Assistance was granted but that was later terminated.

[3] The matter came before court on 24th February 2026, and Mr Sali apparently indicated a wish to invoke the provisions of section 22 of the Legal Aid Act 39 of 2014 (the Act). The following order was granted on 24 February 2026:

> *"2.1 This matter against accused No 6 is further adjourned to* ***11 March 2026****, in order for this court to attend to Accused 6's application in terms of section 22 of Act 39 of 2014 for legal representation at state expense.*
>
> *2.2 The following deadlines for actions by Legal-Aid SA and Accused 6 are set to wit*
>
> > *a.* ***3 March 2026*** *before 16:00: Legal Aid South Africa (LASA) to submit their written report in terms of the provisions of section 22 of Act 39 of 2014 to the registrar, the prosecution and accused No 6;*
> >
> > *b.* ***9 March 2026*** *before 16:00: Accused 6 to submit his evidence in terms of section 22(6) of Act 39 of 2014 to the registrar and the prosecution.*
>
> *3. The application by Accused 6 is to be argued on* ***11 March 2026*** *in the Bisho High Court.*
>
> *4.All the remaining accused's bail is extended to* ***13th March 2026,*** *and they are ordered to attend court on that day.*
>
> *5. The Warrant officer of arrest previously stayed for accused No 5 is cancelled."*

This matter certainly came before me by means of the aforementioned court order.

[4] The Legal- Aid South Africa (LASA) met the deadlines, as it submitted the report envisaged in the court order on 2 March 2026. Mr Sali filed a document styled "*Report in terms of section 22(6) of the Legal Aid Act No 39 of 2014 T. Sali)"* on 9 March 2026. The document purported to comply with the court order dated 24th February 2026, in so far as it directed Mr Sali to submit his evidence in terms of Section 22(6) of the Act on or before 9 March 2026. The matter was then heard on the basis of an affidavit deposed to by Mr Phumlani Dlamkile; the report filed by the LASA with the registrar of this court on 02nd March 2026, and the report filed by Mr Sali on 09th March 2026.

[5] The starting point should be the affidavit deposed to by Mr Dlamkile (HOO), Qonce local office. In paragraph 3-5 thereof he states as follows:

> *"3. I confirm that Mr Sali applied for Legal Aid and in doing so signed our application form known as LA1. In it, he indicated he does not have immovable property. Annexed hereto is such application marked as PD1.*
>
> *4. It has come to our knowledge that he owns three properties, one at 3[...] Gonubie, East London; another at 3[...] Mdantsane and the third one at 1[...] Petty Dunottar in Nigel and this was not disclosed to us.*
>
> *5. When he signed the Legal Aid application (LA1) he made a declaration that the information he gave us was true, correct and complete. That giving false declaration could lead to the suspension of Legal Aid, and in appropriate circumstances to criminal prosecution.*

6.Based on the aforesaid, Legal Aid was terminated by a letter sent to him on the 14th October 2025. Annexed hereto is such letter marked PO2. Mr Sigcau who is his judicare attorney confirmed receipt of the email, and that Mr Sali also received it." (sic)

[6] The termination letter referred to in the affidavit aforesaid was written on 14th October 2025. The letter is worded as follows:

> *"<u>Termination of Legal Aid: Thembelani Sali (x920893922)</u>*
> *You completed a legal Aid application, and you indicated that you do not have immovable property. Attached is such application. It had come to our knowledge that you own three properties, one at 3[...] Gonubie, East London, another at 33 NU9, Mdantsane and the third one at 1[...] Petty Dunottar in Nigel and this was not disclosed to us. When you signed the Legal Aid application you made a declaration that the information you gave us was true, correct and complete. That giving false declaration could lead to the suspension of legal Aid and in appropriate circumstances, criminal prosecution. Based on the, Legal Aid is hereby terminated*" (sic). The termination letter was also penned by Mr Dlamkile.

[7] Mr Sali apparently appealed the decision aforesaid to the Provincial Executive (PE) and ultimately to the Chief Operations Officer (COO). His appeals were unsuccessful. The outcome of the appeal to the COO dealt pertinently with the respective values of Mr Sali's immovable properties, which according to the outcome amounted to a total value of R 3820 000.00 plus R90 000.00 which is the value of Mr Sali's movable property. Paragraph 4 of the COO's appeal outcome reads as follows:

"4. It is evident from the above that you grossly misrepresented the value of your assets in order to create the impression that you are indigent, so that legal aid can be provided to you in circumstances where you do not qualify for legal aid assistance."

5. Based on the above, it is evident from the value of your properties that you cannot be said to be indigent as you exceed Part B of the means test…."

[8] A report in terms of section 22(1) of the Act was filed by LASA on 02nd March 2026 as directed in terms of the court order of 24TH February 2026. The report reiterates, *albeit* in different terms, the contents of the affidavit deposed to by Mr Dlamkile on 16th October 2025. In relevant parts the report reads as follows:

".4… initially, he presented himself as an indigent person who does not own properties/ or have any assets. Legal Aid was granted to him on that basis. He pleaded not guilty to all charges laid against him. The case proceeded. On further scrutiny, it was found that he was not indigent and legal aid assistance was terminated or withdrawn. Reasons for such decision were communicated to him especially on the letter from COO, Marked as TS1.

5… It is hereby recommended that Mr Sali can afford his own legal representative. He has adequate means to acquire one. He is not indigent in anyway. Provisions of legal representation at state expense cannot be made available to him. Attached is the communication from COO with specifics of reasons for refusal, marked as TS1" (sic)

[9] The parties are *ad idem* that this application is in terms of section 22 of the Act. Section 22(1) of the Act provides that:

"1. A court in criminal proceedings may only direct that a person be provided with legal representation at state expense, if the court has-

(a) taken into account-

(i) the personal circumstances of the person concerned';

(ii) the nature and gravity of the charge on which the person is to be tried or of which he or she has been convicted, as the case may be;

(iii) whether any other legal representative at state expense is available or has been provided, and

(iv) any other factor which in the opinion of the court should be taken into account;

(b) subject to subsection (3), referred the matter, together with any report the court may consider necessary, for the attention of Legal Aid South Africa, for evaluation and report by Legal Aid South Africa and Legal Aid South Africa has made a recommendation whether or not the person concerned qualifies for legal representation, as provided in subsection (2) (c) (i).

This subsection provides for provision of a legal representation at state expense and not for reinstatement of a terminated legal representation.

[10] In circumstances where the Legal Aid applicant has applied for legal representation at state expense; that he has been refused such legal representation by LASA; and that he has exhausted his or her internal right to appeal;[1] and also that he has not received any response to the application within a reasonable time; or that the court is of the opinion that there are

[1] Section 22 (1)(b) and 22(3) of the Legal Aid Act 39 of 2014

particular circumstances that need to be brought to the attention of LASA by the court in a report referred to in subsection (1)(a)(ii), the court may refer a matter in terms of subsection (1)(b). The LASA may make recommendation whether or not the legal aid applicant qualifies for legal representation. If the court refers the matter in terms of section (1)(b), the LASA must evaluate and report on a matter. The report must include a recommendation whether or not the legal aid applicant qualifies for legal representation, personal circumstances of the legal aid applicant, whether any other legal representation at state expense is available or has been provided and or any other factor which in the opinion of LASA, should be taken into account[2].In effect the factors mentioned in Section 22(1) (a) (i) and (iii) must be embodied in a report made to court by LASA.

[11] While it is not clear that the factual matrix of the case accords with the requirement of referral for a report[3], the matter was referred and the report was obtained from the LASA. The spirit and purport of section 22(1)(b) read with 22(2) and 22(3) of the Act is seemingly that, for the referral and the report to be apposite, the Legal Aid applicant must have applied for legal representation and that the application has been refused, and that there has been an exhaustion of internal remedies, or that there is no response to the application for legal representation at state expense that has been forthcoming. In that setting, the provisions of section 22(3) of the Act apply. Refusal of the application is contemplated in Regulation 34. In this matter there was no refusal of the application, but termination of the already granted application and such termination is envisaged in Regulation 33.

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2 Section 22(2) of the Legal Aid 39 of 2014

3 Section 22(3) of the Legal Aid Act 39 of 2014 set out specific instances where a report may be sought. Referral is apposite only when an application for legal representation at state expense is refused in terms of regulation 34 and internal remedies have been exhausted. In casu, the legal representation was granted and later terminated in terms of regulation 33

[12] Section 22(6) of the Act provides that:

> *"(6) In determining whether any person is entitled to legal representation at state expense and before any court orders the provision of legal representation at state expense, the legal aid applicant bears the onus of showing, on a balance of probabilities, that he or she-*
>
> > *(a) is unable to afford the cost of his or her own legal representation;*
> >
> > *(b) has made a full disclosure of all relevant facts and documents pertaining to his or her inability to pay for his or her own legal representation;*
> >
> > *(c) has a lifestyle that is consistent with his or her alleged inability to afford the cost of his or her own legal representation; and*
> >
> > *(d) has cooperated fully with any investigation conducted by Legal Aid South Africa".*

The words in the subsection "*legal aid applicant*" presuppose that the provisions are applicable at an application stage; contradistinctionally or as opposed to "*legal aid recipient* "referred to in the regulations. In casu, Mr Sali's application was granted and he"*ipso facto*" became a legal aid recipient. Interpretation maxim "*expressio unius est exclusio alterius*" applies. The express mention of the applicant in the subsection is an exclusion of the recipient. Section 22(6) applies only to the refused applications. This matter is about legal aid assistance that was granted and later terminated.

[13] While the Act does not specifically provide for instances where a legal representation at state expense has been granted but later withdrawn or

terminated, it provides for the making of regulations by the Minister of Justice and Correctional Services. Regulations provide for termination of legal aid assistance. Section 23(1) of the Act provides thus;

> *"(1) The Minister must, after receipt of recommendations of the Board, make regulations relating to-*
>
> *……*
>
> *……*
>
> *(c) the policy relating to the approval or refusal of legal aid, the termination of legal aid and appeals against such refusal or termination of legal aid…"*

The Constitutional Court in *Welkom High School*[4] quoted with approval the case of *Akani Garden Route Pty Ltd*[5] to make a point that regulations and rules are legislative instruments. Regulations are subordinate legislations which hold legally binding status and have the force of law, ensuring specific, detailed and operational compliance. They must conform to the constitution[6] and the parent statute. They provide necessary detail to implement legislation. Regulations have the same force and effect as the statute in terms of which they are made[7]. As subordinate legislations, they are part of the main legislation. The Act and the Regulations must be read conjunctively.

[14] Regulation 33 (1) provides for termination of Legal Aid assistance thus:

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[4] ***Head of Department, Department of Education, Free stse Province v Welkom High School and another; Head of Department of Education Free State Province v Harmony High School and Another*** 2013 (9) BCLR 989 (CC); 2014 (2) SA 228 (CC) Para 217

[5] ***Akani Graden Route (Pty) Ltd v Pinnacle Point Casino (Pty) Ltd*** 2001 (4) SA 501 SCA Para 7

[6] ***AAA Investments (Proprietary) Limited v Micro Finance Regulatory Council and Another*** 2006 (11) BCLR 1255 (CC), 2007 (1) SA 343 (CC) Para 72

[7] ***National Pride Trading 452 (Pty) Ltd v Media 24 Ltd*** 2010 (6) 587 (ECP) Para 31

"(1) Legal Aid South Africa may terminate a legal aid recipient's legal aid on account of the conduct of the legal aid recipient, which may include that the legal aid recipient-

(a)ceases to qualify under the means test;

(b)fails to appear in court timeously on the appointed day without giving a good reason for not appearing and a warrant for arrest has been issued;

(c) unreasonably refuses to accept a settlement;

(d)does not timeously comply with a contribution order as contemplated in regulation 32;

(e) Terminates the mandate of the instructed legal practitioner unreasonably and without goof reason; or

(f) makes it impossible for the instructed legal practitioner to carry out his or her mandate."

[15] Of particular importance is regulation 33(1)(a), 33 (3) (a) and 33(3) (d) of the Act. Regulation 33(3)(a) provides for termination of legal aid where the instructed legal practitioner's mandate is terminated by LASA for ethical reasons. Regulation 33(3)(d) provides for termination of legal aid where the legal practitioner is unable to continue to act because there is a cause that makes it impossible to carry out his or her obligations as a practitioner.

[16] It is so because according to the LASA, Mr Sali after he enjoyed the legal aid services was found not to qualify under the means test. He was found after the investigation or after the LASA obtained information that Mr Sali can afford his own legal representation. The lifestyle was found not to be consistent with

the alleged inability to afford the cost of his own legal representation. He was found not to have made full disclosure of all relevant facts and documents pertaining his assets.[8] Mr Sigcau, who was the legal aid practitioner assigned to Mr Sali was withdrawn or his mandate was terminated by LASA and could not continue to act because of a cause that made it impossible to carry out his or her obligations as a practitioner[9]. The main cause as mentioned above in this paragraph is mainly that there was a material non-disclosure of Mr Sali's immovable assets when an application for a legal representation at State expense was made. That revelation made it impossible for LASA to continue providing legal representation and for Mr Sigcau to carry out his obligation as a practitioner. The termination therefore fell within the purview of regulation 33 of the same Act.

[17] Whether or not the appeal process was statutorily apposite in circumstances where there was termination of an already granted legal representation at state expense[10], Mr Sali followed and exhausted all the appeal processes stipulated by legal aid manual. According to clause 3.5 of the manual, appeal is available where there is refusal of legal aid. The manual was compiled, amended and approved in terms of section 24(1)(a) of the Act to provide for the procedure in terms of which applications for legal Aid are administered. Clause 3.5.3 of the relevant manual provides:

> *"A dissatisfied legal aid applicant may:*

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[8] Section 22(6) of the legal Aid Act 39 of 2014

[9] Regulation 33(1)(d) of the Legal Aid Act 39 of 2014

[10] Regulation 34 Provides for refusal of legal and thus:
"(1) when an application for legal aid has been refused the legal aid applicant has the right of appeal according to processes as determined in the Manual." Reference to the application in this regulation presupposes that the refusal and approval are made at an application stage; similarly reference to legal aid applicant as opposed to legal aid recipient implies that the appeal can only be made to the refusal of an application not termination of an already existing legal Aid assistance.

(i) apply for judicial relief- for example a review of the NOE or CLE'S decision

(ii) approach the Presiding officer in serious criminal cases to issue an order requiring a report under section 22 of the Act."

In criminal cases, there are no further internal appeals beyond the National Operations executive (NOE)[11]. It is plain that Mr Sali did not come for this court to issue an order requiring a report under section 22 of the Act. The option available to Mr Sali in terms of the applicable legislative framework is the judicial relief in the form of judicial review, especially in cases of termination of a granted legal representation at state expense. There is jurisprudential reason for that procedure to be followed as I set out below.

[18] The crucial decision that adversely affected Mr Sali's legal representation at state expense is the termination of Mr Sali's legal representation. That decision is still extant, and it has not been impugned or challenged. For it is well settled in our law that until a decision is set aside by a court in proceedings for judicial review it exists in fact and it has legal consequences that cannot simple be overlooked[12]. The decision to terminate Mr Sali's legal representation cannot simply be disregarded as if it never existed. The proper functioning of a modern state would be considerably compromised if all administrative acts could be given effect to or ignored depending upon the view the subject takes of the validity of the act in question. No doubt it is for this reason that our law has always recognised that even an unlawful administrative act is capable of producing legally valid consequences for so long as the unlawful act is not set

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[11] Clause 3.53 of the Manual

[12] ***South African Broadcasting Corporation SOC Ltd and others v Democratic Alliance and others*** 2015 (4) ALL SA 719 (SCA); 2016 (2) SA 522 (SCA) Para 45

aside.[13] There exists an evidential presumption of validity expressed by the maxim "*omnia praesumuntur rite esse acta";* and until the act in question is found to be unlawful by a court, there is no certainty that it is. Hence it is sometimes argued that unlawful administrative acts are voidable because they have to be annulled[14]. In the light of the above it is plain that Mr Sali misconceived his remedy. This application should fail on this ground alone.

[19] Even if it can be said that I must consider a substitution order, it would still be inappropriate to substitute LASA's termination decision. A substitution order can only be considered in the context of proceedings for judicial review. In the case of PAJA review Section 8 (1) (c) of Promotion of Administrative Justice Act 3 of 2000 (PAJA) provides:

> "(i) *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-*
>
> *(c) Setting aside the administrative action and –*
>
> *(i)…………*
>
> *(ii) in exceptional cases*
>
>> *(aa) Substituting or varying the administrative action or correcting a defect resulting from the administrative action."*

While it is plain that this court is not a review court invited to set aside LASA's decision to terminate legal representation at state expense, Mr Sali has not

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[13] **Ouderkraal (Pty) Ltd v City of Cape Town and Others** 2004 (3) ALL SA 1 (SCA); 2004 (6) SA 222 (SCA) Para 26
[14] Lawrence Baxter Administrative Law 355

shown any exceptional circumstances for a substitution order to be granted. In addition, the court must be placed in a position to exercise the power imposed to the organ of state. No information was given to this court, that would enable it to substitute, grant or direct LASA to grant legal representation at state expense.

[20] The primary duty of the courts is to ensure that those who are charged with the duty to perform public functions in terms of the Law Act within the parameters of the Law. The Constitution requires courts to ensure that all branches of government act within the law.[15] Baxter; administration law, page 305 puts it thus:

> "*Without Statutory Authority, the court may not venture to question the merits or wisdom of any administrative decision that may be in dispute. If the Courts were to do this, it would be usurping the authority that has been entrusted to the administrative body by the empowering Legislation".*

[21] In the Economic Freedom Fighter (EFF) the[16] Constitutional Court quoted with approval Certification case[17]. The Constitutional Court held:

> *"The principle of separation of powers, on the one hand, recognises the functional independence of branches of government. On the other hand, the principle of checks and balances focuses on the desirability of ensuring that Constitutional order, as a totality, prevents the branches of government from usurping the power from one another. In this sense it anticipates the necessary or unavoidable intrusion of the branch on the terrain of another. No Constitutional Scheme can reflect a complete separation of powers: the scheme is always one of partial separation".*

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[15] *Maximum Profit Recovery (pty) Ltd v Sakhisizwe Local Municipality and another (1086/2019) [2025] ZAECMKHC 25(18 March 2025) para 65*

[16] *Economic Freedom Fighters v Speaker of the National Assembly and others; Democratic Alliance v Speaker of the National assembly and others 2016 (5) BCLR 618 (CC); 2016(3) SA 580 (CC) para 91*

[17] *Certification of the Constitution of the Republic of South Africa. 1996 (4) SA 744(CC);1996 (10) BCLR 1253 (CC) para 161*

[22] Even if I may be found to be incorrect in this regard, Mr Sali does not at the very least complain in this court that the decision taken by LASA to terminate his legal representation at state expense is unlawful. However, he states in his report that the termination of his legal aid assistance was based on incorrect allegations and statements regarding the facts or events. Mr Sali accepts that his legal aid assistance was terminated mainly on the basis that there is non-disclosure or no full disclosure of his assets and as a result of the fact that he presented himself as an indigent person. He was granted, at the first instance, the legal aid assistance. It was terminated upon discovery that he has some immovable properties which make him not to be indigent. While it is a common cause that the first completed application form went missing, it is also accepted that Mr Sali, when this matter was already serving in this High Court, was caused to complete and sign another application form (LA1). In that new form, Mr Sali states that he declared ownership of assets. The application form was an annexure to the affidavit deposed to by Mr Dlamkile. It was completed and signed on 12th September 2025. Section B of the form deals with the assets or it seeks disclosure of the assets Mr Sali has, and its reasonable market values. It sought information about "*fixed property: Reasonable Market Value, less bonds.*" No information was filled in there. The spaces were left blank. However, Mr Sali disclosed that he has a motor vehicle worths R 60 000.00. No further disclosures were made. I assume that, when he said he declared his assets in the new application, he refers to the motor vehicle.

[23] Mr Sali, in the whole tenor of the documents placed before this court, does not say anything about the three immovable properties found to be in his name. He does not explain or give reason for his failure to disclose them in the application form completed on 12th September 2025. That conduct was clearly

antithetical to the provisions of section 22 (6)(b) of the Act, which require that the legal aid applicant makes a full disclose of all the relevant facts and documents. That requirement is interlaced with the question of lifestyle envisaged in section 22(6) (c) of the Act. Ownership of three immovable properties and a motor vehicle directly talks to and affects the kind of lifestyle one is living. The value of those properties as given by the LASA is not in dispute herein. The value of R3910 000.00 does not conduce to an indigence.

[24] A court must interpret the words in issue according to their ordinary meaning. Ordinary grammatical meaning of the words must be adhered to and can only be departed from if that leads to an absurd result[18]. A fundamental tenet of statutory interpretation is that words in a statute must be given their grammatical meaning, unless to do so would result in an absurdity[19]. Regulation 28(6) provides that:

> "(*6) A legal aid applicant must provide proof that he or she is a natural person who is indigent as set out in these regulations."*

South African Concise Oxford Dictionary defines the adjective *indigent* by providing the following synonym: "*poor, needy.* As a noun the word means "*a needy person*". Indigence refers to a state of extreme poverty, destitution, or severe deprivation where basic necessities of life are lacking. It signifies being severely impoverished. His indigence would be proved by providing information required in terms of Section 22(6) of the Act. Consistently with that, section 22(6) provides that *".... The legal aid applicant bears the onus of showing, on a balance of probabilities*" that he is indigent.

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[18] ***Natal Joint Municipality Pension Fund v Endumeni Municipality*** 2012 (4) SA 593 at 603 Para 17

[19] ***Cool Ideas 1186 CC v Hubbard and Another 2014*** (4) SA 474 (CC); 2014 BCLR 869 (CC) Para 28; ***SATAWU and Another v Garvans and others*** 2013 (1) SA 83 (CC); 2012 (8) BCLR 840 (CC) Para 37

[25] The proof referred to in regulation 28(6) is achieved when the Legal Aid applicant satisfies the requirements of section 22(6) (a-d) of the Act on a balance of probabilities. A person owning properties worth almost 4 million rand cannot, by any stretch of imagination, be regarded as an indigent or a destitute person. Mr Sali therefore failed to discharge the onus rested on his shoulders in terms of section 22(6). Regulation 28(5) provides:

> *" (5) A legal aid applicant must provide documentary proof and a written disclosure of assets for purposes of the means test, where requested."*

During argument of this matter, Mr Sali was pointed out to be deficiencies of his application for Legal Aid assistance. When accepting that his application lacked sufficient disclosure, he argued that such failure was as a result of the hostile approach by Mr Dlamkile and the insufficient time he had with the Legal Aid official who was assisting him. However, he did not tell how he managed to forget to disclose his own houses and their high valuation and values, but remembered only a motor vehicle with a relatively paltry value of R60 000.00. It is not his case that he did not see the requirements in the application form.

[26] Mr Sali in his report, makes a point that his properties are encumbered and cannot be used as surety for anything. That was a kneejerk reaction from termination of his legal representation by the LASA. The termination was as a result of his material non-disclosure of the relevant information. Mr Sali did not explain what it means by that "*his assets are encumbered."* However, Ms De Klerk attempted to explain what it means. She submitted that the properties are bonded and she could not give a further elaboration about the bonds. Serious difficulties arise in this assertion. Firstly, the application form (LA1) for legal representation at state expense required information about the bonds to be

furnished. No information was furnished; the spaces were inexplicably left blank. Even during argument, no details were given about the mortgage bonds relating to the properties. Even at that stage of Ms De Klerk's inability to give detail, Mr Sali did not even attempt to give the necessary details. No documentary proofs were provided in terms of Regulation 28(5).

[27] Mr Sali further cited, as a reason for the scanty or paucity of information accompanying his application, that he hoped that he would be assisted by Ms De Klerk in his application as she gave him that impression. Of the course the correspondence[20] demonstrates that Ms De Klerk talked to the parties about the way forward and that she was advised by Mr Sali that he intends appealing the decision terminating his legal representation at state expense. However, that does not take away the fact that his application suffered material non-disclosure, which remains insufficiently explained and unacceptable.

[28] It transpired for the first time during argument of this case that the property situating at No 1[...] Petty Dunnottar in Nigel Gauteng is subject of a lease. He conceded that there is a tenant staying therein and the undisclosed rental is paid directly to the Municipality for the rates. It is not clear if the property is a subject of a written or oral lease agreement. I have already stated that the lease amount is not disclosed. That demonstrated another non-disclosure. The Nigel property generates an undisclosed income that is, according to Mr Sali, used to pay Municipal bill. That is contrary to what he said in LA1 form that he does not have an income.

[29] Documents placed before this court by Ms De Klerk revealed that Mr Sali is a student at the University of South Africa (Unisa). Mr Sali confirmed that he

[20] Email transmitted on 17 October 2025

is taking studies at Unisa and that he is able to pay an amount of approximately R1800.00 per month. The source of tuition fees paid to Unisa is still undisclosed. Let alone that he is paying such an amount.

[30] The last thing that needs attention is what is contained in the application form (LA1). Mr Sali is a married man. However, no details of his marriage are provided. It is not clear if his wife owns some property or if she is working or if she has an income. The matrimonial regime is unknown. I raise this in the light of the provisions of Regulation 28(3) which provide:

> "*3. If any asset is owned by a trust, company or other legal personality but is controlled, either directly or indirectly, by the legal aid applicant or his or her spouse, dependent, sibling, parent, descendent or nominee, for the direct or indirect benefit of the legal aid applicant or his or her spouse, dependant, sibling, parent, descendant or nominee,* ***that asset will be deemed to be owned by the legal aid applicant*** *for the purposes of determining whether the legal aid applicant qualifies for legal aid in terms of the means test: Provided that where there are beneficiaries other than the legal aid applicant or his or her spouse, dependent, sibling, parent, descendant or nominee, the applicant is deemed to be the owner of his or her percentage share of that assets.*"

[31] The LASA made a point that Mr Sali is a shareholder and member with member's interests in no less than 10 juristic entities. However, Mr Sali countered that by saying all those entities were deregistered and are not making any profit or benefit. There was no gainsaying to that as some documentary proof to that effect was furnished. However, it is not clear when these entities were deregistered in so far as it relates to the application for legal representation at state expense. There is no evidence of when these entities last made profit. No financial statements of the relevant periods were furnished.

[32] In his report, Mr Sali preponderantly makes counter submissions to the allegations of non-disclosure to the effect that he was not asked to furnished specific kinds of information. That militates against the provisions of section 22(6) which place evidential burden on the legal aid applicant to show on a balance of probabilities that he is entitled to the legal representation at state expense.

[33] On the conspectus of this, I found that Mr Sali has failed to discharge the onus or duty placed on his shoulders and that there is no case made out for the relief sought. I accordingly refused his application in terms of section 22 of Act 39 of 2014. Non-disclosure generally has an element of misrepresentation which also entails an illegality. It is a basic principle of our law that a court can never lend its aid to the enforcement of an illegal act.[21] Granting legal aid assistance in circumstances where there is a glaring non-disclosure amounting to misrepresentation would be an enforcement of an illegal act of non-disclosure and misrepresentation. LA1 form criminalises false declarations.

[34] In the result I still make the following order

[34.1] **The application in terms of section 22 of Act 39 of 2014 made by Mr Sali (Accused No 6) is hereby refused.**

A.S ZONO

[21] Cool ideas 1186 CC v Hubbard and Another 2014(4) SA 474 (CC) para 77

JUDGE OF THE HIGH COURT (ACTING)

APPEARANCES:

Applicant :	Mr Sali in person
For Respondent:	Mr Dlamkile
Instructed by:	Legal Aid South Africa
	King Williams Town
For NPA:	Ms De Klerk
Instructed by:	The Director of Public Prosecution
	Bhisho
Date heard :	11 March 2026
Date of the order:	11 March 2026
Date reasons delivered:	27 March 2026

Due to the fact that this matter was brought on urgent basis, this judgment reflecting reasons for an order was handed down in court and electronically by circulation to the above-mentioned legal representatives and the applicant by email and release to SAFLII. The date and time for hand-down is deemed to be 09:30 on Friday 27th March 2026.