

THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)

CASE NO: SS70/2021

In the matter between:-

THE MINISTER OF POLICE

Applicant/Appellant

and

RORICH CHRISTIAAN SIEBERT AND OTHERS

Respondents

In re the criminal trial of:-

STATE

versus

MFALAPITSO TLHOMEDI EPHRAIM

Accused No 1

RORICH CHRISTIAAN SIEBERT

Accused No 2

**APPLICANT'S/APPELLANT'S NOTICE OF APPLICATION FOR LEAVE TO
APPEAL**

BE PLEASED TO TAKE NOTICE that the applicant/appellant (**THE MINISTER OF POLICE**) on a date and at a time to be determined by the Registrar of this Honourable Court, will apply for leave to appeal to the Supreme Court of Appeal, alternatively to

the Full Bench of the Gauteng Division of the High Court, Johannesburg, against the judgment of Makgoatheng J handed down on 9 June 2022 in terms whereof the court ordered, during an inquiry in the criminal trial, under the auspices of Section 342A of the Criminal Procedure Act, 51 of 1977 (as amended):-

"That the SAPS as the successor in title to the South African Police, are in law obliged in terms of Standing Order 109 to provide legal assistance and funding for legal assistance and -representation of Accused No 2 (RORICH CHRISTIAAN SIEBERT) by no later than 14 (fourteen) days of the judgement"

BE PLEASED TO TAKE FURTHER NOTICE THAT the factual and/or legal grounds upon which the applicant/appellant will apply for leave to appeal are based on the following:-

1 BACKGROUND

- 1.1 Accused No 2 (RORICH CHRISTIAAN SIEBERT) ("Mr Rorich") faces criminal charges in the High Court of Kidnapping, Murder and Crimes against Humanity, which events occurred during 1982 when he was a member of the Security Branch of the SAPS. Now, more than 40 years later, he is being prosecuted for the crimes he allegedly committed.
- 1.2 Mr Rorich elected not to apply for Legal Aid but instead wants the SAPS to fund his legal costs for his criminal defence.

- 1.3 On or about 10 February 2022 the SAPS, in its administrative capacity, resolved to refuse to pay the costs for legal representation for Mr Rorich, who is a former police officer and who resigned in 1987 from the SAPS, as the SAPS resolved that he does not meet the requisite criteria to be afforded legal assistance.
- 1.4 Mr Rorich thereafter indicated to the court that he intends to launch an application for the review of the aforesaid administrative decision taken by the SAPS (which review application has since February 2022 not been launched), and after all the records of the administrative decision had been made available) within 180 days from the date on Mr Rorich gained knowledge of the rejection of his application in terms of Act 3 of 2000.
- 1.5 On 23 March 2022 the court *a quo* issued a rule *nisi*, calling on the applicant/appellant to show cause as to why the following order should not be made final:-
- "That the South African Police Services be directed to pay the reasonable costs of the 2nd Accused (Mr Rorich) in the above matter, which costs include the reasonable cost of a senior counsel."*
- 2 On 9 June 2022, alternatively on an earlier date, the court confirmed the rule *nisi*, ordering the SAPS to pay the legal costs of Mr Rorich.

- 2.1 The court *a quo* misdirected itself in assuming the position of a civil high court to review and order the rescission of the administrative decision taken by the SAPS not to pay for the legal costs of Mr Rorich, as no motion application was launched, no record of the administrative decision was filed before the court as envisaged in Rule 53 of the Uniform Rules of Court, whilst the court was busy with an inquiry for the purposes and under the provisions of Section 342A as to why there may be a delay in the pending trial.
- 2.2 The court *a quo* erred in usurping powers under Section 173 of the Constitution to order the review and setting aside of the administrative decision, in its capacity as a criminal court conducting an inquiry under Section 342A.
- 2.3 The court *a quo* failed to take into account that the charges which Mr Rorich are facing, are charges of Kidnapping, 3 counts of Murder and 1 count of Crime Against Humanity, and the court *a quo* further failed to find that the said charges clearly and indisputably do not fall within the normal execution of police duties by a police officer and/or the constitutional and common law duties of a police officer under the South African Police Act, 68 of 1995.
- 2.4 The court *a quo* erred in not finding that Mr Rorich is not remedy-less for the purposes of an enquiry under Section 342A, in that Mr Rorich can approach the Legal Aid Board for legal assistance in his criminal trial, who can assist him immediately like his co-accused.

- 2.5 The court *a quo* misdirected itself in adopting a stance that the court is empowered to proceed to act in terms of Section 173 of the Constitution, and Section 340A(2) of the Criminal Procedure Act, 51 of 1977 (as amended), and then coming to the conclusion that the court is empowered to make any order the court may deem fit, but that the court is not reviewing and setting aside the administrative decision taken by the SAPS, without there being any record of that administrative process before court.
- 2.6 The court *a quo* misdirected itself by finding that Mr Rorich had a right to be granted legal representation, taking into account the definition and the interpretation thereof as set out in Standing Order 109.
- 2.7 The court *a quo* misdirected itself in finding that Mr Rorich qualifies, without any exception, to be afforded legal assistance by the SAPS, irrespective of the requirements set out in Standing Order 109 and/or any other SAPS policies and/or regulations, and despite the fact that Mr Rorich already resigned from the SAPS in 1987.
- 2.8 The court *a quo* erred in finding that despite the fact that this court was not supplied with the reasons as to why the SAPS refused to pay Mr Rorich's legal costs in his criminal trial, and despite the fact that the court has no record of the application and all the arguments which were advanced in favour and/or against the issuing of the discretion of the SAPS, the court *a quo* nevertheless found, in comparison with the Coetzee matter (and wrongly so), that there was no justification by the

SAPS for the decision taken in the prevailing circumstances of the case of Mr Rorich.

2.9 The court *a quo* misdirected itself by comparing the alleged facts in this matter (the full facts of which are totally unknown to the court *a quo*) with the facts and judgment by Pretorius J in the Coetzee matter, where a High Court civil review application was adjudicated within the normal Rules of the High Court.

2.10 The court *a quo* misdirected itself in finding, in its capacity to conduct an inquiry under Section 342A, that the court can lawfully rule on an administrative issue, ordering the SAPS to pay Mr Rorich's legal costs in his criminal trial.

3 The court *a quo* should have found, in its capacity in conducting an inquiry under Section 342A, as follows:-

3.1 that the court *a quo* cannot order the SAPS to pay Mr Rorich's (who was a former police officer and who resigned in 1987) legal costs in his criminal trial, alternatively that the administrative decision taken by the SAPS is wrong and requires rescission; and

3.2 that the court *a quo* sitting in its capacity as a criminal court, cannot afford *locus standi* to the complainants of Mr Rorich in the criminal matter to put up an argument that the SAPS should pay his legal costs, and in turn to find that the court *a quo* can review and set aside the administrative

decision of the SAPS, without allowing Mr Rorich to exercise his right to launch a review application of the administrative decision taken during February 2022 by the SAPS to refuse to pay Mr Rorich's legal costs in his criminal trial in the High Court in the normal course.

WHEREFORE it is submitted that the court should grant the applicant/appellant leave to appeal the court *a quo's* judgment to the Supreme Court of Appeal, alternatively to the Full Bench of the Gauteng Division of the High Court, Johannesburg.

DATED at PRETORIA on this the 16th day of AUGUST 2022.



THE STATE ATTORNEY: PRETORIA

Attorney for applicant/appellant

SALU Building

316 Thabo Sehume Street

PRETORIA

Tel: 012 309-1500

Email: KMeier@justice.gov.za

Ref: K Meier 330/2022/Z49

c/o THE STATE ATTORNEY: JOHANNESBURG

10th Floor, North State Building

95 Albertina Sisulu Street, Cnr Kruis Street

JOHANNESBURG

Tel no: (011) 330-7685

E-mail: rpooe@justice.gov.za

Ref: Mr R Pooe

**TO:
THE REGISTRAR OF THE ABOVE HONOURABLE
JOHANNESBURG**

**AND TO:
THE DIRECTOR OF PUBLIC PROSECUTIONS (JOHANNESBURG)**

Ref: Adv Serepo and Adv Ngobeni

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Received a copy hereof by email jserepo @npa.gov.za and hsgobeni@npa.za as per arrangement
on this 16th day of August 2022

**AND TO:
KOBUS MULLER ATTORNEYS**

Attorneys for second accused

357 Buffelsdrift Street

Erasmusrand

Pretoria

Ref: Kobus Muller

Email: Kobusmuller1@absamail.co.za

Delivered by email as per arrangement
on this the 16th day of August 2022