

2: 8-11-16

NPA 946

15/11/16

IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)

CASE NO. 75378/16

In the matter between:

PAUL O'SULLIVAN

APPLICANT

and



NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

1ST RESPONDENT

MINISTER OF JUSTICE & CORRECTIONAL SERVICES

2ND RESPONDENT

MINISTER OF POLICE

3RD RESPONDENT

LT-GENERAL KHOMOTSO PHAHLANE

4TH RESPONDENT

LT-GENERAL BERNING NTLEMEZA

5TH RESPONDENT

MAJOR-GENERAL PRINCE MOKOTEDI

6TH RESPONDENT

ADVOCATE SELLO MAEMA

7TH RESPONDENT

ADVOCATE JABULANI JACOB

MLOTSHWA

8TH RESPONDENT

WARRANT OFFICER JOSHUA JACOBUS VLOK

9TH RESPONDENT

DRAFT ORDER OF COURT

HAVING read the papers filed of record, and by agreement between the parties (but without any admission of liability, and in particular without admission that the applicant is entitled to any relief in relation to Part A), an order in the following terms issues in relation to Part A of the application:

1. The first respondent will undertake a review (pursuant to the request made by the applicant), in accordance with the provisions of section 179(5)(d) of the Constitution of the Republic of South Africa, Act 108 of 1996, as read with section 22(2)(c) of the National Prosecuting Authorities Act 32 of 1998 ("**the review provisions**") of the decision to prosecute in the following matters:
 - 1.1. Kempton Park CAS 679/3/215;
 - 1.2. Rosebank CAS 47/5/2016;
 - 1.3. Bramley CAS 414/04/2016.
2. Such review will be conducted in accordance with the standard procedure currently adopted by the first respondent ("**the standard procedure**"), and

pursuant to such written representations as the applicant shall make in writing.

3. To the extent that any decision is made to prosecute the applicant in respect of the below mentioned cases, then and in that event, such decision will first be referred to the Acting Special Director of Public Prosecutions: PCLU, Dr Pretorius SC, who shall be required to approve the decision to prosecute therein prior to the issue of any charges against the applicant:
 - 3.1. Pretoria Central CAS 380/4/2016;
 - 3.2. Johannesburg Central CAS 755/5/2014;
 - 3.3. Alberton CAS 799/11/2013;
 - 3.4. Midrand CAS 867/06/2016.
4. Should the Acting Special Director of Public Prosecutions: PCLU, approve the issue of charges against the applicant, then and in that event the first respondent will, if requested to do so in writing and after the receipt of written representations from the applicant, engage in a review of the decision to prosecute in accordance with **the review provisions**, and in accordance with **the standard procedure**.

5. The parties record that, to the extent that any such review culminates unfavourably for the applicant, the first respondent may then, in his sole and absolute discretion, determine whether any such prosecution ought to be conducted by an alternative prosecutor (to wit by a prosecutor other than the prosecutor that made or makes the determination to prosecute): Provided that nothing in this paragraph shall preclude the applicant from instituting fresh proceedings if so advised.
6. Part B is postponed *sine die*;
7. The costs of the Part A application are reserved for later determination.

