

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: CCT 23/06

In the matter between:

THE MINISTER OF SAFETY & SECURITY

Applicant

and

ALLISTER ROY LUITERS

Respondent

APPLICANT'S AFFIDAVIT

I, the undersigned,

GEORGE FREDERICK KÖHLER

do hereby make oath and state:

1. I am an adult male attorney of the State Attorney, 4th Floor, Liberty Centre, 22 Long Street, Cape Town, the applicant's attorneys of record herein.
2. The facts herein contained are within my personal knowledge and belief, unless the contrary appears from the text and are true and correct.

3. This affidavit is filed in compliance with paragraph 4 of the directions issued by the Constitutional Court on 22 May 2006. A chronology follows:

3.1 The respondent was shot and injured on 14 October 1995.

3.2 Attorneys Van Wyk, Von Ludwig & Hanekom (“VWH”) addressed a letter of demand dated 22 July 1996 to the Provincial Commissioner of the South African Police Service (“the SAPS”) which was received on 30 July 1996 (**Record, vol 3, pp 249 & 250**).

3.3 On 27 September 1996 the office of the Provincial Commissioner referred the matter to the State Attorney’s office with instructions that at the time of the shooting, Lionel Siljeur (“Siljeur”) was not acting within the course and scope of his employment.

3.4 The file was allocated to me and I have represented the Minister of Safety & Security since then.

3.5 On 14 October 1996 the respondent caused a combined summons to be issued out of the Cape of Good Hope Provincial Division of the High Court which was served on the State Attorney’s office on the same date. The Minister of Safety & Security and Siljeur were cited

as the first and second defendants respectively (**Record, vol 1, pp 1 – 10**).

- 3.6 On 16 October 1996 I briefed counsel to draft the Minister's plea which was served and filed on 18 November 1996 (**Record, vol 1, pp 11 – 15**).
- 3.7 On 3 December 1996 Mr von Ludwig of VVH contacted me and discussed the further conduct of the matter. This was followed up by a letter from him dated 4 December 1996 requesting that the civil trial be kept in abeyance pending the finalisation of Siljeur's criminal trial.
- 3.8 On 10 November 1997 VVH served a notice to discover. I served a similar notice on behalf of the Minister on 20 November 1997.
- 3.9 Siljeur was convicted on 24 August 1998 (**Record, vol 6, pp 626 – 637**) and sentenced on 22 September 1998 (**Record, vol 6, p 638 – 644**).
- 3.10 After service of the respondent's discovery notice in November 1997 and for several years thereafter no further steps were taken in connection with the civil action and I closed the filed.

- 3.11 On 9 November 2002 Mr G de Jongh of Smith & De Jongh Attorneys contacted me and advised that they had been instructed in the matter and that he would address a letter to me in due course.
- 3.12 On 20 December 2002 VVH served a notice of withdrawal as the respondent's attorneys of record. The notice is dated 18 December 2002. A similarly dated notice was also served at the State Attorney's office on 20 December 2002 in terms whereof Smith & De Jongh Attorneys came on record for the respondent.
- 3.13 Almost a year passed with no further communication or any documents from attorneys Smith & De Jongh and I again closed the file.
- 3.14 On 10 December 2003 I received a letter from Mr de Jongh dated 8 December 2003, a copy whereof is annexed marked "GFK1". The judgment on conviction has not been annexed since it forms part of the record.
- 3.15 I received a further letter from Mr de Jongh dated 14 January 2004 enquiring whether the merits and quantum may be separated.

- 3.16 On 26 January 2004 I responded to the two letters from Smith & De Jongh and explained that the file had been closed and that I was in the process of taking instructions from the client whereupon I would revert.
- 3.17 On 13 February 2004 the respondent's duly completed rule 37 questionnaire was served on the State Attorney's offices. His discovery affidavit was served on 24 February 2004.
- 3.18 On 7 April 2004 I received a notice of set down from the Registrar indicating that the matter was enrolled for trial in the fourth division of the Cape Provincial Division on 25 October 2004. The trial commenced on that date and evidence and argument was completed on 28 October 2004. Judgment was reserved and handed down on 6 April 2006.

GF KÖHLER

I certify that the Deponent acknowledged to me that he knows and understands the contents of this Declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on his conscience. The Deponent thereafter uttered the words: "I swear that the contents of this Declaration are true,

so help me God.“ The Deponent signed this Declaration in my presence at CAPE TOWN on this 20th day of JUNE 2006.

COMMISSIONER OF OATHS