

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

AFFIDAVIT

I, the undersigned,

GERHARDUS CORNELIUS DE JONGH

hereby make oath and state as follows:

1. I am an attorney practising in the partnership Smith & De Jongh at 67 Voortrekker Street, Bellville, Western Cape. The contents in this affidavit fall within my personal knowledge unless I indicate to the contrary.

2. The Honourable Chief Justice requested an explanation on 22 May 2006 regarding the unusual lapse of time between the incident on 14 October 1995 and the date when the Cape High Court delivered judgment on 6 April 2005. As this matter was not in my hands before September 1998 the information disclosed hereinunder from 1995 to 1998 I derived from the file which I took over from Mr Johan von Ludwig.

3. The main reasons for the delay can be summarised as problems experienced to obtain full information regarding the incident as Respondent was not able to do so because he was seriously injured; a decision to wait for the completion of the criminal proceedings against Constable Siljeurs to enable client to establish what the prospects of success would be to proceed with litigation against the Minister of Safety & Security; a lack of funds and a time consuming resort to the Legal Aid Board (at a crucial stage the Respondent was left in the lurch by the said Board and problems were experienced to make alternative arrangements); problems experienced with counsel to accept the brief on a contingency basis; the waiting period caused due to the state of the court's congested roll and other frustrations experienced.

4. The initial phase

- 4.1 The shooting incident was on 14 October 1995 whereafter Respondent was hospitalised. on 31 October 1995 attorney Von Ludwig obtained the necessary mandate to proceed against the Applicant.
- 4.2 Respondent was hospitalised for a period and attempts were made to obtain the versions of witnesses.
- 4.3 On 20 November 1995 Mr von Ludwig, accompanied by Adv J van Niekerk of the Cape Bar, proceeded to the hospital to consult with Mr Luiters.
- 4.4 Steps were taken to obtain medical reports regarding the seriousness of the injury of Mr Luiters.
- 4.5 Attempts were made to obtain funds from Mr Luiters' employer to fund further investigations for possible litigation. Despite the fact that the employer was supplied with reports confirming that

Mr Luiters would be a tetraplegic for the rest of his life, the employer gave no assistance in this regard.

- 4.6 Problems were experienced over a period to track witnesses down. Mr Luiters (as will appear from his evidence) could not supply much information regarding the conduct of Constable Siljeurs.
- 4.7 On 12 February 1996 a further consultation was held with Adv van Niekerk at the Conradie Hospital in Pinelands with Mr Luiters.
- 4.8 Over the following months consultations with experts proceeded regarding the sequelae of the injuries sustained by Mr Luiters. Correspondence was addressed to the police on 9 July 1996. On 7 August 1996 the Provincial Commissioner of the South African Police Service responded and indicated in a letter that the matter was being investigated. Queries were made by the attorney for Mr Luiters to establish what progress was made regarding the criminal matter against Constable Siljeurs.

4.9 During October 1996 it was decided that the services of a senior advocate should be obtained regarding the drafting of the Particulars of Claim. It was decided to instruct Adv Deon Irish SC in this regard. The Particulars of Claim was signed on 11 October 1996 (**Volume 1, p 7**).

4.10 The plea was filed on 18 November 1996 (**Volume 1, p 15**).

4.11 On 4 December 1996 Mr von Ludwig confirmed to attorney Köhler, acting on behalf of Applicant, that the matter will be held in abeyance pending the finalisation of the criminal proceedings (see Annexure "GCDJ1"). The motivation for this was to obtain the various versions of the witnesses before embarking further on costly litigation.

5. The delay caused by the criminal proceedings

5.1 Over a considerable period and various postponements the matter proceeded eventually on 14 April 1998 (**Volume 3, p 251**).

5.2 Judgment was delivered on 24 August 1998 and Siljeurs was sentenced on 11 September 1998 (approximately three years after the incident).

6. The delay caused by the Legal Aid Board

6.1 On 15 August 1997 an application was made to the Legal Aid Board for financial assistance to proceed with the civil proceedings against Applicant (see Annexure "GCDJ2"). An advocate's opinion was required by the Board regarding the prospects of success. This could only be determined once the criminal trial was finalised.

6.2 During the beginning of 1999 I became involved personally. I approached the Legal Aid Board and indicated the importance of a transcription of the criminal proceedings (Annexure "GCDJ3"). I received no response. I again enquired on 17 March 1999. I emphasised the importance for the advocate to be in possession of the transcript to advise on the merits (Annexure "GCDJ4"). I subsequently on a regular basis tried to get reaction from the Legal Aid Board.

- 6.3 I am in possession of numerous letters that I addressed to the Legal Aid Board. I annex one of these letters dated 6 May 1999 as Annexure "GCDJ5" wherein I addressed the inordinate delay and emphasised that it was not in the interests of justice that the Legal Aid Board was acting as such. My letters were ignored and I again on 1 July 1999 complained to the Legal Aid Board that we had to wait for longer than a year to get permission to have the criminal record typed. See in this regard Annexure "GCDJ6". This letter was also ignored and I eventually contacted the head of the Legal Aid Board telephonically. Permission was given to transcribe parts of the criminal record. The permission was granted on 22 October 1999.
- 6.4 A further delay was caused by Paarl Typing Services (responsible for the typing of the record) that insisted on payment before they make the record available. It was only in March 2000 that I succeeded in getting the record.
- 6.5 After the record was obtained the Legal Aid Board indicated that they were not prepared to fund the civil proceedings. This was

on 1 September 2000. The impecunious Mr Luiters was left in the lurch. Attempts were made to generate funds but with no success. The advocate that had prepared the Advice on Evidence, Adv Murray, was not prepared to accept the brief on a contingency basis. An attempt was made by the family of Mr Luiters to obtain funds.

6.6 I decided to proceed with the matter nevertheless. On 8 December 2003 I contacted Mr Köhler from the State Attorney and requested that we separate the quantum and merits. On 19 February 2004 I filed the necessary discovery documents. On 6 February 2004 I applied for a date to enrol the matter on the court's roll. On 19 March 2004 the trial date of 25 October 2004 was allocated. On 30 August 2004 I approached Adv HM Raubenheimer SC and explained the background of the matter and the frustrations experienced. He was prepared to accept the brief on a contingency basis. A consultation was held with the advocate on 9 September 2004. A further consultation was held on 23 September, 27 September and 1 October. On 13 October the Rule 37 Conference was held. The rest of the

criminal record was received on 22 October 2004. The matter commenced before Thring, J. on 25 October 2004.

7. There is nothing more that I could do than the abovementioned to expedite the proceedings. The accumulative effect of the factors mentioned in paragraph 3 hereinabove caused considerable delay.

G C DE JONGH

I certify that the Deponent acknowledged to me that he/she 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/her 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 _____ on this _____ day of _____

COMMISSIONER OF OATHS