IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC Case No. CCT 188/14
SCA Case No. 1055/13

In the matter between:

LEGAL AID SOUTH AFRICA	Applicant
and	
MZOXOLO MAGIDIWANA	First Respondent
INJURED AND ARRESTED PERSONS	Second Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Third Respondent
THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT	Fourth Respondent
THE MARIKANA COMMISSION OF INQUIRY	Fifth Respondent
PARTIES TO THE MARIKANA COMMISSION OF INQUIRY	Sixth to Nineteenth Respondents

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PRACTICE NOTE
ON BEHALF OF THE EIGHTEENTH RESPONDENT
(THE LEDINGOANE FAMILY)

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1 **The nature of the proceedings**

This is an application for leave to appeal against the judgment and order of the Supreme Court of Appeal.

2 **The issues that will be argued, clearly and succinctly stated**

2.1 Whether it is in the interests of justice to grant leave to appeal, particularly having regard to mootness;

2.2 If leave to appeal is granted, whether the High Court erred in directing Legal Aid South Africa ("LASA") to provide legal aid to the first and second respondents ("the miners") to enable them to be legally represented in the proceedings of the Marikana Commission of Inquiry.

3 **Portions of the record that, in the opinion of counsel, are necessary for the determination of the matter**

Entire record.

4 **An estimate of the duration of oral argument**

One day.

5 A summary of the argument

5.1 The 18th respondent submits that the decision of LASA in failing and/or refusing to grant legal aid / assistance to the miners is unlawful and invalid for two reasons:

5.1.1 First, it constitutes a violation of the right of access to courts in s 34 of the Constitution, as given effect in the Legal Aid Act and Legal Aid Guide. In the circumstances of the Marikana Commission, the failure to provide legal representation at state expense to the miners deprives them of a fair hearing and would result in substantial injustice.

5.1.2 Secondly, the decision falls to be reviewed for failure to comply with the constitutional requirement of legality. The decision is irrational in the light of the purposes of the Commission, which are frustrated – rather than being achieved – by the failure to provide legal aid to the miners.

6 Authorities on which particular reliance may be placed during oral argument

Legislation

1. Constitution of the Republic of South Africa, 1996

2. Legal Aid Act 22 of 1969

South African case law

1. *Albutt v Centre for the Study of Violence & Reconciliation* 2010 (3) SA 293 (CC)
2. *Bernstein and Others v Bester and Others NNO* 1996 (2) SA 751 (CC)
3. *Bongoza v Minister of Correctional Services and Others* 2002 (6) SA 330 (TkH)
4. *City of Johannesburg Metropolitan Municipality v Blue Moonlight Properties 039 (Pty) Ltd and Another* 2012 (2) SA 104 (CC)
5. *Glenister v President of the Republic of South Africa and Others* 2011 (3) SA 347 (CC)
6. *Legal Aid Board v Msila and Others* 1997 (2) BCLR 229 (E)
7. *Lufuno Mphaphuli & Associates (Pty) Ltd v Andrews and Another* 2009 (4) SA 529 (CC)
8. *Magidiwana and Others v President of the Republic of South Africa and Others* 2013 (11) BCLR 1251 (CC)
9. *Mbebe and Others v Chairman, White Commission and Others* 2000 (7) BCLR 754 (Tk)
10. *Nkuzi Development Association v Government of South Africa* 2002 (2) SA 733 (LCC)
11. *Sidumo and Another v Rustenburg Platinum Mines Ltd and Others* 2008 (2) SA 24 (CC)

International treaties and declarations

1. Convention for the Protection of Human Rights and Fundamental Freedoms, 1950 (known as the "European Convention on Human Rights")

2. International Covenant on Civil and Political Rights, 1966 (known as the "ICCPR")

    a. General Comment No. 32: Article 14 "Right to equality before courts and tribunals and to a fair trial", CCPR/C/GC/32 (23 August 2007)

Foreign and international case law and legislation

1. *Airey v Ireland* (1979) 2 EHRR 305
2. *Currie / Jamaica* Human Rights Committee communication no. 377/1989 (25 October 1989)
3. *New Brunswick (Minister of Health and Community Services) v G (J)* 66 CRR (2^{nd}) 267 (1999)

Jason Brickhill

Counsel for the eighteenth respondent (the Ledingoane family)

Legal Resources Centre

2 April 2015