

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO: -----/2025

SCA CASE NO: 1196/2023

FSHC CASE NO: 2482/2024

In the matter between:

NANDIPHA MAGUDUMANA

Applicant

and

THE DIRECTOR OF PUBLIC PROSECUTIONS,

FREE STATE

First Respondent

THE MINISTER OF THE SOUTH AFRICAN

POLICE SERVICES

Second Respondent

CAPTAIN FLYMAN

Third Respondent

THE PRESIDING MAGISTRATE (NO)-

CASE NUMBER 20A/113/23

MAGISTRATE COURT BLOEMFONTEIN

Fourth Respondent

THE HEAD OF BIZZAH MAKHATE

CORRECTIONAL CENTRE: KROONSTAD

Fifth Respondent

THE MINISTER OF HOME AFFAIRS

Sixth Respondent

FILING SHEET

DOCUMENTS FILED: SIXTH RESPONDENTS' ANSWERING AFFIDAVIT.

Dated at Johannesburg on the 04 day of July 2025.



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**PRESIDING MAGISTRATE (NO) CASE 20A/113/23
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SIXTH RESPONDENTS' ANSWERING AFFIDAVIT

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I, the undersigned,

LIVHUWANI TOMMY MAKHODE

do hereby make oath and say the following:

PART I

A. INTRODUCTION

1. I am the Director-General of the Department of Home Affairs.

1.1. I am duly authorised to depose to this answering affidavit on behalf of the Minister of Home Affairs, who is cited *nomine officio* as the Sixth Respondent.

1.2. The facts described in this affidavit have been obtained in the course of the performance of my duties as Director-General and fall within my personal knowledge or are drawn from documents in my possession or within my control, unless stated otherwise, or the contrary appears from the context and are, to the best of my knowledge and belief, true and correct.

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- 1.3. I have consulted with officials in the employ of the Department of Home Affairs to obtain insight and information regarding the factual events underpinning this application. The Department of Home Affairs has extensive institutional experience in the field of deportation and extradition, both nationally and internationally, on which expertise I have drawn. I have no reason to doubt the veracity of the information provided to me.
- 1.4. To the extent that I make legal submissions regarding aspects of these proceedings, I do so on the advice of the Sixth Respondent's internal and external legal advisors and representatives.
2. In due course, I will respond to the averments and submissions made in the notice of motion and founding affidavit filed on behalf of the Applicant. My failure to deal with any allegation is not to be construed as an admission of its correctness and accordingly, I deny each and every allegation made by the Applicant which is inconsistent with the legal and factual position set out in this answering affidavit.
3. There was an unfortunate delay in the filing of this answering affidavit. A separate application for condonation is filed together with this answering affidavit explaining the delay and respectfully requesting condonation. I

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sincerely apologise for any inconvenience occasioned to this Honourable Court and to the parties.

B. PURPOSE OF THIS AFFIDAVIT

4. I depose to this affidavit in opposition to this application for leave to appeal in terms of section 167(3)(b) of the Constitution and Rule 19 of the rules of the Constitutional Court read with Practice Direction of 17 March 2015. This application for leave to appeal seeks to challenge the majority judgement and order of the Supreme Court of Appeal per Zondi DP (Kathree-Setiloane JA; Gorven JA and Molopa-Sethosa AJJA concurring) handed down on 16 May 2025 ("SCA majority judgement").
5. The SCA majority judgment correctly dismissed the Applicant's appeal on the basis that:

"The overwhelming evidence is that the appellant and Mr Bester were arrested by the Tanzanian authorities for having violated the immigration laws of that country. When she arrived at Lanseria airport, she was lawfully arrested by members of the SAPS."¹ (Emphasis added)

¹ SCA majority judgment para 41

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6. The SCA majority judgement articulates a cogent, well-reasoned basis for this conclusion. The judgment reasoning is compelling, comprehensive and firmly rooted in the evidential and legal framework justifying the dismissal of the appeal.

7. This application for leave to appeal invites this Honourable Court to declare that South Africa violated the sovereignty of the United Republic of Tanzania ("Tanzania") by engaging in extraterritorial conduct in breach of international law. This is a grave and reckless proposition. The narrative advanced by the Applicant brands South Africa as a rogue state, acting in contravention of section 231, 232 and 233 of the Constitution, 1996 and in defiance of both Tanzanian sovereignty and international comity.

8. In truth, this application seeks to distort lawful immigration enforcement into an international transgression. Through calculated legal mischaracterization, the Applicant seeks to recast her lawful deportation as a "disguised extradition" in a desperate attempt to evade criminal accountability.

9. The flawed nature of this application, together with the numerous legal misconceptions on which it is based, will become apparent from the Sixth Respondent's grounds of opposition.

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10. Before dealing with the factual chronology and legal analysis, I begin by identifying the central misconceptions on which the Applicant's case is built.

C. SYNOPSIS OF APPLICANT'S MISCONCEPTIONS

11. The Applicant's case appears to be constructed on six interrelated misconceptions, which I have grouped into three broad categories:

- 11.1. One: Conceptual misconceptions regarding deportation and extradition:

- 11.1.1. Misconception 1: That deportation and extradition are mutually exclusive, and deportation cannot lawfully result in a person being returned to their country of origin for prosecution.

- 11.1.2. Misconception 2: That any return of a fugitive to South Africa for purposes of prosecution is only lawful in terms of an extradition process.

- 11.2. Two: Mischaracterisation of intergovernmental cooperation:

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11.2.1. Misconception 3: That any cooperation or communication between the South African and Tanzanian authorities automatically renders a lawful deportation, a disguised extradition.

11.2.2. Misconception 4: That the mere presence of South African officials in Tanzania is conclusive evidence of the Second or the Sixth Respondent's involvement in an unlawful rendition.

11.3. Three: Procedural misconceptions regarding onus and relief sought:

11.3.1. Misconception 5: That the Applicant need only allege an unlawful arrest, and the onus automatically shifts to the Respondents to disprove it.

11.3.2. Misconception 6: That the Applicant may claim her return was unlawful without setting aside the Tanzanian Notice declaring her a Prohibited Immigrant and without evidence of unlawful actions by members of the Second and/or the Sixth Respondents.

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12. I will address each of these misconceptions in the sections that follow, in the context of the legal framework and the findings of both the SCA majority judgment and the High Court. I will demonstrate that the attempt to attack the SCA majority judgment, is untenable. It is also, with respect, legally and jurisdictionally misdirected, I am advised. I will also engage with the minority judgment of Makgoka JA, with due respect and I will submit that the reasoning adopted by the SCA majority judgment is to be preferred.

D. ORIENTATION

13. I have structured the Sixth Respondent's opposition as follows:

- 13.1. **PART II:** I examine the relevant facts regarding the Applicant's deportation from Tanzania and demonstrate that there is no substance in the Applicant's challenges regarding choice of destination, hand-over and escort, agreement and the validity of the deportation. I demonstrate that the relief sought by the Applicant in the intended appeal is not competent. I also examine Applicant's new relief, debunk her alleged constitutional right and provide a synopsis of the litigation.

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- 13.2. **PART III:** I investigate the foundational fallacies of the Applicant's case with specific regard to the nature of deportation, the mischaracterization of state cooperation and examine the Applicant's misuse of legal doctrine. Thereafter, I address the principal grounds on which leave to appeal is opposed with reference to the findings of the SCA majority judgment and I demonstrate that the Applicant's grounds of appeal are misplaced. I also address the criteria which must be met before leave to appeal to this Court is granted and the Applicant's failure to satisfy these criteria.
- 13.3. **PART IV,** I traverse the contents of the founding affidavit *ad seriatim* to the extent that it relates to the Sixth Respondent. I shall show that the interests of justice require the dismissal of this application and that there is no arguable point of law which, in the public interest, requires this Court's consideration. There is no compelling reason why the appeal should be heard. The Applicant does not point to any consideration that favours the granting of leave to appeal. In short, no constitutional issue of substance arises, there are no prospects of success and yet a further appeal to this court is not in the interests of justice, especially not in the circumstances of this case. In conclusion, I

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make short submissions on the appropriate order, and submit that this application for leave to appeal falls to be dismissed.

PART II

E. RELLEVANT FACTS

14. The Applicant, a fugitive from South Africa, entered Tanzania unlawfully, in contravention of its immigration laws.² Tanzania, like all sovereign nations, has the right to control its borders and deport individuals who do not have legal status to remain in the country.³

15. Deportation is s sovereign right. As Lord Denning explained *R v Brixton Prison (Governor), Ex parte Soblen*:

"...by international law any country is entitled to expel an alien if his presence is for any reason obnoxious to it; and as incidental to this right, it

² Notice of Motion to the application for Leave to Appeal dated 30 May 2025 ("NOM LTA"). High Court judgment para 11; SCA minority judgment Makgoka JA para 74.

³ Minister of Home Affairs&others v Watchnuka&another 2004 (4) SA 326 (SCA) para 29 citing with approval *Nishimura Ekiu v The United States* (1892) 142 US 651 at 659

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can arrest him, detain him, and put him on board a ship bound for his own country.”⁴

16. The Tanzanian power to deport is not taken away by the fact that the Applicant was a fugitive from justice in South Africa.⁵ Tanzania is not obliged to retain the Applicant indefinitely until South Africa makes a request for extradition.⁶ As clarified in *R v Brixton Prison (Governor), Ex parte Soblen*:

“It was suggested before us that there was a common law shackle on this power of deportation. It was said that a man could not be deported, even to his own country, if he was a criminal who had fled from it. No authority was cited for this proposition. It cannot stand examination for one moment. Supposing no other country but his own is willing to take him. Are we to keep him here against our will simply because he is, in his own country, a wanted man? Clearly not. If a fugitive criminal is here, and the Secretary of State thinks that, in the public good, he ought to be deported, there is no reason why he should not be deported to his own country, even though he is there a wanted criminal.”⁷ (Emphasis added)

⁴ *R v Brixton Prison (Governor), Ex parte Soblen* [1962] 3 All ER 641 at 660 E-F
⁵ *R v Brixton Prison (Governor), Ex parte Soblen* [1962] 3 All ER 641 at 661 A-B
⁶ *Hogan v. R.*, 1976 CanLJ 158 (SCC), [1977] 1 SCR 413
⁷ *R v Brixton Prison (Governor), Ex parte Soblen* [1962] 3 All ER 641 at 660 H-I to 661A-B

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17. I am advised that the Applicant misunderstands the fundamental difference between deportation and extradition.⁸

17.1. Deportation: Deportation occurs when a state wishes to expel a person from its territory. A sovereign state may lawfully declare a foreign national a prohibited immigrant and remove them from its territory if it deems their presence undesirable or unlawful after compliance with duly authorised deportation procedures.⁹

17.2. Extradition: Extradition occurs when one state wishes to retrieve a person and makes a request for extradition from another state. A sovereign state may, on request by another state, surrender a person to stand trial or serve a sentence after compliance with duly authorised extradition procedures.

18. The distinction lies in the purpose for the removal.¹⁰ If the Applicant's arrest and removal from Tanzania was done pursuant to an authorised immigration purpose, namely, enforcement of Tanzania's domestic laws through deportation, then the act was lawful. The crux of the inquiry is whether the actions of South African authorities in any way subverted

⁸ Halm v Canada (Minister of Employment and Immigration (TD)) [1996] 1 FC 547

⁹ R v Brixton Prison (Governor), Ex parte Soblen [1962] 3 All ER 641 at 661 B-C

¹⁰ R v Brixton Prison (Governor), Ex parte Soblen [1962] 3 All ER 641 at 661 C-D

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Tanzanian immigration law, thereby transforming an otherwise lawful deportation into an unlawful rendition.

19. What is relevant to consider is whether South African officials instigated or participated in any unlawful process of rendition that violated the sovereignty of Tanzania and, in so doing, bypassed South Africa's own constitutional and statutory requirements.
20. This is precisely what the SCA majority judgment sought to ascertain when it inquired into whether the Applicant established the identity of the parties alleged to have unlawfully apprehended, arrested, abducted or were involved in her forced return to South Africa.¹¹
21. The SCA majority judgment correctly found that the Applicant failed to establish that she was arrested in Tanzania by members of the Second Respondent. The SCA majority judgment correctly concluded that the failure to amend her pleadings to extend liability to the Sixth Respondent was fatal.¹²
22. Absent proof of South African officials having orchestrated the Applicant's arrest or requested the removal of the Applicant for the purpose of

¹¹ SCA majority judgment para 19

¹² SCA majority judgment para 38

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prosecution prior to her arrest (which is necessary to ground a claim of disguised extradition), the relief sought cannot be sustained. On this ground alone, the application stands to be dismissed.

F. VALIDITY OF APPLICANT'S DEPORTATION

23. There is no dispute that the Applicant entered Tanzania illegally in contravention of its immigration laws. Even the SCA minority judgment, (“Makgoka JA”) states that the Applicant “*was lawfully arrested and detained by the Tanzanian authorities because she was in the country illegally.*”¹³

24. The Applicant made two choices. First, the Applicant chose to clandestinely exit South Africa. Second, the Applicant chose to illegally enter Tanzania. The consequences of illegal immigration are determined in accordance with the host country’s legislation. In this case, the Tanzanian Immigration Act governed the Applicant’s status and removal.

25. After the Applicant was apprehended for being illegally present in Tanzania, she was issued with a Notice of Prohibited Immigrant (“the Notice of Prohibited Immigrant”) in terms of the Tanzanian Immigration

¹³ Makgoka JA judgment para 74

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Act (Cap 54 revised edition of 2016) and Regulations made thereunder, which authorises the arrest, custody and removal of illegal immigrants ("the Tanzanian Immigration Act").¹⁴ A copy of the Notice of Prohibited Immigrant is attached marked **Annexure "LM1"**.

26. The Notice of Prohibited Immigrant constitutes *prima facie* evidence of a valid issuance under the Tanzanian Immigration Act.¹⁵ The Notice of Prohibited Immigrant is the legal basis for the Applicant's removal, escort and return to South Africa. The Notice of Prohibited Immigrant:

26.1. Declared the Applicant a prohibited immigrant in Tanzania.

26.2. Declared the Applicant's presence in Tanzania, unlawful; and

26.3. Ordered the Applicant to leave Tanzania within three days by "*escort*".

27. There is no evidence that prior to the Applicant's arrest:

¹⁴ CAP. 54 R.E 2016. Section 12(1)(p) provides for the removal of all prohibited, unwanted or undesirable immigrants. Section 25(2)(c) allows for the arrest, custody and conveying of prohibited immigrants to any place outside Tanzania.

¹⁵ R v Brixton Prison (Governor), Ex parte Sobien [1962] 3 All ER 641 at 660-661 This court cannot inquire into the legality of actions taken by Tanzania in the exercise of its sovereign powers

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- 27.1. South Africa had knowledge of the Applicant's presence in Tanzania; or
- 27.2. South Africa had made a prior request for the Applicant's arrest and return to South Africa; or
- 27.3. South Africa was involved in the Applicant's apprehension, arrest and abduction in Tanzania for violation of immigration laws.
28. This is corroborated by correspondence issued by the Tanzanian immigration authorities informing the South African High Commission of the unlawful entry and arrest. A copy of the correspondence is attached marked **Annexure "LM2"**. It reads *inter alia*:
- "[2] The above mentioned people are South Africans, who were found and arrested in the United Republic of Tanzania for Unlawfully entry and present within the country the act which is contrary to the Immigration law."*
29. Accordingly, the Applicant's removal was executed pursuant to the sovereign decision of a foreign state acting under its immigration laws, and not as a result of any clandestine extradition arrangement initiated by the Respondents and in particular the Sixth Respondent.

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F1. DEPORTATION: DESTINATION

30. The Tanzanian authorities, acting within their sovereign powers, and unprompted by South Africa, determined the Applicant's removal destination and mode of enforcement. South Africa's role was reactive, not instigative.
31. The obvious first choice for deportment is the country of origin. As Lord Bingham CJ explained in *R v Staines Magistrates Court and others, ex parte Westfallen*:¹⁶

"It was indeed a natural step for Norway to send the applicants back to where they had come from. There is in the material before us nothing to suggest that the British authorities procured or influenced that decision. It is true that they did not in any way resist it, and there is no reason why they should have resisted it. It is very probable that they welcomed the decision, but in my judgment they would have been failing in their duty as law enforcement agencies if they had not welcomed it. In my judgment there is nothing to suggest any impropriety such as would attract application of the

¹⁶ *R v Staines Magistrates Court and others, ex parte Westfallen, R v Staines Magistrates Court and others, ex parte Soper, R v Swindon Magistrates Court and others ex parte Nangle* (1998) 4 All ER 216 QBD

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ratio in Bennett v Horseferry Road Magistrates' Court (1993) 3 ALL ER 138, (1994) 1 AC 42 in this case." (Emphasis added)

32. South Africa has a duty to accept the return of its own nationals.¹⁷ There is no evidence of an ulterior purpose as the decision to return the Applicant to South Africa was a decision of the Tanzanian immigration authorities acting within sovereign powers.
33. The Applicant incorrectly assumes that a person subject to deportation is entitled to select her destination. This arises from a misunderstanding of immigration law. A departure order may enable an individual to choose a destination, but the Applicant was not subject to such an order.
34. Rather, she was issued with a Notice of Prohibited Immigrant which empowered the Tanzanian immigration authorities to determine both her destination and the manner of removal: by "escort".¹⁸
35. Provided there is no risk of refolement or persecution in the receiving country, I am advised that the Applicant has no right to choose her

¹⁷ Section 21(3) of the Constitution of the Republic of South Africa, 1996 provides that "Every citizen has the right to enter, to remain in and to reside anywhere in the Republic." The African Charter on Human and People's Rights, specifically Article 12 addresses the right to freedom and movement. While it grants individuals the right to leave any country of and return to their own, it also allows for restrictions based on national security, law and order, public health, or morality, provided these restrictions are stipulated by law.

¹⁸ Halm v Canada (Minister of Employment and Immigration) (1995) 91 F.T.R 106 (TD) under "Deport-Depart" section

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destination. This principle was confirmed by the Supreme Court of Ireland in *P(D) v Governor of the Training Unit & Ors*:¹⁹:

"There remains then the submission by Dr. Forde that the deportation was also invalid, in that he was being brought to Romania and that he should be deported to a country of his choice. That is, I am satisfied, is a total misconception of the process of deportation. The deporting State, are entitled to choose the destination to which they will deport the applicant. They must, of course, be in a position from their point of view to ensure that they can effect his entry into the country to which they decide to deport him because otherwise it would simply involve them in difficulty and further expense. They are perfectly entitled to make an election. In this case they made a very obvious election to return him to the country of origin, the country from which he had come. I am satisfied that was perfectly within their competence as the deporting State, if I can so describe them and I am satisfied that that ground also fails. That is not to say that the issue of refoulement might not arise if there was a possibility of persecution of the applicant existing in some other country, but that did not arise in this case."

(Emphasis added)

¹⁹ *P(D) v Governor of the Training Unit & Ors* [2001] IESC 113 (28 November 2001)

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36. Tanzania, as the deporting state is entitled to choose the destination to which they will deport the Applicant. There is no evidence that South Africa influenced the Tanzanian immigration authority's decision regarding the Applicant's destination.
37. Although the SCA majority judgment did not engage with this aspect, it is obvious that there is nothing untoward in South Africa receiving its citizen, as a prohibited immigrant in compliance with its constitutional and international obligations.

F2. DEPORTATION: HAND OVER AND ESCORT

38. Sovereign control is territorial. Section 25(2)(c) of the Tanzanian Immigration Act states that the Applicant may "*be placed in custody until he boards a ship or aircraft or obtains any other means of transport conveying him to any place outside Tanzania.*" The words "*until he boards a ship or aircraft...*" (albeit in English legislation) have been interpreted to mean that the sovereign state, is empowered to choose the ship or aircraft and determine the prohibited immigrant's destination.²⁰

²⁰ Mohamed and Another v President of RSA and another 2001 (3) SA 893 (CC) at para 31 regarding the interpretation of UK Aliens Order 1953 with similar wording: Removal of aliens subject to deportation orders 21. (1) An alien in whose case a deportation order has been made may be placed, under the authority of the Secretary of State, on board any ship or

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39. The Notice of Prohibited Immigrant ordered the Applicant to leave by “escort”. The Tanzanian Immigration Act does not specify the precise nature of the removal, hence a wide discretion regarding the “escort” is permissible.
40. Section 12(1)(l) of the Tanzanian Immigration Act enjoins its immigration officials to combat illegal immigration by cooperating with immigration departments of other countries and international organizations.
41. Since a removal by escort requires facilitated and monitored accompaniment to destination, it makes imminent sense for the Tanzanian Immigration officials to have liaised with their South African counterparts to assist with the Applicant’s “escort” out of Tanzania.
42. The Tanzanian officials did not “handover” the Applicant in the sense used in extradition law. The expression “handover” in extradition law presupposes a formal transfer of custody following a judicial process between sovereign states. No such process occurred here.

aircraft which is about to leave the United Kingdom; and the master of the ship or commander of the aircraft shall, if so required by an immigration officer, take such steps as may be necessary for preventing the alien from landing from the ship or aircraft before it leaves the United Kingdom, and may for that purpose detain the alien in custody on board the ship or aircraft”

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43. Although officials of the South African High Commission in Tanzania assisted and the Second and Sixth Respondent escorted the Applicant, she remained in Tanzania's legal and physical control until she exited its sovereign territory. In other words, execution of the deportation order is only complete once the aircraft has departed Tanzanian airspace and the Applicant has been removed from Tanzania.
44. The Tanzanian authority's handover of the Applicant to the South African officials is in accordance with the Tanzanian Immigration Act, to give effect to her deportation.
45. There is no evidence of an ulterior purpose or that the Sixth Respondent was involved or influenced the manner in which the Applicant was handed over by the Tanzanian authorities to the officials of the South African High Commission in Tanzania and thereafter to the officials of Sixth Respondent (protected by the Second Respondent).
46. A case in point is *Ocalan v Turkey*²¹ where the European Court of Human Rights stated:

²¹ *Ocalan v Turkey* Ect HR APP No 46221/99 (at p. 325 par 92)

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"Independently of the question whether the arrest amounts to a violation of the law of the state in which the fugitive has taken refuge- it must be established to the court 'beyond reasonable doubt' that the authorities of the state to which the applicant has been transferred have acted extra-territorially in a manner that is inconsistent with the sovereignty of the host state and therefore contrary to international law." (See mutatis mutandis, Stocke v Germany (App No 11755/85 12 October 1989 report of the Commission at paragraph 54))"

47. The SCA majority judgment correctly found nothing untoward in the Second and/or the Sixth Respondent's involvement in the Applicant's return to South Africa.²²

F3. DEPORTATION: AGREEMENT

48. Agreement with Tanzanian immigration officials regarding the practical facilitation of the Applicant's hand over, escort and return to South Africa, is not subterfuge.

49. In *Kissel v Attorney-General of Canada*²³ the court stated:

²² SCA majority judgment para 3

²³ *Kissel v Attorney-General of Canada* 2006 CANLII 47314 (ON SC) at pg 47 para 152

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“Second, cooperation and communication between Canadian and American authorities with respect to a certain individual who is sought for prosecution in the United States also does not, by itself, suggest bad faith or improper motive. Indeed such communication and cooperation is necessary in order for Canadian authorities to successfully pursue the objectives of Canadian immigration law.”

50. The South Africa officials were present at the invitation of Tanzania immigration officials exercising powers in accordance with the Tanzanian Immigration Act.
51. There is no evidence that South Africa infringed or interfered with the territorial sovereignty of Tanzania which could compromise the legitimacy of the deportation process.
52. Tanzania lawfully deported the Applicant in terms of its immigration law. Compliance with sovereign legislation is not evidence of collusion.

F4. VALID DEPORTATION

53. Unless the Second Respondent or the Sixth Respondent initiated and procured the Applicant’s deportation by unlawful means in violation of

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Tanzania's sovereignty and breached international law, this court lacks jurisdiction to review, invalidate or disregard the validity of the deportation actions taken by Tanzania, as sovereign state in the execution of its sovereign laws.²⁴

54. As the Canadian court stated in *Bembenek v Canada (Minister of Employment and Immigration)*:²⁵

"The applicant's whole case on this application is based on the proposition that the immigration proceedings are a disguised form of extradition. The real mischief of disguised extradition is the case where extradition fails because the evidence of foreign crime is too weak for extradition, and deportation is sought to achieve indirectly what could not be achieved directly through extradition: see, generally, G. V. La Forest, Q.C., Extradition to and From Canada, 2nd ed. (1977), pp. 37-9.

Disguised extradition is typically established when the evidence is not strong enough for extradition and the authorities of both countries collude together through deportation to achieve indirectly what they could not

²⁴ *Johnstone v Pedlar* [1921] 2 AC 262, 290 "Municipal Courts do not take it upon themselves to review of the dealings of State with State or of Sovereign with Sovereign. They do not control the acts of a foreign state done within its own territory, in the execution of sovereign powers, so as to criticise their legality or to require their justification."

²⁵ *Bembenek v Canada (Minister of Employment and Immigration)* 1991 CANLII 11763 (ON SC) at pg 49C-H

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achieve through extradition. That is not this case. The applicant has not established here that the case for extradition is so weak that the authorities decided to launch immigration proceedings for the improper purpose of a groundless extradition.

Although the applicant has not established the typical case of disguised extradition, it is asserted that the evidence shows that the immigration officials did bring the immigration proceedings as a disguised form of extradition. That is an allegation of bad faith. The applicant bears a heavy onus to show bad faith. The applicant must go so far as to show that the immigration proceedings are a sham."

55. A sovereign state such as Tanzania cannot be precluded from taking steps to deport any individual who has transgressed its immigration laws. There was no ulterior purpose in the Applicant's arrest and deportation. The purpose was to deport the Applicant to South Africa because she was an illegal immigrant.
56. Other than the Applicant's unsubstantiated allegations, there is no objective evidence that South African officials procured or orchestrated the Applicant's arrest for contravention of Tanzanian immigration laws.

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57. In *S v Beahan*²⁶ a decision of the Zimbabwean Supreme Court, the court held:

"The appellant, a fugitive from Zimbabwe, entered Botswana illegally in transgression of the immigration laws. He was apprehended by members of the Botswana Defence Force and handed over to the Police. Upon it being ascertained that the authorities in Zimbabwe were anxious that he be returned to stand trial, he was conveyed in the custody of the Botswana Police to the border between the two countries and voluntarily surrendered to the Zimbabwe Republic Police, who promptly arrested him. That conduct did not constitute a violation of international law for it involved no affront to the sovereignty of a foreign State."

58. Since the Applicant has not established a violation of Tanzanian sovereignty as basis for the exercise of this Court's extraterritorial jurisdiction, I am advised that this Court must accept that Tanzania acted within its sovereign powers and legal propriety of the Applicant's deportation from Tanzania is valid and is binding on this Court.

²⁶ *S v Beahan* 1992 (1) SACR 718 (ZS) at pg 728

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59. A disguised extradition cannot exist concurrently with a legally valid deportation by Tanzania. On this ground alone, this application must be dismissed.

G. APPLICANT'S NEW RELIEF IN CONSTITUTIONAL COURT

60. In this application for leave to appeal, the Applicant seeks different relief to the relief previously sought before the High Court and the Supreme Court of Appeal:

"It is declared that the applicant's hand-over by the Tanzanian authorities to the officials of the South African High Commission in Tanzania and/or the officials of the second and sixth respondents, and the subsequent deportation of the applicant to South Africa, were unconstitutional and unlawful."²⁷ (Emphasis added)

61. I immediately express my displeasure. The procedural irregularity of the Applicant's constantly vacillating relief against the Sixth Respondent is audacious, in the extreme.

²⁷ NOM LTA FA paras 4 and 5.

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62. The SCA majority judgment did not consider whether the Applicant had made out a case on the papers that her hand over by the Tanzanian Ministry of Home Affairs to the South African High Commission and/or the officials of the Second and Sixth respondents, and the subsequent deportation to South Africa was part and parcel of a disguised extradition in breach of the law.
63. Leaving aside the procedural irregularities, the fundamental difficulty for the Applicant is that her deportation was conducted in terms of the Tanzanian Immigration Act.
64. The Tanzanian authorities, acting within their sovereign immigration powers, declared the Applicant an illegal prohibited immigrant and arranged for her escort out of Tanzania by South African immigration officials. The Tanzanian Notice of Prohibited Immigrant and the deportation pursuant is lawful in the absence of conduct that indicates unlawfulness.
65. I am advised that the Applicant's metamorphosized relief, in whatever mutated format, is not competent.

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H. NO CONSTITUTIONAL RIGHT

66. To determine whether leave to appeal must be granted by this Court, the Court must establish that the case engages its jurisdiction. The Applicants' founding affidavit is not a model of clarity. The nature of the alleged right on which the Applicant relies, pivots on a complicated legal contortion in order to contrive a constitutional right. It is impossible to pin down the exact basis in law on which the Applicant claims relief in this matter. It remains a moving target.
67. This Court has repeatedly stated that it is essential for a constitutional issue to be pleaded properly, timeously and not raised for the first time on appeal to this Court. Failure to do so can be fatal to an applicant's case.²⁸
68. Whilst I accept that in the abstract, questions regarding disguised expropriations may in appropriate circumstances give rise to constitutional issues, I am advised that the Applicant has not pleaded and explained the nature of the constitutional question that arises on the facts and with which the appeal is allegedly concerned.

²⁸ Billiton Aluminium SA Ltd t/a Hillside Aluminium v Khanyile&Others 2010 (5) BCLR 422 (CC) paras 16 to 24 and the authorities cited.

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69. It is not open to the Applicant, nor is it constitutionally sustainable, to attempt a second bite at the cherry by re-litigating a case rejected by two courts—particularly where no new evidence is advanced, and no valid constitutional principle is implicated. This Court is not a forum for appeals in general but for those raising constitutional matters with broad implications. This matter does not meet that threshold.

70. I am advised and submit that not having adequately pleaded or identified a constitutional issue of any moment or having sought to raise any such issue in the courts below, the present application falls to be dismissed on this basis alone.

I. SYNOPSIS OF LITIGATION

71. The Applicant has already enjoyed the benefit of three hearings:

71.1. First: in the High Court per Loubser J (“High Court”) who concluded that Applicant had willingly acquiesced to her transportation back to South Africa, thereby giving informed and

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enforceable consent and her removal was lawful. The High Court dismissed the application with costs.²⁹

71.2. Second: on leave to appeal in the High Court per Loubser J, who refused leave to appeal on the basis that another court would not reach a different conclusion and there were no other compelling reasons why the matter should proceed on appeal.³⁰

71.3. Third: on appeal to the Supreme Court of Appeal, per Justices Zondi DP (Kathree-Setiloane JA; Gorven JA and Molopa-Sethosa AJJA concurring) who held that the overwhelming evidence indicated that the Applicant was arrested by Tanzanian authorities for having violated the immigration laws of that country and when she arrived in South Africa, she was lawfully arrested by members of the investigating division of the Second Respondent.³¹

72. The Applicant's cause of action is dubious. I say this because the Applicant's relief has metamorphosized considerably:

²⁹ High Court judgment para 42

³⁰ Magudumana v Director of Public Prosecutions Free State and Others [2484/2023] [2023] ZAFSHC 271 (18 July 2023)

³¹ SCA majority judgment para 41

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- 72.1. Before the High Court: Wrongful and unlawful arrest and detention against the Second Respondent.³²
- 72.2. Before the SCA on appeal: Wrongful and unlawful arrest and detention against the Second and Sixth Respondents and a disguised extradition claim.³³
- 72.3. Before this Court on leave to appeal: Wrongful and unlawful detention claim against the Second and Sixth Respondents, unlawful deportation and disguised extradition.³⁴
73. I shall deal with the Applicant's shifting relief by demonstrating the correctness of the SCA majority judgment and explain why it is to be upheld. In so doing, I shall examine the misdirection of the minority judgment of Makgoka JA to assist this Court to avoid similar pitfalls.

³² SCA majority judgment para 3
³³ SCA majority judgment para 27
³⁴ NOM LTA prayer 2.2.1

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PART III**J. FOUNDATIONAL FALLACIES OF THE APPLICANT'S CASE**

74. This section expands on the key fallacies that underlie the Applicant's case which I briefly set out at the outset.

J1 CATEGORY 1: FOUNDATIONAL CONFUSION ABOUT THE NATURE OF DEPORTATION

75. This application appears to be based on a fundamental misunderstanding of the distinction between deportation and extradition.

75.1. This case is not about an unlawful disguised extradition, as the Applicant contends, but about deportation flowing from illegal immigration. The Applicant has not shown that her deportation was unlawful or precluded by pending extradition.

75.2. The Applicant seeks to cloak her deportation in the guise of extradition, based on the flawed assumption that as an illegal immigrant and fugitive she could only be extradited and could not be lawfully deported.

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75.3. This misconception is rooted in legal obfuscation and the unsubstantiated belief that the Applicant could have successfully resisted extradition, despite the *prima facie* evidence of her criminal conduct, surreptitious departure from South Africa and illegal entry into Tanzania.

75.4. There is no evidence that South African authorities demanded her return or knew of her whereabouts prior to her arrest as an illegal immigrant.

75.5. As held in *Halm v Canada (Minister of Employment and Immigration)*³⁵

"I see nothing inherently unfair in a foreign state delaying extradition proceedings when it is known that the individual in question is likely to be deported in any event."

³⁵ *Halm v Canada (Minister of Employment and Immigration)* (1995) 91 F.T.R 106 (TD)

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J2 CATEGORY 2: MISCHARACTERISATION OF STATE COOPERATION

76. The Applicant seeks to convert legitimate intergovernmental cooperation into unlawful collusion.

76.1. The Applicant's contention is that the involvement of South African officials in facilitating her return from Tanzania constitutes collusion which converted her lawful deportation into a disguised extradition.

76.2. This contention is legally unsustainable. Practical cooperation between states does not render a lawful deportation unlawful, nor does it transform deportation into extradition.

J3 CATEGORY 3: MISUSE OF LEGAL DOCTRINES AND PROCEDURAL FAIRNESS

77. The Applicant's flawed legal premises seek to distort established principles of procedure, onus and fair hearing. I say this for the following reasons:

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- 77.1. The Applicant contends that the High Court's *obiter* remark on disguised extradition, must be accepted as *res judicata* in the absence of a cross-appeal.
- 77.2. Contrary to the Applicant's assertion, the High Court did not grant declaratory relief on this basis, nor were the parties bound to this conclusion. Accordingly, there was no obligation on the Respondent's to cross-appeal.
- 77.3. This misconception lies in equating the absence of a cross-appeal with a waiver. In law, waiver must be unequivocal. The Applicant has neither alleged nor proved that the Respondents waived any rights.
- 77.4. The Applicant also seeks relief against the Sixth Respondent based on vague allegations first made in her replying affidavit and pressed only in her heads of argument without amendment to her notice of motion.
- 77.5. The SCA majority judgment correctly held that such relief, involving a direct and substantial interest, could not be granted

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without affording the Sixth Respondent the opportunity to be heard in accordance with *audi alteram partem*.

- 77.6. Finally, the Applicant claims that the mere allegation of unlawful arrest and detention by the Second Respondent in Tanzania suffices to shift the onus to the Respondents. This is incorrect.
- 77.7. The power to arrest and detain is an incident of sovereignty, exercised exclusively by the state on whose territory the person is located.
- 77.8. Had members of the Second or Sixth Respondent arrested and detained the Applicant in Tanzania, this would have constituted a violation of Tanzanian sovereignty.
- 77.9. It was for this reason that the SCA majority found it critical to determine whether the Applicant had established that members of the Second Respondent had in fact arrested her in Tanzania.
- 77.10. The SCA majority correctly held that the Applicant failed to discharge the onus resting upon her, having not established that

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members of the Second Respondent affected her arrest in Tanzania.

77.11. There is no identifiable infringement of the Applicant's rights by the Tanzanian authorities in apprehending her following her illegal entry into Tanzania or in returning her to South Africa, her country of origin.

77.12. Nevertheless, the Applicant continues to vociferously assert that the mere fact of her arrest and detention in Tanzania, suffices to establish unlawfulness on the part of both the Second and the Sixth Respondents.

K. GROUNDS OF OPPOSITION FOR LEAVE TO APPEAL

78. In the sections that follow, I demonstrate with reference to the SCA majority judgment that there is no merit in the grounds of appeal raised by the Applicant and that there are no prospects of success on appeal.

79. The SCA majority judgment correctly dismissed the appeal on the ground that the Applicant:

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- 79.1. Failed to establish that she was arrested and abducted in Tanzania by members of the Second Respondent;³⁶ and
- 79.2. Failed to amend her Notice of Motion to include relief against the Sixth Respondent.³⁷
80. As a result of the finding that the Applicant failed to establish the involvement of the Second and Sixth Respondents, the SCA majority judgment correctly determined that it was not necessary to consider the applicability of the law relating to disguised extradition.³⁸
81. In the SCA minority judgment, Makgoka JA, ignored the fact that the Applicant was arrested for transgression of Tanzania's immigration laws. It is respectfully submitted that in the SCA minority judgment, Makgoka JA, however well-intentioned, ventured beyond the pleadings, and blurred the distinction between deportation and extradition by disregarding the legality of the Notice of Prohibited Immigrant and finding that extradition was the only lawful means for the removal of the

³⁶ SCA majority judgment paras 19-22
³⁷ SCA majority judgment paras 27-30
³⁸ SCA majority judgment para 39

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Applicant. I will explain Makgoka JA's misdirection in more detail in the section dealing with disguised extradition.

K1 GROUND 1: APPLICANT FAILED TO ESTABLISH ARREST BY SAPS

82. In the initial application, the Applicant sought relief *inter alia*:

"...declaring that that her apprehension, arrest and abduction in Tanzania was performed by members of the SAPS on or about 7 April 2023 and subsequent transportation to the Republic of South Africa and her purported arrest and detention pursuant thereto, was wrongful and unlawful."³⁹ (Emphasis added)

83. On appeal before the Supreme Court of Appeal, the Applicant raised in heads of argument, new and different relief:

"2.1 It is declared that the applicant's apprehension and arrest in Tanzania by officials of the second and sixth respondents, as well as her subsequent forced return to the South Africa is inconsistent with the Constitution of South Africa, 1996, unlawful and invalid."⁴⁰

³⁹ SCA majority judgment para 3 and High Court judgment para 3;

⁴⁰ SCA majority judgment para 27

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84. The SCA majority judgment determined that it was fundamental to establish the Second Respondent's involvement in Tanzania.⁴¹ Analyzing the evidence, the SCA majority judgment applied *Plascon-Evan v Van Riebeeck Paints (Pty) (Ltd)*⁴² and relied on facts averred by the Minister of Police which it found not to be far-fetched or untenable:⁴³

84.1. Mr Bester was regarded as extremely dangerous and members of the Second Respondent who formed part of the South African delegation to Tanzania were enlisted for purposes of protection.⁴⁴

84.2. The Applicant was arrested at Lanseria airport by members of the Second Respondent investigating the case and not by those members of the Second Respondent who formed part of the South African delegation to Tanzania.⁴⁵

84.3. The Second Respondent did not take any action against the Applicant until her arrest at Lanseria airport.⁴⁶

⁴¹ SCA majority judgment para 16(i)

⁴² *Plascon-Evan v Van Riebeeck Paints (Pty) (Ltd)* 1984 (3) SA 623 at 634E-635C

⁴³ SCA majority judgment para 21

⁴⁴ SCA majority judgment para 22

⁴⁵ SCA majority judgment para 21

⁴⁶ SCA majority judgment para 21

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84.4. The Applicant did not attack the lawfulness of her arrest at Lanseria airport.⁴⁷

85. The SCA majority judgment examined the decisions in *Zealand v Minister for Justice and Constitutional Development*⁴⁸ and *Mahlangu and another v Minister of Police*⁴⁹ and stated:

*"[19] It is clear from Zealand and Mahlangu that the onus shifts only once the identity of the party alleged to have acted unlawfully has been established."*⁵⁰

86. The Applicant attempts to overcome this hurdle by simply alleging:

*"...the facts placed before the Court by Home Affairs established that both the SAPS and Home Affairs acted unlawfully."*⁵¹

87. These "facts" are vague, unsubstantiated and mutable. The Applicant appears to allege three distinct arrests:

⁴⁷ SCA majority judgment para 21
⁴⁸ *Zealand v Minister Justice Constitutional Development & another* 2008 (2) SACR 1 (CC)
⁴⁹ *Mahlangu and another v Minister of Police* [2021] ZACC 10
⁵⁰ SCA majority judgment para 19
⁵¹ LTA FA para 51.13

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- 87.1. First, in Tanzania, where she claims to have been arrested or abducted by members of the Second Respondent for contravention of immigration laws. This is entirely unsubstantiated.
- 87.2. Second, again in Tanzania, when she alleges being handed over by the Tanzanian authorities to officials of the Second and Sixth Respondents in the South African escorting delegation. This too lacks substantiation.
- 87.3. Third, upon landing in South Africa, where she was arrested by members of the Second Respondent's investigating team.⁵²
88. The uncontested fact is that the Applicant was arrested in Tanzania for contravening its immigration laws. The issuance of the Notice of Prohibited Immigrant provided a lawful and valid basis for her removal from Tanzania.
89. Despite this, the Applicant simply asserts that she satisfies the two requirements in *Zealand supra* insofar as:

⁵² SCA majority judgment para 21

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- 89.1. Argument having been made regarding her arrest and detention;⁵³ and
- 89.2. Evidence allegedly available to determine whether a disguised extradition took place.⁵⁴
90. The Applicant misconstrues *Zealand supra*. The test is whether the identity of the party responsible for the unlawful conduct has been established. The Applicant has not established the involvement of the South African state in any unlawful arrest on foreign soil.
91. The Applicant sought final relief in motion proceedings and is thus bound by the well-established *Plascon-Evans* rule.⁵⁵ In the event of a material dispute of fact, the court must accept the respondent's version unless it is so far-fetched or clearly untenable as to justify rejection on the papers.
92. The SCA majority judgment correctly accepted the Sixth Respondent's evidence that members of the Second Respondent accompanied the Home Affairs delegation only to provide protection, not to effect an arrest.⁵⁶ The

⁵³ FA LTA para 51.5 and 51.13

⁵⁴ FA LTA para 51.13

⁵⁵ SCA Majority judgment para 21

⁵⁶ SCA majority judgment para 22

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Applicant does not dispute the security concerns or the legitimacy of requiring protection.

93. More critically, the SCA majority judgment correctly concluded that the Applicant failed to establish a causal nexus between the Second Respondent's involvement in her arrest or removal from Tanzania.⁵⁷ No evidence has been presented that the Second and Sixth Respondents participated in, directed, or executed the Applicant's arrest or removal in Tanzania and this application for leave to appeal fails to provide convincing grounds that there are prospects of success on appeal which are not remote but have a realistic chance of succeeding as contemplated in section 17(a)(i) of the Act.

94. This application fails to invoke section 167(3)(b)(i) of the Constitution. No constitutional issue arises from action by Tanzanian immigration officers, acting in terms of Tanzanian laws. The constitutional implications alleged depend entirely on a prior finding of the Second and Sixth Respondent's involvement in unlawful conduct which has not been established.

⁵⁷ SCA majority judgment para 21

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95. This application does not invoke section 167(3)(b)(ii) of the Constitution as the Applicant does not make out a case for exercising this Court's non-constitutional jurisdiction.

K2 GROUND 2: NO RELIEF PERMISSIBLE AGAINST SIXTH RESPONDENT

96. In heads of argument in the appeal before the SCA, the Applicant sought to include relief against the Sixth Respondent on the basis that she had made out a case for unlawful disguised extradition against the Sixth Respondent in her replying affidavit.⁵⁸

97. The SCA majority judgment correctly found this to be impermissible as:

97.1. The application was issued on 19 May 2023.⁵⁹

97.2. The application cited only the First to Fifth Respondents.⁶⁰

⁵⁸ SCA majority judgment para 27 "It is declared that the applicant's hand-over by the Tanzanian authorities to the officials of the South African High Commission in Tanzania and/or the officials of the second and sixth respondents, and the subsequent deportation of the applicant to South Africa, were unconstitutional and unlawful"

⁵⁹ SCA majority judgment para 23

⁶⁰ SCA majority judgment para 23

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- 97.3. The cause of action pivoted on allegations that members of the Second Respondent affected the Applicant's alleged apprehension, arrest and abduction in Tanzania.⁶¹
- 97.4. The Applicant's attorneys of record stated in correspondence that they did not seek any relief against the Department of Home Affairs; and saw no need for the Department to be joined as a Respondent.⁶²
- 97.5. The Sixth Respondent made application to join on 26 May 2023 and answering affidavits were delivered in due course.⁶³
- 97.6. No application was brought to amend to include relief against the Sixth Respondent.
- 97.7. The High Court proceeded on the relief sought against the five Respondents cited in the original application.⁶⁴
- 97.8. On appeal, in her heads of argument, the Applicant sought amended relief that officials of Sixth Respondent were involved

⁶¹ SCA majority judgment para 23

⁶² SCA majority judgment para 24

⁶³ SCA majority judgment para 26

⁶⁴ SCA majority judgment para 27

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in the Applicant's apprehension and arrest in Tanzania and her subsequent "forced return" and this is inconsistent with the Constitution, unlawful and invalid.

98. As the SCA majority judgment correctly pointed out, no substantive application was brought to amend the notice of motion to include any relief against the Sixth Respondent.
99. The SCA majority judgment correctly held that the Sixth Respondent's right to respond in terms of the *audi alteram partem* principle was compromised, and in the light of the avowed intent of the Applicant to proceed only against the initial five Respondents, the Sixth Respondent would be prejudiced if relief were to be granted when this was not foreshadowed prior to receipt of the Applicant's heads of argument and in the absence of a formal application to amend even on appeal.
100. The SCA majority judgment concluded that, for these reasons, no relief should be granted against the Sixth Respondent, regardless of the outcome of the rest of the appeal.

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101. The SCA majority judgment correctly pointed out that the refusal to join the Sixth Respondent was entirely inconsistent with seeking any relief against him.⁶⁵
102. The Applicant contended that in the absence of a cross appeal, the finding of an unlawful disguised extradition was *res judicata* and the SCA majority judgment was bound thereby.⁶⁶
103. The Applicant's reliance on the decision in *Zealand supra*, is misplaced as the onus can only shift once the identity of party responsible for the arrest and detention is established.
104. With respect, the Applicant fails to appreciate that this case concerns two sovereign states. It is not a situation of uncertain attribution of unlawfulness between national departments.
105. The Sixth Respondent acted in accordance with standard protocols for receiving deported nationals. In the absence of demonstrable evidence of violation of sovereignty, the Applicant's deportation is legally valid and binding.

⁶⁵ SCA majority judgment para 25.

⁶⁶ FA para 49.

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106. In this regard, the Applicant cannot demonstrate that the findings of the SCA majority judgment are misguided and there is no reasonable prospect that another court will come to a different conclusion.

K3 GROUND 3: NO CASE FOR DISGUISED EXTRADITION

107. The Applicant, a fugitive from South Africa entered Tanzania illegally in transgression of the immigration laws. She was apprehended, declared a prohibited immigrant and ordered to leave Tanzania. The South African immigration authorities were contacted to facilitate the Applicant's "escort" and removal from Tanzania. Accepting the return of the Applicant is not evidence of collusion or an abduction by agents of the government of South Africa. The immutable fact is that the Applicant was removed from Tanzania without any form of force or deception being practiced by officials of South Africa.
108. The Applicant's attempt to reframe her case as a disguised extradition is opportunistic. The Applicant contends that disguised extradition was pleaded indirectly or by inference in her founding papers. According to the Applicant, disguised extradition is a matter of law and can be raised at any stage.

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109. The SCA majority judgment did not make pronouncements on the alleged disguised extradition given that the Applicant failed to identify the involvement of the Second Respondent in her arrest as an illegal immigrant in Tanzania or make out a case which the Sixth Respondent was obliged to meet.⁶⁷
110. Although Makgoka JA's minority judgment is articulately reasoned, it amounts to an impermissible encroachment on Tanzanian sovereignty and fails to respect the presumption of legality that attaches to sovereign acts under international law and the doctrine of comity.
111. The misdirection stems from a conflation of deportation and the right of Tanzania to arrest and hand over the Applicant and insist on her escort from the country and extradition. This confusion is apparent:

"[46] ...I am of the view that despite not having been arrested by the SAPS, consideration should also be given to the lawfulness of:

(a) the handing over of the appellant by the Tanzanian authorities to the South African authorities;

⁶⁷ SCA majority judgment para 32

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(b) the South African authorities detention of the appellant upon such hand-over; and

(c) the transportation of the appellant back to South Africa where she was arrested upon arrival and subsequently prosecuted.”

112. I have painstakingly and repeatedly discussed in the relevant sections of this affidavit why the Applicant’s deliberate obfuscation of deportation and extradition created confusion for Loubser J and Makgoka JA. This is understandable given the complexities. However, in the absence of an unlawful purpose for the deportation, as the court in *Kissel supra*⁶⁸ stated:

“First, there is nothing improper in American authorities making a tactical choice between deportation and extradition, as long as Canadian immigration authorities have a legitimate basis to pursue deportation.”

113. Irrespective of the action or inaction of South Africa instituting an extradition process, Tanzania cannot be prevented from initiating and carrying out the deportation of any prohibited immigrant found within its territory.

⁶⁸ *Kissel v Attorney-General of Canada* 2006 CANLII 47314 (ON SC) at pg 47 para 151

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114. In *R v Staines Magistrates Court and others, ex parte Westfallen*⁶⁹ Lord Bingham CJ stated:

"The Norwegians were entitled under their own law to deport the applicant. The propriety of the deportations is acknowledged and indeed could not be challenged."

115. The minority's reliance on procedural fairness, while noble in abstract, overlooks the core constitutional principle of factual proof. There is no factual foundation on which to infer that the Sixth Respondent acted unlawfully or colluded to bypass extradition mechanisms. The facts show administrative compliance and cooperation, not subterfuge or deceit.
116. It is respectfully submitted that the minority judgment, however well-intentioned, ventures beyond the pleadings, conflates deportation with extradition, and undermines established principles of international comity and judicial deference.

⁶⁹ *R v Staines Magistrates Court and others, ex parte Westfallen, R v Staines Magistrates Court and others, ex parte Soper, R v Swindon Magistrates Court and others ex parte Nangle* [1998] 4 All ER 216 QBD

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L. NO ARGUABLE POINT OF LAW OF GENERAL APPLICATION ARISES

117. I am advised that under Section 167(3)(b) of the Constitution, this Court may decide constitutional matters and any other matter which raises an arguable point of law of general public importance.

118. It is trite that an appeal lies against an order, and not the reasons for it. The case of *Absa Bank v Mkhize and Two Similar Cases*⁷⁰ is instructive in this regard. It does not avail the Applicant to direct her attack on the reasons set out by the SCA.

119. Lastly under this head, there is no arguable point of law or public importance in this matter. To this end the governing legal framework is trite. The dispute has no consequences for the broader public and there are no arguable points of law that arise in this regard.

M. THE INTERESTS OF JUSTICE NECESSITATE DISMISSAL OF THE APPLICATION

120. Even if the application were properly premised on the existence of a constitutional matter or an arguable point of law of general public

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Absa Bank v Mkhize and Two Similar Cases 2014 (5) SA 16 (SCA) para 64

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importance, it does not automatically follow that leave to appeal will be granted.

121. The jurisprudence of this Court is clear that the Court retains a discretion to grant leave only when the interests of justice so require. The cases of *Paulsen and Another v Slip Knot Investments*.⁷¹ and *S v Boesak*⁷² are instructive in this regard.
122. Factors that are important in determining whether it is in the interests of justice to grant leave to appeal include questions as to the importance of the issues raised and whether the issues are raised for the first time before this Court.
123. I have already addressed these factors above. The manner in which the Constitutional point was raised and the Applicant's failure to properly plead her cause of action and relief counts against the Applicant.
124. Further in considering the interests of justice, prospects of success are an important aspect of the enquiry. The Applicant must show that there are

⁷¹ *Paulsen & Another v Slip Knot Investments 777 (Pty) Ltd 2015 (3) SA 479 CC paras 12-31*

⁷² *S v Boesak 2001 (1) SA 912 CC paras 11-12*

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reasonable prospects that this Court will reverse or materially alter the decision of the SCA.

125. The Applicant has not shown that she is genuinely acting in the public interest or that others similarly situated, have a constitutional right not to be deported when entering foreign states as illegal immigrants.
126. Accordingly, and for all these reasons, it is in the interests of justice that this leave to appeal be dismissed.

PART IV

N. AD SERIATIM RESPONSE TO APPLICANT'S FOUNDING AFFIDAVIT

127. I have addressed the substance of the Applicant's challenge advanced in support of her application for leave to appeal. To the extent that any of her allegations are inconsistent with what I have stated above, those allegations must be taken to be denied, and what I have said above should be regarded as incorporated into the responses to individual paragraphs.
128. Against the above background I now proceed to respond to the averments in the paragraphs of the founding affidavit.

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129. **Ad Paragraph 1**

129.1. I have no knowledge of the averments contained in these paragraphs, but I do not dispute same.

130. **Ad Paragraph 2**

130.1. I do not admit that the facts described in the founding affidavit are true and correct.

130.2. I submit that the inferences and assumptions made in the founding affidavit are unfounded.

131. **Ad Paragraph 3**

131.1. I note that this is an application for leave to appeal in terms of Rule 19 of this Court's rules.

131.2. I deny that the Applicant has set out clearly and succinctly any constitutional matter raised in the SCA majority decision, and the issues alleged to be connected therewith.

Z.H.N. /A.

132. **Ad Paragraphs 4 and 5**

132.1. I deny the allegation that the Applicant's removal from Tanzania and return to South Africa was a disguised extradition.

132.2. The Applicant was illegally present in Tanzania contrary to the immigration laws.

132.3. The Applicant was apprehended and issued with a Notice of Prohibited Immigrant.

132.4. The Notice of Prohibited Immigrant forms the legal basis in terms of which the Applicant was deported to South Africa.

132.5. In the absence of the necessity for the invocation of extraterritorial jurisdiction, this court is bound to accept the legality of the Tanzanian deportation.

132.6. Disguised extradition cannot exist concurrently with a legal deportation.

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132.7. This application does not concern an unlawful disguised extradition. This is so for the following reasons:

1.1.1. The circumstances under which the Applicant was brought to South Africa cannot be likened to an abduction by agents of the governments of Tanzania and/or South Africa.

1.1.2. The Applicant exited South Africa and entered Tanzania illegally in transgression of immigration laws.

1.1.3. She was apprehended in Tanzania and a formal process was followed in terms of the Tanzanian Immigration Act resulting in her removal from Tanzania and return to South Africa.

1.1.4. There is no evidence of any collusion or connivance by South African officials with Tanzanian authorities to abduct the Applicant.

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1.1.5. The immutable fact is that the Applicant was returned to South Africa without any evidence of force or deception being practiced by South African officials.

1.1.6. The decision to return the Applicant to South Africa was made and could only have been made by the Tanzanian immigration authorities, in whose custody she was held.

132.8. The South African officials, invited by the Tanzanian immigration authorities, to escort the Applicant from Tanzania did not act contrary to any law or exercise any force upon the territory of Tanzania so as to violate the territorial sovereignty and breach international law.

132.9. The conduct of both Tanzania and South Africa did not constitute a violation of international law for it involved no affront to the sovereignty of a foreign state.

132.10. Save as aforesaid I deny the averments in these paragraphs.

Z-HM /T.

133. Ad Paragraph 6

133.1. I deny that the Applicant's deportation was a disguised extradition.

133.2. I deny that in the High Court before Loubser J, the Applicant challenged her "disguised extradition". The Applicant sought relief on the basis of an unlawful arrest and detention by members of the Second Respondent:

"...declaring that that her apprehension, arrest and abduction in Tanzania was performed by members of the SAPS on or about 7 April 2025 and subsequent transportation to the Republic of South Africa and her purported arrest and detention pursuant thereto, was wrongful and unlawful."⁷³ (Emphasis added)

133.3. It is misleading for the Applicant to allege that the High Court *"held that the respondents acted unlawfully by using deportation to secure the objectives of extradition"*⁷⁴

⁷³ SCA majority judgment para 3 and High Court judgment para 3

⁷⁴ FA LTA para 6

Z.H.N
h.t.

133.4. The High Court made an *obiter* finding that:

"[38]...the respondents willingly participated in the handing over event at the airport believing such handing over was done in terms of international law and in terms of the law in Tanzania. Moreover, the respondents were aware that the applicant was handed over for purposes of prosecution in South Africa. What they did not realize, was that such handing over of the applicant was in fact an extradition without any process and not a deportation. This is what the law says, as we have seen hereinbefore." (Emphasis added)

133.5. As I have discussed in the preceding sections of this affidavit, there is no legal prohibition against deporting a person who is facing criminal prosecution in the receiving state. In this regard, I align with the principle articulated by Lord Denning:⁷⁵

"The power to deport is not taken away by the fact that he is a fugitive from the justice of his own country, or by the fact that his own country wants him back and has made a request for him."⁷⁶

⁷⁵ R v Brixton Prison (Governor), Ex parte Soblen [1962] 3 All ER 641 pg 660 "The Supreme Court of India considered this very point in 1955 in Muller v. Superintendent, Presidency Jail, Calcutta, and in an instructive judgment made it quite clear that in their opinion, the right to expel an alien could be exercised though he was wanted by his own country for a criminal offence.

⁷⁶ R v Brixton Prison (Governor), Ex parte Soblen [1962] 3 All ER 641 pg 661

Z.H.N
K.T.

133.6. The Applicant mischaracterises the findings of the High Court. Contrary to her assertion, the High Court made no finding that:

"Their conduct, so the High Court concluded, was inconsistent with the Constitution and international law."

133.7. To the extent that the Applicant seeks to extract such conclusion from the High Court's reasoning, this would, at best, be *obiter*. The relief before the High Court was confined to declaratory relief premised on the unlawful conduct of the Second Respondent relating to the Applicant's apprehension, arrest and abduction in Tanzania. Given the relief, there can be no *ratio* judicial finding that the conduct of the Second or the Sixth Respondent amounted to a disguised extradition which violated international law.

133.8. Save as aforesaid I deny the averments in this paragraph.

134. Ad Paragraph 7

134.1. The High Court found that the Applicant consented to her removal from Tanzania to South Africa.

ZHY
KT

134.2. The claim that she “...consented to her disguised extradition” is a distortion of the High Court’s reasoning.

134.3. The High Court per Loubser J held:

“In the present case I have no hesitation in finding that the applicant was well aware, at the time of her handing over, of the charges that could be levelled against her upon her arrival in South Africa. She nevertheless consented to her removal from Tanzania to South Africa because she wanted to return to be with her children. At the very least she had willingly acquiesced to her transportation back to South Africa. Based on the decisions of the Appellate Division in December and Mahala, to which I have referred, and which I am bound to follow, I find that the application cannot succeed.” (Emphasis added)

134.4. Save as aforesaid I deny the averments in this paragraph.

135. Ad Paragraphs 8 and 9

135.1. I do not dispute the allegations herein.

ZHM / X.

136. Ad Paragraph 10

136.1. The SCA majority judgment held:

"[39]....But, as mentioned above, the case made out against the Minister of Police was that members of the SAPS arrested the applicant in Tanzania and that they were involved in forcing the applicant to board the aircraft and return to South Africa. The factual disputes in this regard must be determined in favour of the Minister of Police. And, as set out above, no relief against the Minister of Home Affairs is competent. As such, it is unnecessary to consider the law concerning disguised extraditions and its application in this matter."

136.2. This reasoning accords with the *Plascon-Evans* rule. No member of the Second or Sixth Respondents arrested the Applicant in Tanzania, and none forced her onto the aircraft. In the absence of compelling evidence to the contrary, the Applicant's claim cannot be sustained.

136.3. Save as aforesaid I deny the averments in this paragraph.

Z.H.N.

hit.

137. **Ad Paragraphs 11 (including subparagraphs 11.1 to 11.7), 12, 13, 14 and 15**

137.1. I admit the averments in these paragraphs to the extent that they correctly reflect the findings and conclusions of Makgoka JA's minority judgment.

138. **Ad Paragraph 16**

138.1. I deny that there is merit in this application for leave to appeal.

138.2. I deny that the proposed appeal concerns a constitutional matter or engages questions of international law.

138.3. The Applicant conflates the law on deportation and extradition and contrives to create a purported constitutional conundrum. The SCA majority judgment is clear: there is no controversy.

138.4. I refer to my grounds of opposition which I have discussed in this affidavit and deny that there are any prospects of success on appeal.

ZHN. lit.

138.5. Save as aforesaid I deny the averments in this paragraph.

139. Ad Paragraph 17

139.1. I note the structure of the founding affidavit.

140. Ad Paragraph 18 to 23

140.1. I do not dispute that Dr Nandipha Magudumana is the Applicant in these proceedings.

140.2. I have no knowledge of the Applicant's whereabouts, but for purposes of these proceedings, I do not dispute same.

140.3. I deny that there was an unlawful disguised extradition of the Applicant in April 2023 or at all.

140.4. I do not dispute the citation of the First to Fifth Respondents.

140.5. Save as aforesaid I deny the averments in these paragraphs.

ZHN
LIT.

141. Ad Paragraph 24

141.1. I admit that the Minister of Home Affairs is cited *nomine officio* as the Sixth Respondent.

141.2. I admit that the Sixth Respondent made application and was joined by order of court dated 26 May 2023.

141.3. The Sixth Respondent facilitated the return of the Applicant at the request of the Tanzanian immigration authorities after she had entered Tanzania illegally and as a consequence, declared a prohibited immigrant.

141.4. The Sixth Respondent chartered a plane to ensure compliance with the requirement that the Applicant leave by "escort" stipulated in the Tanzanian Notice of Prohibited Immigrant.

141.5. I emphatically deny that the Sixth Respondent deployed immigration officers in Tanzania to secure the Applicant's arrest and return.

141.6. Save as aforesaid I deny the averments in this paragraph.

ZHN
lit.

142. **Ad Paragraphs 25 to 32**

142.1. I do not dispute the averments made in these paragraphs insofar as they correctly reflect the factual circumstances and are corroborated by the judgments in the High Court and Supreme Court of Appeal.

143. **Ad Paragraphs 33**

143.1. The Applicant is an illegal immigrant. Tanzania has the right to deport and is not obliged to retain the Applicant indefinitely until South Africa makes a request for extradition.⁷⁷

143.2. The Applicant refers to *Kaunda and others v President of RSA*⁷⁸ with specific reliance on the following two paragraphs:

"[93] The government says that the prosecuting authority's investigations have not been completed and there is not yet sufficient evidence to take a decision to institute a prosecution. This is not denied by the applicants, who themselves deny that they were party to plans to stage a coup. That being so, it must be

⁷⁷ Hogan v. R., 1976 CanLII 158 (SCC), [1977] 1 SCR 413

⁷⁸ Kaunda and others v President of RSA 2005 (4) SA 235 (CC).

Z.H.N
lit.

accepted that when these proceedings were initiated the government lacked the evidence necessary to apply for the extradition of the applicants. On that ground alone the first claim must fail. Counsel for the applicants was constrained to concede that this was so and did not persist in the claim.

[94] In the circumstances it is not necessary to deal with the question whether, if there were a legitimate basis for seeking the extradition of the applicants, this Court would have had the power in the circumstances of this case to order the government to do so."

143.3. To the extent that the Applicant seeks to rely on the aforementioned paragraphs to support her assertion that she is entitled to an explanation regarding extradition, it is obvious from a reading thereof, that the Applicant is misguided.

143.4. To avoid prolixity, I refer to the basis for my opposition to this leave to appeal and such averments are denied to the extent that they conflict with my position in this affidavit.

ZHN
lit.

144. **Ad Paragraph 34**

144.1. The averments made in this paragraph are speculative without any detailed credible and admissible evidence.

144.2. I am unable to deal with speculations which have no factual foundation and contentions that are made in the abstract.

144.3. Save as aforesaid, I deny the averments contained in these paragraphs.

145. **Ad Paragraphs 35 to 39**

145.1. I do not dispute the averments made in these paragraphs insofar as they correctly reflect the factual circumstances and are corroborated by the judgments in the High Court and Supreme Court of Appeal.

Z.H.N
h.t.

146. Ad Paragraph 40

- 146.1. The Applicant seeks to subvert the meaning of "agreement" so as to create an inference of interference with the Applicant's deportation. This is incorrect.
- 146.2. It is undisputed that the Applicant was apprehended and issued with a Notice of Prohibited Immigrant which ordered her to leave Tanzania by escort within three days.
- 146.3. The Tanzanian immigration authorities made the decision to deport when issuing the Notice of Prohibited Immigrant.
- 146.4. I am advised that the Applicant attempts to obfuscate the Tanzanian authority's decision to issue the Notice of Prohibited Immigrant by conflating the subsequent agreement with the Sixth Respondent regarding the practical facilitation of the required "escort" to give effect to the deportation. This is legal gymnastics designed to distract from the legality of the Applicant's deportation.

ZHN
hit.

146.5. To avoid prolixity, I refer to the basis for my opposition to this application for leave to appeal, and such averments are denied to the extent that they conflict with my position in this affidavit.

147. Ad Paragraph 41

147.1. I admit that the application was heard before the High court on 1 June 2023 and judgment was handed down on 5 June 2023.

147.2. The High court did not conclude that the Applicant's apprehension, arrest and abduction in Tanzania was performed by members of the Second Respondent.

147.3. The High court made an *obiter* finding regarding the agreement for the handing over of the Applicant at the airport insofar as:

*"What they did not realize, was that such handing over of the applicant was in fact an extradition."*⁷⁹

147.4. Since the inherent nature of a disguised extradition requires *mens rea*, the Applicant seeks to conflate "*collude*" which is

⁷⁹ High Court judgment para 38

Z.H.N.
K.T.

necessary for a disguised extradition, with “*collaborate*” which is necessary for deportation and in so doing subvert the agreement between Tanzanian and South African immigration officials regarding the practicalities of the Applicant’s removal, as evidence of a disguised extradition.

147.5. I point out that the authority on which the Applicant relies, Dugard,⁸⁰ only uses the word “*collude*” when dealing with disguised extradition.⁸¹

147.6. Dugard also makes a point of distinguishing circumstances in where “*the police of the receiving state are themselves complicit in the deportation.*”⁸² (Emphasis added)

147.7. Dugard specifically distinguishes circumstances where the authorities of the receiving state are in no way involved in the deportation.⁸³ Dugard cites the case of *S v Beahan*⁸⁴ where the Supreme Court of Zimbabwe distinguished an abduction akin to

⁸⁰ Dugard et al Dugard’s International Law: A South African Perspective (Juta Publishers, Cape Town 2022) at 316

⁸¹ Dugard et al Dugard’s International Law: A South African Perspective (Juta Publishers, Cape Town 2022) at 316-323

⁸² Dugard et al Dugard’s International Law: A South African Perspective (Juta Publishers, Cape Town 2022) at 318

⁸³ Dugard et al Dugard’s International Law: A South African Perspective (Juta Publishers, Cape Town 2022) at 318

⁸⁴ *S v Beahan* 1992 (1) SACR 71B (ZS)

Z.H.N.
k.t.

*S v Ebrahim*⁸⁵ when dealing with a person illegally present in transgression of immigration laws.

147.8. Save as aforesaid, I deny the averments contained in this paragraph.

148. **Ad Paragraph 42**

148.1. The Applicant entered Tanzania illegally.

148.2. The Applicant was apprehended, and a Notice of Prohibited Immigrant was issued by the Tanzanian immigration authorities in terms of which the Applicant was ordered to leave within three days by "escort".

148.3. The Tanzanian immigration authorities made contact with the Sixth Respondent as their immigration counterpart in order to reach an agreement on the practicalities relating to the Applicant's removal by "escort".

⁸⁵ *S v Ebrahim* 1991 (2) SA 553 (A)

Z.H.N
K.T.

148.4. There is no contradiction. Both Tanzania and South Africa have ratified the Vienna Convention on Diplomatic Relations, 1961 which provides for cooperation between states and aims to promote friendly relations.⁸⁶

148.5. Save as aforesaid, I deny the averments contained in this paragraph.

149. **Ad Paragraphs 43 and 44**

149.1. I refer to my discussion relating to the distinction between deportation and extradition in the relevant section of this affidavit.

149.2. The Applicant relies on the authority of *Mohamed v President of RSA*⁸⁷ which was concerned with South African authorities who handed over Mohamed to the FBI without due process. No deportation order was issued by the South African government; the process was entirely illegal. Unlike the Applicant, Mohamed was removed from South Africa not deported to South Africa.

⁸⁶ Vienna Convention on Diplomatic Relations, 1961 Article 3
⁸⁷ *Mohamed v President of RSA* 2001 (3) SA 893(CC)

ZHN
k.T.

- 149.3. In *Mohamed supra*⁸⁸, this Court emphasized that South African authorities may not surrender a person to a foreign State without assurances regarding the death penalty.
- 149.4. This case is wholly distinguishable: the Applicant was not surrendered but received by South Africa from a sovereign deporting State. No international assurances were required because no constitutional or international right was at risk.
- 149.5. The Applicant was not arrested in Tanzania for crimes committed in South Africa pursuant to a request by the South African government. Extradition is the consequence of an arrest made pursuant to a formal request on the basis that the person is a fugitive wanted for prosecution in South Africa.
- 149.6. Deportation is the consequence of an arrest made pursuant to contravention of immigration laws.
- 149.7. Save as aforesaid, I deny the averments contained in this paragraph.

⁸⁸ *Mohamed v President of RSA* 2001 (3) SA 893 (CC) at para 39

ZHAN
L.F.

150. Ad Paragraphs 45 to 47

150.1. The SADC Protocol does not override the sovereign right of a State to deport persons who violate its immigration laws.

150.2. Tanzania acted within its domestic legal framework by declaring the Applicant a prohibited immigrant and electing to deport her.

150.3. The cogency of the High Court's *obiter* remarks based on the judgments in *Mahala*⁸⁹ and *December*⁹⁰ should not detract from the finding that the Applicant consented to her return to South Africa.

150.4. The High Court refused leave to appeal on the basis that another court would not come to a different conclusion.

150.5. I do not dispute the allegations in these paragraphs relating to the chronology of the litigation.

⁸⁹ S v Mahala and another 1994 (1) SACR 510 (A)

⁹⁰ S v December 1995 (1) SACR 438 (A)

Z.H.M
h.t.

150.6. Save as aforesaid, I deny the averments contained in this paragraph.

151. Ad Paragraph 48

151.1. I deny that the SCA majority was required to determine the issue of disguised extradition. The question was not dispositive of the appeal, particularly in light of the fact that no relief was sought against the Sixth Respondent in the notice of motion.

151.2. I deny that issues of disguised extradition or consent are relevant to the lawfulness of the Applicant's deportation by Tanzanian authorities.

151.3. The Applicant was declared a prohibited immigrant under Tanzanian law and removed in accordance with that country's sovereign processes.

151.4. Save as aforesaid, I deny the averments contained in this paragraph.

ZHN
k.t.

152. **Ad Paragraphs 49 to 51.13**

152.1. I deny the contentions made in these paragraphs.

152.2. These averments substantially repeat allegations already canvassed in the Applicant's founding affidavit before the SCA. To avoid prolixity, I refer to my responses contained elsewhere in this affidavit, which are incorporated herein by reference. These averments are denied insofar as they are inconsistent with the Respondent's version.

152.3. It bears emphasis that the SCA majority did not pronounce on the Applicant's disguised extradition theory. It found it unnecessary to do so, given that the relief sought did not implicate the Sixth Respondent. The absence of any direct relief against the Sixth Respondent rendered the issue moot in the SCA proceedings.

152.4. Accordingly, SCA majority correctly held that there is no merit to the allegations that in the absence of a cross appeal, the SCA lacked jurisdiction to determine whether the Applicant had properly pleaded unlawful disguised extradition.

Z.H.N
N.T.

152.5. The SCA dealt with allegations that were irrelevant to the relief sought.

152.6. Save as aforesaid, I deny the averments contained in these paragraphs.

153. **Ad Paragraphs 51.14 to 54**

153.1. I respectfully submit that the Applicant's claim lacks legal coherence and is unsupported by any factual basis. She relies on the concept of disguised extradition, yet she identifies no formal extradition request, no bilateral process, and no breach of any known treaty obligation or international protocol.

153.2. As detailed elsewhere in this affidavit, the Applicant was lawfully declared a prohibited immigrant by Tanzanian authorities. Her removal occurred pursuant to a sovereign decision of the government of Tanzania. That decision is not subject to review by South African courts.

Z,HN
W.T.

- 153.3. To avoid prolixity, I incorporate by reference the full grounds of opposition as set out in preceding portions of this affidavit. Save as aforesaid, I deny the averments in these paragraphs.
- 153.4. Elsewhere in this affidavit I discussed the correctness of the SCA majority. I refer to my position extrapolated in this affidavit, incorporate same in this response and to avoid prolixity, I do not repeat such.
- 153.5. Save as aforesaid, I deny the averments in these paragraphs.
154. Ad Paragraphs 55 to 56 (including subparagraphs 56.1 to 56.8
- 154.1. The Applicant has not made out a case for the relief she seeks. The SCA majority's approach was legally sound and consistent with binding authority, including *Plascon-Evans*. No finding of fact adverse to the Sixth Respondent was made, nor could it have been on the Applicant's version.
- 154.2. I incorporate by reference my earlier submissions and reiterate that the Applicant's reliance on the doctrine of disguised extradition is wholly misplaced.

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h.T.

154.3. Save as aforesaid, I deny the averments in these paragraphs.

155. **Ad Paragraphs 57 to 58 (including subparagraphs 58.1 to 58.12)**

155.1. I deny the conclusions drawn by the Applicant in these paragraphs. The conclusions are wholly unfounded and are based on averments which have no credible legal foundation.

155.2. Her contentions are legally unfounded, factually incorrect, and grounded in speculation rather than admissible evidence.

155.3. Elsewhere in this affidavit I have demonstrated why this contention is legally incorrect and why the Applicant has not made out a case for leave to appeal.

155.4. To avoid prolixity, I refer to the relevant sections of this affidavit setting out the basis for my opposition to this leave to appeal and incorporate them herein by reference.

155.5. Save as aforesaid, I deny the averments in these paragraphs.

Z.H.N
k.T.

156. Ad Paragraphs 59 and 60

156.1. I do not admit the cogency of the Applicant's grounds for a constitutional appeal. The Applicant has not raised a constitutional issue that is arguable on its merits or of general public importance. The application does not meet the jurisdictional threshold for leave to appeal to the Constitutional Court.

156.2. I refer to my grounds of opposition which I have discussed in this affidavit and to avoid prolixity, do not repeat same but ask that such be incorporated by reference.

156.3. Save as aforesaid, I deny the averments made in these paragraphs.

O. CONCLUSION

157. I am advised that the SCA majority judgment is based on a sound and well-reasoned analysis of the common cause facts and the application of the appropriate legal principles.


ZHM
h.t.

158. I have dealt with the substance of each ground of appeal and demonstrated that the SCA majority, did not err or misdirect itself in whatsoever manner when it dismissed the Applicant's claim
159. I am advised that there is no consideration that favours the granting of leave to appeal.
160. The Applicant was lawfully arrested and detained by the Tanzanian authorities, acting within their sovereign powers, for violating immigration laws following which she was declared a prohibited immigrant and was ordered to be escorted out of Tanzania. She was escorted from Tanzania by South African immigration officials and lawfully arrested by members of the investigating team of the Second Respondent upon arrival at Lanseria Airport.
161. The Applicant's return to South Africa followed lawful deportation by a foreign State, was executed in accordance with Tanzanian law, and involved no collusion, coercion, or disguised extradition process. The Applicant's attempt to relitigate factual findings under the guise of constitutional complaint is misplaced and unsustainable.

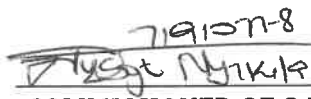
Z.H.N
L.T.

162. The costs associated with having this Court engage with an appeal in this matter are totally unnecessary when ultimately, the prospects of a different conclusion are highly unlikely.

163. I respectfully ask the Court to dismiss this application for leave to appeal with costs.


LIVHUWANI TOMMY MAKHODE
DEPONENT

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at CAPE TOWN on this the 04 day of JULY **2025**, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS



ZHN.
W.T.

PASSPORT NO A05853269

TRP 9

Seen / Certified as an authentic document / copy of the original document



12 APR 2023



Signed: AK
For: HIGH COMMISSIONER
TANZANIA HIGH COMMISSION
Date: 23/05/2023

THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF HOME AFFAIRS
IMMIGRATION DIVISION
The Immigration Regulations, 1997
(Regulation 20)

Ref. No. NASC/APP/CONF/373/12/511

No. 0073511

NOTICE TO PROHIBITED IMMIGRANT

To: NANDIPHA MALUMPA NATIONALITY SOUTH AFRICAN SEX FEMALE
PASSPORT NO. A05853269 Place of issue: SOUTH AFRICA
Date of issue: 16th FEB 2017

TAKE NOTICE THAT YOU ARE:-

*(1) A prohibited immigrant within the meaning of sections 23(1)(a)(b)(c)(d)(e)(f)(g)(h)(i)(j)(k)(l) of the Immigration Act, cap 54 revised edition of 2016 on the ground that YOU ARE UNLAWFUL PRESENT WITHIN THE UNITED REPUBLIC OF TANZANIA.

*(2) A prohibited immigrant within the meaning of section 23(1)(k) of the Immigration Act, cap 54 revised edition of 2016 by virtue of the fact that I have declared you to be an undesirable immigrant and my declaration has been confirmed by the Ministry for Home Affairs.

*(3) A prohibited immigrant within the meaning of section 23(1)(l) of the Immigration Act cap 54 revised edition of 2016 virtue of the fact that the Minister of Home Affairs has declared you to be undesirable immigrant.

*(4) You are hereby ordered to leave Tanzania within THREE DAYS (03) days by AIRCRAFT

*(5) You are hereby, ordered to depart or board and to leave Tanzania by the ship/aircraft on which you arrived at Tanzania.

*Delete words which do not apply.

Read and Understood. Signature: _____
Dated this 12th day of APRIL year 2023

12 APR 2023
IMMIGRATION DIVISION
MINISTRY OF HOME AFFAIRS
TANZANIA

CS CamScanner

W
J
ZHN
6-7

ANNEX D

THE UNITED REPUBLIC OF TANZANIA
MINISTRY OF HOME AFFAIRS
IMMIGRATION DEPARTMENT

Telegram: Immigration
Telephone: 027-2503569
Email:
rioarusha@immigration.go.tz



Regional Immigration Office,
P.O. Box 236,
ARUSHA.

Ref. No. AR/IMM/73/2023/126

12, APRIL 2023

THE HIGH COMMISSION,
REPUBLIC OF SOUTH AFRICA

RE: HANDING OVER OF TWO SUBJECTS OF SOUTH AFRICAN
1. THOMS BESTER MAGAGULA (PASSPORT NO.EP1643190)
2. NANDIPHA MAGUDUMANA (PASSPORT NO.A05853269)

Reference is made to the above subject.

- The above mentioned people are South Africans, who were found and arrested in the United Republic of Tanzania for Unlawfully entry and present within the country the act which is contrary to the Immigration Law.
- Therefore, we are handling them over to you for your further procedures.
- Kindly be informed.

REGIONAL IMMIGRATION OFFICE
ARUSHA
ACI- Angela M. Shija n/c
REGIONAL IMMIGRATION OFFICE
ARUSHA

Seen / Certified as an authentic document / copy of the original document
28
HIGH COMMISSIONER
TANZANIA HIGH COMMISSION
DATE: 23/05/2023

Name of receiving Officer: NED THEKESA MROGWA

Signature: [Signature]

Date: 13 April 2023 Time: 00:00

0728
+255 765 901 788



Z.H.N

[Handwritten mark]

ANNEXURE "LM3"

HIGH COMMISSION OF THE UNITED REPUBLIC OF TANZANIA

Telephone: 012- 342 4371/93
Fax: 012 – 430 2835
E-mail: .
pretoria@hcie.co.tz
info@tanzania.org.za
Website: www.hcie.co.tz



822 GEORGE AVENUE,
P.O. BOX 56572,
ARCADIA 0007,
PRETORIA

Ref No. TZPRC/C.100/1/8

23rd May 2023

Chief Director: Inspectorate, Immigration Services,
Department of Home Affairs,
230 Johannes Ramokhoase Street,
Private Bag X114, Pretoria 0001,
SOUTH AFRICA.

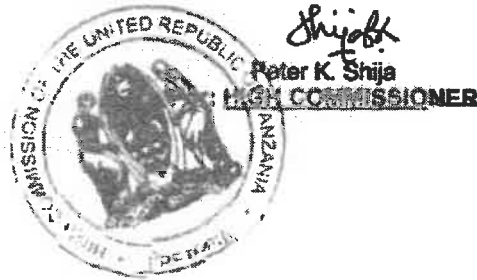
**Re: CERTIFICATION OF OFFICIAL DOCUMENTS USED FOR THE
REPATRIATION/DEPORTATION OF DR. NANDIPHA MAGUDUMANA**

Reference is made from the above captioned.

The High Commission of the United Republic of Tanzania in Pretoria wishes to confirm that the official documents that have been submitted regarding the repatriation/deportation of Dr. Nandipha Magudumana is certified true copies and certify that these documents were issued by the Government of the United Republic of Tanzania.

We wish to enclose herewith the said documents for further necessary actions.

Thank you for your continued cooperation.



WS

ZHN

L.T.