



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

CASE NO: B38737/2022

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|-----|---------------------------------|
| (1) | REPORTABLE: YES |
| (2) | OF INTEREST TO OTHER JUDGES: NO |
| (3) | REVISED |

Date

Signature

In the matter between:

THULANI SILENCE DLOMO

APPLICANT

and

**THE DIRECTOR-GENERAL:
STATE SECURITY AGENCY**

FIRST RESPONDENT

THE MINISTER OF STATE SECURITY

SECOND RESPONDENT

JUDGMENT

BASSON, J

[1] The applicant, Mr. Dlomo, approached this court seeking an order declaring his dismissal by his erstwhile employer, the State Security Agency (the first respondent), to have been procedurally and substantively unfair. He claims reinstatement to his former position and claims that he be compensated retrospectively for the damages suffered “for the years” that he had been home “due to the unlawful and unfair conduct of the Respondents”. The second respondent is the Minister of State Security. I will refer to both respondents collectively as “the respondents” unless the context requires otherwise.

[2] Although there are disputes of fact on the papers, the applicant chose to proceed via motion proceedings instead of via action. This turned out to be problematic for the applicant, especially regarding the dispute concerning whether the Minister of State Security had indeed granted the applicant permission for extended sick leave – a claim vehemently disputed by the respondent. I will return to this dispute in more detail. The matter must therefore be determined based on the respondents' version, unless their account is so far-fetched that it can be rejected merely on the papers.¹

Interlocutory applications

[3] Two interlocutory applications served before court. The first is an application brought by the respondents for leave to file a further supplementary affidavit deposed to by the (current) Director-General of State Security Agency (Ambassador Thembisile Cheryl Majola). Attached to this affidavit is a confirmatory affidavit by the former Acting Director-General (Mr Loyiso Jafta (“Jafta”). The respondents explain that the confirmatory affidavit by Jafta is necessary to support the facts set out in the

¹ *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 647 (A) 634H-I.

answering affidavit which will remain unsubstantiated without the confirmatory affidavit. They further explain that Jafta was, due to his work commitments, unable to sign the confirmatory affidavit at the time. He was only able to do so after he had returned to his office. It is noted that Jafta's affidavit does not introduce any new or additional facts; it merely confirms the facts pertaining to him as set out in the answering affidavit. I have considered the application and can find no reason to refuse the application.

[4] The second application is an application for condonation for the late filing of the answering affidavit. The affidavit is comprehensive and sets out in detail the reason for its lateness. Primarily, the delay arose from the fact that all the relevant officials who were involved in the events leading to the dispute are no longer in the employ of the State Security Agency. I have considered the application taking into account, *inter alia* the length of the delay, the explanation for the delay, the prospects of success (which are good), and ultimately whether it is in the interests of justice to grant the application for condonation. Apart from all the other considerations, it is manifestly in the interest of justice to grant condonation. I am therefore satisfied that a proper case has been made out for the granting of condonation. Condonation is therefore granted for the late filing of the answering affidavit.²

The applicant's cause of action

[5] The applicant's case appears to be premised on a claim for "unfair dismissal" in that he claims that his dismissal was "substantively" and "procedurally" unfair and unlawful. In particular, the applicant takes issue with the fact that his employment

² *Grootboom v National Prosecuting Authority and Another* 2014 (2) SA 68 (CC): "[22] I agree with him that, based on *Brummer and Van Wyk*, the standard for considering an application for condonation is the interests of justice. However, the concept 'interests of justice' is so elastic that it is not capable of precise definition. As the two cases demonstrate, it includes: the nature of the relief sought; the extent and cause of the delay; the effect of the delay on the administration of justice and other litigants; the reasonableness of the explanation for the delay; the importance of the issue to be raised in the intended appeal; and the prospects of success. It is crucial to reiterate that both *Brummer and Van Wyk* emphasise that the ultimate determination of what is in the interests of justice must reflect due regard to all the relevant factors but it is not necessarily limited to those mentioned above. The particular circumstances of each case will determine which of these factors are relevant. [23] It is now trite that condonation cannot be had for the mere asking. A party seeking condonation must make out a case entitling it to the court's indulgence. It must show sufficient cause. This requires a party to give a full explanation for the non-compliance with the rules or court's directions. Of great significance, the explanation must be reasonable enough to excuse the default."

was terminated by operation of law and submitted that he ought to have been dismissed for “misconduct”. He further claims that the State Security Agency acted procedurally unfairly and unlawfully by failing to call him to an internal disciplinary hearing in order to be heard prior to his dismissal. In argument, counsel for the applicant submitted that this court should “review” the “decision” to terminate his employment in terms of the Constitution and “declare” that the State Security Agency’s conduct was “both procedurally and substantively unlawful and unfair”.

The case before the court

[6] It is difficult to discern from the papers exactly what the applicant’s cause of action is. On the one hand, the applicant seems to base his claim on the unfair dismissal remedies as typically provided for in the Labour Relations Act³ (the “LRA”), seeking retrospective reinstatement from the date of his dismissal. More in particular, the applicant seeks an order declaring that the “conduct” of the respondents was “both procedurally and substantively unlawful and unfair”. On the other hand, the applicant seeks compensation for the financial damages suffered “for the years that [he] has been home” without providing any foundation whatsoever in the papers to explain the extent of such damage. To further complicate matters, the applicant claims that it was “substantively unfair” to terminate his employment on the basis of “operation of law” instead of “misconduct”. He contends that the respondents were misguided in believing that the termination of his employment was on the grounds of “operation of law” and not misconduct which (according to the papers) is included in s 15 of the Intelligence Services Act⁴. Muddying the waters even further, the applicant now claims in argument that the respondents have “taken an administrative action” and that he has the right to be given reasons “as to why the decision to dismiss me was taken as per PAJA requirements”.

Substantively and procedurally unfair dismissal

[7] Although the applicant does not explicitly refer in his papers to the LRA, it is evident that the applicant has framed his dispute in a manner consistent with, *inter alia*, the provisions of s 188 and s 191 of the LRA. These sections provide for the

³ Act 66 of 1995.

⁴ Act 65 of 2002.

resolution of unfair dismissal disputes based on the grounds that the dismissal was substantively and procedurally unfair. Employees who have been dismissed due to misconduct would typically refer their unfair dismissal disputes to the Commission for Conciliation, Mediation and Arbitration (the “CCMA”) and, if not settled, to arbitration. Unfair dismissal disputes fall within the exclusive jurisdictional confines of the CCMA and the Labour Court. In as far as the LRA provides for specific remedies, the High Court’s jurisdiction is ousted.⁵

[8] Moreover, although the LRA does not differentiate between the state (and its organs) as an employer, and any other employer in the private sector, certain categories of employers (and their employees) - all public service employees - are, excluded from the ambit of the extensive dispute-resolution procedures provided for in the LRA.⁶ One such category is the State Security Agency. Consequently, because the applicant in the present matter was employed by the State Security Agency, he is, in any event, excluded from pursuing his claim for unfair dismissal through the dispute resolution mechanisms provided for in the LRA.

[9] In as far as the applicant’s cause of action is based on an allegation of unfair dismissal, the application should, because the High Court does not have concurrent jurisdiction be dismissed on this basis alone.⁷

*Section 15 of the Intelligence Services Act*⁸

⁵ In *Baloyi v Public Protector & others* 2021 (2) BCLR 101 (CC); [2021] 4 BLLR 325 (CC); (2021) 42 ILJ 961 (CC); 2022 (3) SA 321 (CC), the Constitutional Court said the following: “[23] *The legislation in terms of which an assignment would be made in the context of the present matter is the LRA. Section 157(1) of the LRA provides for the exclusive jurisdiction of the Labour Court in all matters that — in terms of the LRA or other law — are to be determined by the Labour Court. In doing so, it fulfils one of the stated purposes of the LRA, which is to establish the Labour Court and the Labour Appeal Court as superior courts, with “exclusive jurisdiction to decide matters arising from the Act” (emphasis added). Section 157(1) reads:*

‘Subject to the Constitution and section 173, and except where this Act provides otherwise, the Labour Court has exclusive jurisdiction in respect of all matters that elsewhere in terms of this Act or in terms of any other law are to be determined by the Labour Court.’

Sections 68(1), 77(2)(a), 145 and 191 of the LRA proffer examples of matters that “are to be determined by” the Labour Court and are therefore, by virtue of s 157(1), within the exclusive jurisdiction of the Labour Court. This court has found, moreover, that the High Court’s jurisdiction in respect of employment-related disputes is ousted only where the dispute is one for which the LRA creates specific remedies, including, for example, unfair dismissal disputes.”

⁶ Section 2 of the LRA provides that the LRA does not apply to members of (a) the National Defence force; (b) the National Intelligence Agency; (c) the South African Secret Service; (d) the South African National Academy of Intelligence; and (e) Comsec.

⁷ *Id* at paragraphs 39 - 40.

⁸ Act 65 of 2002.

[10] To the extent that it can be deduced from the applicant's papers that he was deemed discharged based on account of a long absence without leave as provided for in s 15 of the Intelligence Services Act, I am inclined, notwithstanding the deficiencies in the applicant's founding papers, to assess whether the jurisdictional requirements for such a deemed discharge have been satisfied.

Background facts

[11] The applicant was employed by the State Security Agency until 27 September 2019, which is the date on which the applicant's employment with the State Security Agency was formally terminated.

[12] Although the applicant was employed by the State Security Agency, he was deployed to the Department of International Relations and Cooperation (DIRCO) as ambassador of South Africa to Japan. On 31 January 2019, the applicant's deployment as an ambassador of South Africa in Tokyo Japan, was terminated. In a letter dated 15 January 2019, the former Minister of State Security Minister Letsatsi-Duba ("Duba") instructed the applicant to report to the State Security Agency on 25 January 2019 upon his return.

[13] On 25 January 2019, the applicant responded in a letter to Duba requesting special leave for a period of 21 days from 1 February 2019 in order to deal with family matters. In this letter, the applicant also expressed his dissatisfaction with the termination of his secondment deeming it "clearly unfair and discriminatory ". He also expressed his intention to consult his lawyers.

[14] On 31 January 2019, Duba replied to this letter informing the applicant that the request for special leave had been forwarded to Acting Director (Jafta) for "their handling". The letter also recorded that the Acting Director-General will communicate the decision regarding his request for leave to the applicant. The respondents submitted that the request was referred to the Acting Director-General (Jafta) as the direct supervisor of the applicant and the head of the institution, The Acting Director-General, and not the Minister who is the political head of the State Security Agency,

has jurisdiction over internal matters such as leave requests. Internal matters therefore do not fall under the jurisdiction of the Minister. The respondents contended that, in light of this letter, the applicant knew already in January 2019, alternatively, ought to have known that the only person responsible for the management of his leave requests at the State Security Agency is the Acting Director-General. Despite this, there is no evidence on the papers that the applicant ever submitted his leave requests to the Acting Director-General.

[15] That the Acting Director-General (Jafta) and not the Minister (Duba) is responsible for leave requests is underscored by a further letter written by Duba to Jafta in April 2019 enquiring whether the applicant had reported for duty and whether any leave was granted to him since his return from Japan. Duba then instructed Jafta, in the event no such “requisite approval” had been granted, to immediately invoke the provision of s 15 of the Intelligence Services Act.

[16] Despite having received the letter from Duba on 31 January 2019 which informed him that his request was referred to Jafta for approval, the applicant persisted in this court that he had sent his sick notes to Duba and that she (as the Minister) was aware of his condition. However, notably absent from the papers is any paper trail indicating that he had submitted his leave requests to Jafta and/or to the Human Resources Department. Also conspicuously absent from the papers is a letter or documentation from the first respondent confirming that the applicant's applications for sick leave had been received and considered and the outcome of these request. It is, in fact, common cause that the applicant had never submitted any requests for sick leave to Jafta. In respect of the initial request for special leave, the respondents during argument conceded that such leave was granted because no documents pertaining to the initial request for special leave could be found.

[17] Complicating matters further for the applicant, Jafta, in a letter dated 30 April 2019, expressly instructed the applicant to report to the Acting Director-General of the State Security Agency on the first working day following receipt of the letter. The letter further records that the applicant has not reported for work since his return from Japan and that all efforts to engage with him have been ignored. The letter further informed the applicant of the consequences of his continued absence from

work. Despite this clear instruction to report from work, the applicant simply ignored the letter and did not report for work as instructed. With reference to this letter, the respondents submitted that the applicant therefore had been granted an opportunity to provide an explanation for his absence to the Acting Director-General, but that he had simply refused or declined to do so. The respondents further submitted that by this time, there could not have been any doubt in the mind of the applicant that the person he had to communicate with regarding his sick leave requests, was the Acting Director-General. Yet the applicant failed to do so. The respondents further submitted that, having regard to the contents of this letter, the applicant ought to have been aware that Jafta, as his immediate supervisor, was unaware of any arrangements with Duba. The applicant still did not communicate with Jafta and did not, at any stage, submit any of his medical certificates to his immediate supervisor.

[18] On 27 September 2019, Jafta invoked the provisions of s 15 of the Intelligence Services Act which provides that a member would be deemed to have been dismissed for misconduct if he or she is absent without permission of the Director-General for a period longer than 10 (ten) consecutive days and discharged the applicant. In this letter, it is recorded that several unsuccessful attempts were made by the Acting Director-General to contact the applicant telephonically, but to no avail. The General Manager: Internal Security was then tasked to locate the applicant. The letter further records that on 13 June 2019, a meeting took place between the General Manager: Internal Security and the applicant during which a letter was delivered to the applicant informing him that his absence was unauthorised. Despite the fact that the applicant had acknowledged receipt of the letter, he still did not respond. The applicant was informed that he was discharged by operation of law and that he was also deemed to be no longer a member with effect from 8 July 2019. His salary and benefits were also terminated with immediate effect. Despite this letter, the applicant inexplicably still did not communicate with his immediate supervisor.

[19] In a further letter to the applicant's attorneys dated 21 October 2019, Jafta recorded that has been trying for more than two weeks to reach the applicant without success: "All attempts to contact him were frustrated by him and he has refused to

cooperate in this regard”. The letter reiterates that the applicant was discharged by operation of law.

[20] Only on 6 December 2019, the applicant addressed a letter to the Acting Director-General in which he made representations in terms of s 15 of the Intelligence Services Act. In brief, he persisted with the version that he had communicated with Dube and that he had submitted his medical certificates to her. He also states that he had a meeting with the Deputy Minister in KwaZulu Natal and avers that the Minister and the Deputy Minister were aware of his medical condition. In this letter, he seeks his reinstatement failing which he “reserves my right to pursue the matter with the minister in terms of s 15(c) of the Act”.

[21] On 4 June 2020, Jafta informed the applicant that his appeal was dismissed on the basis that he had not reported to the Head Office at Musanda since his return from Japan and that all efforts to engage with him had been ignored.

Section 15 of the Intelligence Services Act

[22] Discharge of members of the State Security Agency may take place on the following circumstances: (i) discharge on account of long absence without leave;⁹ (ii) discharge on account of ill health;¹⁰ (iii) discharge or demotion on account of poor performance;¹¹ and (iv) discharge or demotion on account of misconduct.¹² Section 15 provides for a discharge of a member who absents himself or herself, either voluntarily or involuntary, from his or her official duties without the permission of the director-general for a period exceeding 10 consecutive working days without any form of inquiry. This section reads as follows:

“15 Discharge of members on account of long absence without leave

(1) Any member who absents himself or herself, whether voluntarily or involuntarily, from his or her official duties without the permission of the Director-General for a period exceeding 10 consecutive working days, is deemed to have

⁹ Section 15 of the Act.

¹⁰ Section 16 of the Act.

¹¹ Section 17 of the Act.

¹² Section 18 of the Act.

been discharged from the Agency on account of misconduct, with effect from the date immediately following upon the last day on which he or she was present at his or her place of duty: Provided that if-

- (a) any member absents himself or herself from his or her official duties without such permission and accepts other employment, he or she is deemed to have been discharged even if he or she has not yet absented himself or herself for a period of 10 consecutive working days;
- (b) a member deemed to have been so discharged again reports for duty, the Director-General may, on good cause shown and notwithstanding anything to the contrary contained in any law but subject to the approval of the Minister, reinstate the member in his or her former post or appoint him or her to any other post in the Agency, on such conditions as the Director-General may deem fit and in that event the period of his or her absence from his or her official duties is deemed to have been absent on vacation leave without pay, or leave on such other conditions as the Director-General may determine;
- (c) the Director-General refuses to reinstate the member, the latter may appeal to the Minister, stating the reasons why he or she should be reinstated.

(2) The Minister may in the prescribed manner, for the purposes of any appeal lodged in terms of subsection (1) (c), establish an advisory panel to assist him or her in considering the appeal.”

[23] This section provides for a “deemed dismissal” in circumstances where the employee absents himself or herself *without the permission of the Director-General*. Consequently, it logically follows that where an employee absents himself or herself *with the permission of the Director-General*, the provisions of s 15 of the Intelligence Services Act cannot be invoked to discharge an employee by operation of law.¹³ Provided therefore that the essential requirements of s 15 have been met, namely that the employee had absented himself or herself without the permission of the Director-General, the discharge will be by operation in law. Given that the discharge

¹³ As was found to be the case in *Grootboom v National Prosecuting Authority & another* (2014) 35 ILJ 121 (CC) (“Grootboom”).

is deemed to be by operation of law, it follows that no “decision” to discharge has therefore been taken that may be the subject of administrative review.¹⁴

[24] Similar provisions are to be found in s 17(3)(a)(i) of the Public Services Act¹⁵ (the PSA) and s 14 of the Employment of Educators Act¹⁶ (EEA). All of these provisions have in common that they provide that an employee who absents himself or herself from official duties without the necessary permission from his or her Head of Department, shall be “deemed” to have been discharged from his or her employment on account of misconduct.

[25] The Constitutional Court in *Grootboom v National Prosecuting Authority & another*,¹⁷ confirmed in the context of s 17(5)(a)(i) of the PSA, that a discharge by operation of law does not constitute administrative action capable of being reviewed.¹⁸ Similarly, in *Public Servants Association of SA obo Ms L Van Der Walt v The Minister of Public Enterprise & another*¹⁹ the court pointed out that, once the requirements of section 17(5)(a)(i) of the PSA has been shown to exist, the applicant cannot challenge her discharge on review since it is by operation of law. And finally, in *Phenithi v Minister of Education & others*²⁰ (in the context of s 14(a) of the EEA), the Supreme Court of Appeal likewise confirmed that a discharge does not constitute administrative action capable of review and setting aside. The court in that case

¹⁴ This was confirmed by the court in *Minister van Onderwys en Kultuur en andere v Louw* 1995 (4) SA 383 (A) as follows: “There is then no question of a review of an administrative decision. The coming into operation of the deeming provision is not dependent upon any decision. There is no room for reliance on the *audi alteram partem* rule which in its classic formulation is applicable when an administrative - and discretionary - discretion may detrimentally affect the rights, privileges or liberty of a person.” (Quoted from the headnote.)

¹⁵ Act 103 of 1994.

¹⁶ Act 76 of 1998.

¹⁷ The Constitutional Court in *Grootboom supra* held as follows: “[16] Some 11 years after *Louw*, whilst dealing with a similar situation, the Supreme Court of Appeal in *Phenithi* endorsed *Louw*: ‘In my view, the *Louw* judgment is definitive of the first issue in the present matter, viz whether the appellant’s discharge constitutes an administrative act.... There was no suggestion that *Louw* was wrongly decided. There being no “decision” or “administrative act” capable of review and setting aside, the second part of the first prayer in *casu*, viz that the “decision be declared an unfair labour practice”, falls away.’ I cannot fault the Labour Court and Labour Appeal Court for relying on the principle established in the two cases cited above.”

¹⁸ In this matter, the court, however, found on the facts that the jurisdictional requirements for the operation of this section were not present as the employee was suspended. The court therefore held that it could not be concluded that he was not absent without leave.

¹⁹ JR1453/06: “17. It is trite that the deeming provisions as envisaged in terms of section 17(5)(a)(i) or corresponding 17(3)(a)(i) of the PSA do not constitute a decision which is reviewable in a court of law and is accordingly not reviewable. The requirements of section 17(5)(a)(i) of the PSA have been shown to exist and the applicant cannot challenge her discharge on review since this is by operation of law. The applicant has not made out a case for the review of the decision of 16 October 2007 or for a declarator.”

²⁰ 2008 (1) SA 420 (SCA); (2006) 27 ILJ 477 (SCA).

further explained that, because this section does not require any “decision” to be made for its provisions to come into operation, a hearing is also not contemplated prior to s 14(1)(a) coming into operation.²¹ Section 3(1) of the Promotion of Administrative Justice Act²² also does not come into play.²³

“[19] As to the ground that s 14(1)(a), read with s 14(2), violates the appellant's fundamental right to fair labour practices in terms of s 23(1) of the Constitution, it is not clear what 'act' of the employer is alleged to be allowed by the section 'without considering the substantive and procedural aspects of the case'. It would not be out of place to interpret the word 'act' to mean 'to decide to terminate or discharge', to which the answer again is that the employer takes no decision to terminate an educator's services under s 4(1)(a) of the Act. The discharge is by operation of law. In my view, the provision creates an essential and reasonable mechanism for the employer to infer 'desertion' when the statutory prerequisites are fulfilled. In such a case there can be no unfairness, for the educator's absence is taken by the statute to amount to a 'desertion'. Only the very clearest cases are covered. Where this is in fact not the case, the statute provides ample means to rectify or reverse the outcome.”²⁴

Returning to the facts

[26] I am satisfied, on the facts before the court, that the jurisdictional requirements embedded in s 15 of the Intelligence Act have been satisfied. In fact, the applicant, by his own conduct, brought himself within the jurisdictional boundaries of this section:

- (i) It is common cause that the applicant, apart from the initial short period, was absent without leave for an extended period until his discharge on 27 September 2019.
- (ii) It is also common cause that the applicant never submitted a request nor received permission from the Acting Director-General to be absent from work. Furthermore, the facts show that even after the applicant

²¹ Id at para 9 – 10.

²² Act 3 of 2000.

²³ Ad para [2].

²⁴ Supra note 21. See also *Member Executive Council for the Department of Education, Western Cape Government v Jetro NO and another* 2020 JDR 2921 (LAC) ad para [41] where the Labour Court similarly held that a letter informing an employee of his or her deemed discharge by operation of law under s 14(1) of the EEA involves no decision or exercise of public power and thus do not constitute administrative action.

was specifically informed by Duba that he should engage with Jafta regarding his leave application, chose to ignore him.

- (iii) To restate: Duba herself expressly informed the applicant in her letter dated 31 January 2019 that she had referred his request to the Acting Director-General for their handling and that the Acting Director-General would communicate with the applicant. Therefore, as of 31 January 2019, the applicant could not have been under any illusion that he needed permission to be absent from the Acting Director-General (as is also expressly required by s 15 of the Intelligence Services Act). Yet he made no attempt to request leave to his immediate supervisor.
- (iv) Upon receiving the letter from the Acting Director-General dated 30 April 2019, the applicant must also have been aware of the fact that Jafta was unaware that the applicant had submitted his medical certificates to the Minister (Duba). If Jafta was aware of the medical certificates, he would not have stated in this letter that the applicant had not reported to Head Office since his return from Japan and that all efforts to engage with the applicant were ignored. Rather than engaging with Jafta, the applicant simply ignored the letter. More importantly, he chose to simply ignore the explicit instruction to report for duty on the first working day following receipt of the letter. If he was medically unfit to do so, this was an opportune moment to engage with the Acting Director-General to explain his absence. There is no explanation on the papers as to why the applicant chose to ignore the Acting Director-General's express requests.

[27] From the evidence placed before this court and having regard to the well-established *Plascon Evan's* Rule, I can find no reason to reject the respondents' version as being so far-fetched as to be rejected merely on the papers. In fact, having regard to the common cause facts and the letters written to the applicant which he chose to ignore, it must be accepted the applicant never obtained permission to be absent from work. The applicant had ample opportunity to engage with the Acting Director-General but for some unexplained reason decided not to do so. The statutory prerequisites for the discharge have therefore been fulfilled. The

applicant has therefore been discharged by operation of law. This, as already pointed out, is not a reviewable decision. The application is therefore dismissed. I can see no reason why costs should not follow the result.

[28] One remaining issue is the applicant's claims that he had suffered financial damages "for the years that the [he] has been home". No case whatsoever is made out on the papers. Therefore, this claim is also dismissed.

[29] In the event, the following order is made:

1. The first and second respondents are granted leave to file a further affidavit which includes the supplementary affidavit of the Director-General State Security Agency, Ambassador Thembisile Cheryl Majola together with the confirmatory affidavit of the former Acting Director-General Mr Loyiso Jafta as annexures thereto with no order as to costs.
2. The late filing of the respondents' answering affidavit is condoned with no order as to costs.
3. The main application is dismissed with costs.

JUDGE A.C. BASSON
JUDGE OF THE HIGH COURT
GAUTENG DIVISION OF THE HIGH COURT, PRETORIA

Delivered: This judgment was prepared and authored by the Judge whose name is reflected and is handed down electronically by circulation to the Parties/their legal representatives by email and by uploading it to the electronic file of this matter on Caselines. The date for hand-down is deemed to be 25 October 2023.

Appearances

For the applicant:

Adv G Maphanga

Instructed by: Mngqingo Attorneys Inc.

For the first and second respondents:

Adv S Tleane

Instructed by the State Attorney Pretoria