IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

SCA CASE NO: 17/2019
CASE NO: 05598/16

In the matter between:

THE SOUTH AFRICAN HISTORY ARCHIVE TRUST Appellant

(Applicant in the court a quo)

and

THE SOUTH AFRICAN RESERVE BANK First Respondent

THE GOVERNOR OF THE SOUTH AFRICAN RESERVE BANK, L KGANYAGO Second Respondent

(First and Second Respondents in the Court a quo)

APPELLANT'S HEADS OF ARGUMENT

TABLE OF CONTENTS

INTRODUCTION

1. On 1 August 2014 the South African History Archive Trust (**SAHA**) submitted a request for information to the South African Reserve Bank (**SARB**) in terms of the Promotion of Access to Information Act 2 of 2000 (**PAIA**). SAHA sought copies of records obtained by SARB as part of investigations into eight named individuals, in respect of the period 1 January 1980 to 1 January 1995 (**the requested records**).[1] The requested information addresses corruption under apartheid, and the utilisation of key institutions in the public and private sectors to facilitate the externalisation of South African funds during apartheid.

2. SAHA waited over a year for a decision. On 28 October 2015, SARB provided evidence that it was not in possession of information pertaining to five of the individuals.[2] In respect of the other three individuals, Brig Blaauw, Mr Palazzolo and Mr Hill, SARB refused access to any information – including, it later emerged, a document which was already in the public domain. It contended, *inter alia*, that it was prevented by section 33 of the Reserve Bank Act from disclosing any information - in other words, that the Reserve Bank Act overrides PAIA.

3. In February 2016 SAHA applied to the High Court in terms of section 78(2) read with section 82 of PAIA.[3] SARB abandoned its "section 33" defence, but persisted in a blanket refusal except for disclosing the document which was

[1] The content of SAHA's PAIA request is set out at Record vol 1, page 15, Founding Affidavit, para 18. The Form A: Request for Access is at Record vol 1, page 56, Annexure FA2 of the Founding Affidavit. The eight individuals were the late Mr Giovanni Ricci, the late Mr Fanie Botha, Brig Johann Blaauw, Mr Paul Ekon, Mr R O Hill, Mr Vito Palazzolo, Mr Craig Williamson and Dr Wouter Basson.

[2] Record vol 1, page 90 - 94, Annexure FA9 of the Founding Affidavit.

[3] The application was brought in accordance with the Rules of Procedure for Application to Court in terms of the Act (GNR.965 of 9 October 2009: Government Gazette No. 32622).

already in the public domain. Properly analysed, its defence amounts to a contention that SARB cannot be required to disclose any document in its possession.

4. SAHA's application was dismissed by Matojane J. He

4.1. upheld SARB's point in limine that there was a misjoinder because Mr Palazzolo and Mr Hill had not been served with notices in terms of Rule 10 of the Uniform Rules;

4.2. found that SAHA's request was impermissibly vague;

4.3. found that SARB was entitled to rely on various exemption provisions to refuse access to the information;

4.4. rejected SAHA's complaint that SARB had not complied with its obligation under PAIA, if non-disclosure was warranted, to sever and disclose every part of the records which could be disclosed; and

4.5. rejected SAHA's submission that, notwithstanding the application of any of the exemption provisions, the public interest required disclosure of the information.

5. SARB sought and obtained an order that SAHA was to pay the costs of the application, including the costs of two counsel.

6. Matojane J granted leave to appeal to this Court.

7. SAHA appeals against the whole of the judgment and order of Matojane J

SARB'S OBLIGATION TO PROVIDE ACCESS TO INFORMATION UNDER PAIA

8. Section 32(1)(a) of the Constitution provides that "*Everyone has the right of access to … any information held by the State*." The right of access to information is fundamental to a state whose founding values include the pursuit of "*accountability, responsiveness and openness".*[4] It is a value that permeates the Constitution[5] as the "*lifeblood of democracy.*"[6]

9. Section 32 of the Constitution reflects the need for a decisive break with the apartheid state's obsession with secrecy. The purpose of the right of access to information "…*is to subordinate the organs of State . . . to a new regimen of openness and fair dealing with the public*";[7] "*when access is sought to information in the possession of the State, then it must be readily availed*."[8]

10. PAIA gives effect to the right of access to information. Section 11 regulates the right of access to information held by public bodies. The use of the word "must" in section 11(1) obliges an information officer to grant access to the record if:

    10.1. the applicant has complied with the procedures in PAIA; and

---

[4] Section 1(d) of the Constitution.

[5] For instance: The preamble states that the Constitution lays the foundation for a "democratic and open society". Section 41(1)(c) requires all spheres of government and all organs of state to provide "transparent" and "accountable" government. Sections 57(1)(b), 59(1)(b), 70(1)(b), 72(1)(b), 116(1)(b), 118(1)(b) and 160(7) require parliament, the provincial legislatures and all municipal councils to conduct their business in an open, transparent and accountable manner. Section 195 lays down the basic values and principles that govern public administration in every sphere of government. Public administration "must be accountable" and "[t]ransparency must be fostered by providing the public with timely, accessible and accurate information".

[6] *President of the Republic of South Africa v M&G Media Ltd* 2011 (2) SA 1 (SCA) at para 1; *Oriani-Ambrosini v Sisulu, Speaker of the National Assembly* 2012 (6) SA 588 (CC) at para 46.

[7] Cameron J in *Van Niekerk v Pretoria City Council* 1997 (3) SA 839 (T) at 850C: This passage has repeatedly been quoted with approval, including in *MEC for Roads and Public Works, Eastern Cape, and Another v Intertrade Two (Pty) Ltd* 2006 (5) SA 1 (SCA) at para 21.

[8] *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 (8) BCLR 893 (CC); 2018 (5) SA 380 (CC) at para 23.

10.2. the record is not protected from disclosure under the grounds set out in Chapter 4.[9]

11. The right of access does not depend upon (i) the requester's reasons for requiring the record or (ii) the information officer's assessment of those reasons.[10]

12. Once it has been established that the request complied with the Act, the second inquiry is whether any of the grounds of refusal in Chapter 4 of PAIA apply. If they do not, the information sought must be disclosed.[11]

13. This principle is peremptory.[12] If the public body fails to demonstrate that the record falls within one of the exemptions under PAIA, the requester has a right to its disclosure. "*Under our law … the disclosure of information is the rule and exemption from disclosure is the exception*."[13]

14. The Act provides that the burden of establishing that the refusal of access to information complies with a provision of PAIA rests on the party refusing access.[14] Ngcobo CJ explained that in order to discharge this burden "*the State must provide evidence that the record in question falls within the description of the statutory exemption it seeks to claim*."[15]

---

[9] Section 11(1) of PAIA; *M&G Media* at para 9.

[10] Section 11(3) of PAIA.

[11] *Transnet* at para 58.

[12] *Transnet v SA Metal Machinery Co (Pty) Ltd* 2006 (6) SA 285 (SCA) at para 58.

[13] *M&G Medi*a at para 9.

[14] Section 81(3) of PAIA. See also *President of the RSA and others v M & G Media Ltd* 2012 (2) SA 50 (CC) at para 13.

[15] *M & G Media* at para 23.

15. Ngcobo CJ held further that "*The recitation of the statutory language of the exemptions claimed is not sufficient for the State to show that the record in question falls within the exemptions claimed. Nor are mere ipse dixit affidavits proffered by the State. The affidavits for the State must provide sufficient information to bring the record within the exemption claimed*."[16]

16. Once it is found that SARB has a record, part or all of which falls within the request, in order to justify non-disclosure SARB must allege and prove that –

    16.1. the requested record, and every part of it,[17] is governed by either a mandatory ground or a discretionary ground for refusal; and

    16.2. mandatory disclosure is not required in the public interest as set out in section 46 of PAIA.

17. The *"provisions of PAIA which provide for the refusal of access to information must be strictly and narrowly construed so that the broadest effect may properly be given to ss 32 and 195 of the Constitution"*.[18]

18. The object and purpose of the Act is to provide a simple and inexpensive mechanism of obtaining information held by public bodies. A request is not to be interpreted in a technical manner, as if it were a pleading. That is inconsistent with the objects of PAIA.[19]

[16] *M & G Media* at para 24 – 25.

[17] Section 59 of PAIA.

[18] *Avusa Publishing Eastern Cape (Pty) Ltd v Qoboshiyane no and others* 2012 (1) SA 158 (ECP) at para 17.

[19] *Afriforum v Emadlangeni Municipality* (A286/2015) [2016] ZAGPPHC 510 (27 May 2016) at para 37 - 38.

SARB'S REASONS FOR REFUSAL AND THE HIGH COURT FINDINGS

19. SARB identified a number of categories of documents in its possession in relation to Mr Palazzolo, Brig Blaauw and Mr Hill, and in respect of each category raised one or more grounds of refusal.

20. Below is a table summarising the categories of documents identified by SARB in relation to each individual. The table records SARB's reasons for refusing to grant access to each category of records, and the findings, or lack of findings, by the High Court in respect of each of SARB's reasons.

21. Records relating to Mr Palazzolo:

Records	Para of Answering Affidavit	Reason for Refusal	Para of Answering Affidavit	Court a quo
Trust documents		Do not fall within SAHA's PAIA request	81	No finding
Exchange control index cards		Do not fall within SAHA's PAIA request	82.1	No finding
		Exemption: Section 42(1): disclosure will cause harm to integrity of SARB's record system and jeopardise the economic interests of the country	82.2	No finding
		Exemption: Section 34(1). The cards record personal information about Mr Palazzolo.	82.3	Accepted by the High Court
Proof of transactions by Trust	77.5	Do not fall within SAHA's PAIA request	83.1	No finding
		Exemption: Section 34(1). The cards record personal information about the Trust.	83.2	Accepted by the High Court
Copies of Mr Palazzolo's bank statements	77.6	Do not fall within SAHA's PAIA request	84.1	No finding
		Exemption: Section 34(1). The statements record personal information about Mr Palazzolo.	84.2	Accepted by the High Court
Investigator notes and calculations	77.7	Do not fall within SAHA's PAIA request	85	No finding
	77.8	Do not fall within SAHA's PAIA request	86.1	No finding

Documents submitted to SARB by authorised dealers		Exemption: Section 34(1): The statements record personal information about Mr Palazzolo.	86.2	Accepted by the High Court
		Exemption: Section 37(1)(b) and/or 42(1). Information supplied in confidence or under regulation 19.	86.3	No finding
Correspondence	77.9	Do not fall within SAHA's PAIA request	87	No finding
Screen printouts from Exchange Control electronic database	77.10	Do not fall within SAHA's PAIA request	88	No finding

22. Records relating to Brig Blaauw:

Records	**Para of Answering Affidavit**	**Reason for Refusal**	**Para of Answering Affidavit**	
Letter by Exchange Control Department	97.1	Do not fall within SAHA's PAIA request	98	
		Exemption: Section 36(1): Information is commercial information.	99	No finding
		Exemption: Section 37(1)(b) / 42(1): Supplied in confidence.	101	No finding
Annual Financial Statements and company documents regarding company of which Braauw was director	97.2	Do not fall within SAHA's PAIA request	98	No finding
		Exemption: Section 36(1): Information is commercial information.	99	No finding
		Exemption: Section 37(1)(b) / 42(1): Supplied in confidence.	101	No finding
Miscellaneous newspaper clippings, property deeds, income returns and assessments.	97.3	Do not fall within SAHA's PAIA request	98	No finding
		Exemption: Section 36(1): Information is commercial information.	99	No finding
		Exemption: Section 37(1)(b) / 42(1): Supplied in confidence.	101	No finding

23. Records relating to Mr Hill:

Records	**Para of Answering Affidavit**	**Reason for Refusal**	**Para of Answering Affidavit**	

43 Archive boxes	112 – 113			
Files of forensic auditors, National Prosecuting Agency. Eskom share certificates, company documents, minute books, asset registers, financial records, employee records, papers in the extradition proceedings, litigation against SARB arising from attachment and forfeiture orders.		Exemption: Section 45. Work would substantially and unreasonably divert SARB's resources.	116	Accepted by the High Court
		Exemption: Section 49(2): Personal information of third parties	118 – 120	No finding
		Exemption: Section 37(1)(b) / 42(1): Supplied in confidence.	121	No finding

24. As is apparent from these tables, SARB adopted two main positions in relation to the categories of records sought:

    24.1. Either SARB contends that the record does not fall within the ambit of SAHA's request, and there is therefore no obligation on it to provide access to the record; or

    24.2. SARB contends that it is justified in refusing the information on the basis of one of the PAIA exemptions. SARB has relied on the exemptions in section 42(1), 34(1), 37(1), 36(1) and 45 of PAIA.

25. Where SARB alleges that grounds exist for refusal of access to requested records, it does so in relation to a whole category. It does not identify each of the records to which that ground applies, and does not say why that ground applies to that record, and to the whole of that record. Rather, blanket assertions are made in respect of unidentified records.

26. The findings of the learned judge in the Court a quo were as follows:

26.1. He found that there was a fatal failure of non-joinder in terms of Rule 10.

26.2. He did not deal with the question of whether the identified records fell within SAHA's PAIA request. Rather, he held that SAHA's request for information was vague and unduly broad, and that the application could be dismissed on this basis alone. He held that it was clear what kinds of documents were contained in the investigation files and that therefore SARB's refusal could not be regarded as a blanket refusal. It is unclear from the judgment whether he agreed with SARB's contentions that the records did not fall within the request.

26.3. In respect of the records relating to Mr Palazzolo, he found that the records are exempt from disclosure under section 34(1) because they contain personal information about Mr Palazzolo, his family Trust, companies and other third parties.

26.4. In respect of the records relating to Mr Hill, he found that the records are exempt from disclosure under section 45 because the work involved in processing the request in respect of 43 archive boxes in relation to Mr Hill would substantially and unreasonably divert SARB's resources.

26.5. He made no findings in respect of the exemption provisions raised by SARB in relation to Brig Blaauw.

26.6. He made no finding in relation to SARB's reliance on exemption provisions in sections 42(1), 37(1) or 36(1).

RULE 10 JOINDER WAS NOT REQUIRED

27. SARB argued that Rule 10 of the Uniform Rules of Court required SAHA to join Mr Palazzolo and Mr Hill, and that SAHA's failure to do so rendered them fatally non-suited.[20]

28. As required by Rule 3(5)(a) of the PAIA Rules,[21] SARB served copies of the application on Mr Palazzolo and Mr Hill. Neither of them responded to the notice or gave any indication that he wished to participate in the application.

29. The Court a quo found that Rule 3(5)(a) of the PAIA Rules sought to make affected persons aware of the institution of PAIA proceedings, but that it does not provide for those parties to indicate whether they oppose the proceedings, and if so, to file answering papers.[22] As a consequence, the learned judge reasoned that these third parties may not be aware that they have the right to participate in the proceedings and would be deprived of the right to be heard.

30. As a result of this distinction, the learned judge concluded that Rule 3(5)(a) does not affect the common law rule relating to obligatory joinder of parties. On the application of that test, Mr Palazzolo and Mr Hill have a substantial interest in the application and should have been joined.[23]

31. We submit that the Court a quo erred in applying the common law test for joinder of necessity, for three reasons:

---

[20] Record Vol 1, page 116 - 121, Answering Affidavit, paras 8 – 20.

[21] Section 79(1) of the Act provides that the Rules Board for Courts of Law must make rules for procedure for applications to court in terms of section 78. The Rules were published GN R965 in GG 32622 of 9 October 2009.

[22] Record Vol 3, page 420, Judgment, para 12.

[23] Record Vol 3, page 421, Judgment, para 16.

31.1. First, it is Rule 3(5)(a) of the PAIA Rules and not Rule 10 of the Uniform Rules that governs how parties affected by a request for information should be notified of an application in terms of section 78(2) of PAIA;

31.2. Second, even if Rule 10 of the Uniform Rules applies, this is not a case requiring a joinder of necessity;

31.3. Third, the question of non-joinder relates only to Mr Palazzolo and Mr Hill, and the application in respect of Brig Blaauw (who is deceased) cannot be dismissed for this reason.

Rule 10 does not apply

32. The Rules Board has made rules to govern applications brought in terms of section 78 of the Act. Rule 2(1) provides that the procedure prescribed in the Rules must be followed in all applications under section 78 of the Act. Unless as otherwise provided for in those Rules, the Rules of the relevant Court shall apply "with appropriate changes": Rule 2(2).

33. In High Court proceedings, joinder is ordinarily governed by Rule 10 of the Uniform Rules. The Rules Board has however made a different rule in respect of applications under section 78 of PAIA: it requires the information officer to give all persons affected notice of the application, and to provide them with a copy of the application.

34. The plain intention of the Rules Board was to replace Rule 10 joinder with the Rule 3(5)(a) notice process. This is evident for two reasons:

34.1. If Rule 10 joinder was required, the Rule 3(5)(a) process would be superfluous and senseless.

34.2. The purpose which Rule 10 seeks to achieve – to give affected parties notice and an opportunity to participate - is achieved in section 78 applications by a different method, namely through Rule 3(5)(a).

35. From this it follows that the PAIA Rules do "otherwise provide" in respect of rule 10, and that the "appropriate change" to the Uniform Rules is that the requirement of joinder under Rule 10 does not apply, because that matter is dealt with by the PAIA Rules.

36. SARB has served the application on the two persons who are potentially affected by the orders which SAHA seeks. Neither of them has indicated an interest in participating in these proceedings.

Joinder of necessity not required

37. In any event, even if the Uniform Rules of Court apply in the present case, we submit that joinder of necessity (as opposed to joinder of convenience) would not apply in this matter.

38. In **Judicial Service Commission v Cape Bar Council** Brand JA dealt with the question of non-joinder in the following terms:

> *"It has now become settled law that the joinder of a party is only required as a matter of necessity – as opposed to a matter of convenience – if that party has a direct and substantial interest which may be affected prejudicially by the judgment of the court in the proceedings concerned (see e.g. Bowring NO v Vrededorp Properties CC and Another 2007 (5) SA 391 (SCA) par 21). The mere fact that a party may have an interest in the outcome of the litigation does not*

> *warrant a non-joinder plea. The right of a party to validly raise the objection that other parties should have been joined to the proceedings, has thus been held to be a limited one."*[24]

39. In **Burger v Rand Water Board,** Brand JA summarised the principles applicable to joinder as follows:

> *"The right to demand joinder is limited to specified categories of parties such as joint owners, joint contractors and partners, and where the other party(ies) has (have) a direct and substantial interest in the issues involved and the order which the Court might make."*[25]

40. We submit that at best for SARB, the joinder of these persons may be competent under Rule 10 on the grounds of convenience. There is therefore no basis for the point *in limine*.

The non-joinder has no impact on Brigadier Blaauw

41. The Court in any event erred in concluding that the entire application could be dismissed on the basis of its findings on non-joinder. This is because:

    41.1. the Court accepted that no joinder was necessary in respect of Brig Blaauw or his heirs (para 15); and

    41.2. at the most, SAHA was therefore non-suited only in relation to the portions of the application directed at disclosure of the information relating to Mr Hill and Mr Palazzolo.

[24] *Judicial Service Commission and another v Cape Bar Council (Centre for Constitutional Rights as amicus curiae)* 2012 (11) BCLR 1239 (SCA); 2013 (1) SA 170 (SCA) at para 12.

[25] *Burger v Rand Water Board and another* 2007 (1) SA 30 (SCA) at para 7.

SAHA'S PAIA REQUEST

The request was sufficiently particularised

42. The Court found that SAHA's request "*as formulated, is unduly vague and broad*"[26] and "*the scope of the PAIA request is unreasonably vague*", and that the application fell to be dismissed on that ground.[27]

43. The Court found that the request does not identify the specific records sought, and that SARB was required to "*subjectively to determine which records may tend to prove a substantial contravention amounting to significant fraud*." It was also not clear whether the request applies to all records obtained by SARS or only those obtained during September 1985 to March 1995.[28] The learned judge also found that SAHA had "reformulated" its request in the replying affidavit and again in heads of argument.

44. We submit that the Court erred, as SAHA's request provided sufficient particulars to enable SARB to identify the records requested.

45. The request for access described the records sought as:

> *"Copies of any and all records, or part of records, of any evidence obtained by the bank at any time as part of investigations into any substantial contravention or, or failure to comply with, the law in terms of significant fraud (including fraud through manipulation of the financial rand dual currency, foreign exchange or forging Eskom bonds), gold smuggling or smuggling or other precious metals from 1*

[26] Record Vol 3, page 422, Judgment, para 20.

[27] Record Vol 3, page 421, Judgment, para 18.

[28] Record Vol 3, page 422, Judgment, para 20.

January 1980 to 1 January 1995 in relation to the following persons: …"[29]

46. The Court accepted SARB's version that it had in fact identified and located the records in relation to Brig Blaauw, Mr Hill and Mr Palazzolo requested in SAHA's request of 1 August 2014.[30]

47. As to Mr Palazzolo: SARB acknowledged that it investigated a possible substantial contravention of the law by Mr Palazzolo.[31] It has identified the "*documents collected during the course of the investigation*".[32]

48. All of the documents must have had actual or potential relevance to the investigation, as they would not otherwise have been collected and retained on the investigation file. They were "obtained by the SARB" between 1980 and 1995 "as part of investigations" into contravention of or failure to comply with the law. They are records of evidence collected by the SARB as part of its investigations.

49. That is what SAHA seeks. There can be no doubt about that. The records are the evidence which SARB collected and retained in the investigation file. This includes the following documents that SARB states are in the investigation file[33]:

    49.1. Trust documents;

    49.2. Exchange Control Index Cards;

    49.3. Trust documents relating to the Family trust;

[29] Record Vol 1, page 57, Annexure FA2 of the Founding Affidavit.

[30] Record Vol 3, page 424, Judgment, para 31.

[31] Record Vol 1, page 148, Answering Affidavit, para 76.

[32] Record Vol 1, page 148, Answering Affidavit, para 76.

[33] Record Vol 1, page 148, Answering Affidavit, para 77.

49.4. Bank Statements;

49.5. Investigator Notes;

49.6. Documents from authorised dealers;

49.7. Correspondence;

49.8. Screen printout.

50. As to Brig Blaauw: It is clear that SARB investigated alleged contravention of exchange control regulations. SARB considered the matter serious enough to send an affidavit in that regard to the SAPS.[34] All of the documents collected to that investigation plainly fall within the scope of SAHA's PAIA request.

51. In light of the above, there was simply no basis for the finding that the request was unreasonably vague. SARB was able to identify and locate the requested documents, and did so.

52. Nor was there any basis for finding that SAHA had made a *"rolling request".*[35] The fact that SAHA had made previous PAIA requests to SARB was irrelevant. SAHA's PAIA request in the present matter was clear. SAHA sought to assist SARB by providing further clarification in the papers before the High Court. Neither the earlier PAIA requests, nor SAHA's clarification, rendered the PAIA request unreasonably vague. The characterisation of the request as "a rolling request" was not justified, and did not provide a basis for dismissing the application.

[34] Record Vol 1, page 163, Answering Affidavit, para 97.1.

[35] Record Vol 3, 424, Judgment, para 27.

All of the documents in SARB's possession fall within the request

53. SARB asserts that every document identified in relation to Mr Palazzolo and Brig Blaauw does not fall within SAHA's request and therefore need not be disclosed.

54. In its letter of 15 October 2015 refusing the application, SARB stated that it had placed its own interpretation on the request.[36] Before the High Court, SARB persisted in its own restrictive interpretation of the request.[37] It limits the request to:

    54.1. Investigations by the Exchange Control Department in respect of the various offences;

    54.2. Records that "reveal evidence" of such contraventions.

55. As we have noted, these documents are records of evidence collected by the SARB as part of its investigations. The test cannot be whether they prove the commission of the offences in question.

56. SAHA's narrow and technical interpretation of SAHA's request is contrived, contrary to the values of PAIA and the Constitution, and contrary to the approach explained by the Court in *Afriforum*, to which we have referred above (note 19). We submit that:

    56.1. SARB has a duty to approach the interpretation of the scope of PAIA requests with an attitude of transparency and openness.

[36] Record Vol 1, page 91, Annexure FA9 of the Founding Affidavit, para 3.3.

[37] Record Vol 1, page 127 - 128, Answering Affidavit, para 33 and para 35.

56.2. If there is any doubt as to whether a document falls within the ambit of the request, SARB is required to adopt the default of disclosure and not of secrecy.

56.3. SARB must take into account the location of the documents that it has identified when determining whether a document falls within the scope of a PAIA request.

57. SARB is familiar with SAHA and the scope and thrust of its work. In correspondence exchanged after the request was filed, SAHA explained its interest in the requested records. SARB had the necessary knowledge of the purpose of the request to enable it to know what SAHA sought.

58. Even on a technical reading of the request, all of the records contained in the investigation files of Mr Palazzolo and Brig Blaauw fall within SAHA's request. They are records of evidence collected by SARB as part of its investigations into the offences in question. It is only if one takes the most obstructive approach, seeking technical reasons to avoid disclosure, that one could contend that these records do not fall within the request. Regrettably, and consistently with its conduct throughout this matter, that is the approach which SARB takes. It is an approach which is unworthy of an institution such as SARB, and it is inconsistent with the requirements of the Constitution and PAIA. It is an approach, we submit, that calls for adverse comment by this Court.

MR PALAZZOLO – SECTION 34 EXEMPTION

59. Section 34(1) directs an information officer to refuse a request for access to a record if its disclosure would involve the unreasonable disclosure of personal information about a third party, including a deceased individual.

60. The Court a quo found that the records contained in Mr Palazzolo's investigation file were personal information and accordingly protected from disclosure in terms of section 34(1) of PAIA.[38] On this basis, the Court found that SARB was justified in refusing access to the whole of Mr Palazzolo's investigation file.

61. The learned judge erred in two key respects.

62. First, section 34(1) does not provide a blanket exemption from disclosure of all personal information.

    62.1. The Court failed to appreciate that section 34(1) provides that an information officer may refuse a request to access to a record "*if its disclosure would involve the unreasonable disclosure of personal information about a third party*." The Court did not consider whether, on the evidence adduced by SARB, the disclosure of the personal information would be unreasonable

    62.2. SARB did not give Mr Palazzolo notice in terms of section 47, and he was therefore not given an opportunity to consent to the disclosure in terms of section 48, or to object. He has since been given notice of this application, and of the order which SAHA seeks. Notably, he has not opposed it.

[38] Record Vol 3, page 425, Judgment, para 34.

62.3. SARB provided no evidence as to why disclosure would be unreasonable. It did little more than, in the words of Ngcobo CJ, recite the statutory language, followed by an *ipse dixit*. It failed to discharge its onus.

63. Second, the Court erred in finding that SARB could justifiably refuse disclosure of Mr Palazzo's entire investigation file on the basis of section 34(1) of PAIA.[39]

63.1. SARB invoked the section 34 exemption only in respect of the following documents located in Mr Palazzolo's investigation file: Exchange Control Index Cards, Proof of transactions of the trust, copies of Mr Palazzolo's bank statements, documents submitted to SARB by authorised dealers.

63.2. SARB did not invoke the section 34 exemption relation to the following documents located in Mr Palazzolo's investigation file: Trust documents, Investigator notes and calculations, correspondence, screen printouts from Exchange Control electronic database.

63.3. None of these documents constitute personal information as defined in section 34 of PAIA.

63.4. The Court therefore erred in finding that the refusal in respect of all of the records concerning Mr Palazzolo was justified.

BRIG BLAAUW – SECTION 36 EXEMPTION

64. The Court dealt with the request for information in respect of Brig Blaauw in three paragraphs.[40] The learned judge noted the contents of the investigation file, and

[39] Record Vol 3, page 425, Judgment, para 32 – 34.

[40] Record Vol 3, page 425 - 426, Judgment, para 35 – 38.

noted SARB's conclusion that the documents did not reveal evidence that Brig Blaauw was involved in significant fraud or smuggling. The Court finally noted that SARB relies on section 36 of PAIA in respect of the provision of the documents contained in the investigation file relating to the company of which Brig Blaauw was a director.

65. The learned judge made no determination as to whether SARB's refusal to provide the records of Brig Blaauw was justified under section 36 of PAIA.

66. The learned judge did not apply the test set out in section 36(1)(b) of PAIA, and made no factual findings in this regard. There was accordingly no basis for holding that SARB was justified in refusing the records in respect of Brig Blaauw.

67. If the learned judge had applied the appropriate test, he would have found that SARB had failed to provide a factual basis for the application of section 36 as a basis for refusing the information.

68. In terms of section 36(1) the information officer is obliged to refuse a request for access to a record if it contains "financial, commercial, scientific or technical information, other than trade secrets of a third party, the disclosure of which *would be likely to cause harm* to the commercial or financial interest of that party".

69. SARB relies on the section 36 exemption in respect of the following records relating to Brig Blaauw: Letters by Exchange Control Department, Annual Financial Statements and company documents regarding a company of which Brig Blaauw was director, and miscellaneous documents – trust deeds, annual financial statements and company documents.

70. SARB did not produce facts which show that disclosure of these documents *"would be likely to cause harm"* to the financial and commercial interests of those entities.

71. This Court has said the following about this section:

> *"A party who relies on these provisions to refuse access to information has a burden of establishing that he or she or it will suffer harm as contemplated in sections 36(1)(b) and (c). The party upon whom the burden lies, in this case, Billiton, must adduce evidence that harm "will and might" happen if Eskom parts with or provides access to information in its possession relating to the contracts. The burden lies with the holder of the information and not with the requester."*[41]

72. SARB has provided no factual basis at all for its contention that disclosure of the information would cause financial or commercial harm to these entities.

73. To the contrary:

73.1. SARB does not disclose the identity of the entities;

73.2. SARB has made no attempt to make contact with the entities: for example, it did not send a notice to the company with which Brig Blaauw was associated because "*it would have been unreasonable for the SARB to trace the company*".[42] The address of the company can of course very simply be obtained from CIPRO.

73.3. There is no evidence that these entities even still exist, more than twenty year later;

[41] *BHP Billiton PLC Incorporated and another v De Lange and others* [2013] 2 All SA 523 (SCA) at para 25.

[42] Record Vol 1, page 164, Answering Affidavit, para 100.

73.4. In the nature of things, it is highly unlikely that financial information from 20 or more years ago would cause any material financial or commercial harm.

MR HILL – SECTION 45 EXEMPTION

74. Section 45(1)(b) provides that an information officer may refuse a request for access if the work involved in processing the request would substantially and unreasonably divert the resources of the public body.

75. SARB relies on section 45 in relation to all of the records relating to Mr Hill.[43] It claims that the exercise of considering all the documents would take approximately 141 days and that such a task would have to be performed by a person familiar with the investigations process in an exchange control investigation.[44]

76. The Court a quo accepted these factual allegations, and found that "the processing of the PAIA request in relation to Mr Hill will unreasonably divert the SARB's resources".[45]

77. The Court did not acknowledge or appreciate the fact that SARB's increased work involved in considering the records is a self-created burden. SARB had failed to comply with its obligations under the National Archives and Records

[43] Section 45(1) of PAIA provides:

> *"The information officer of a public body may refuse a request for access to a record of the body if—*
>
> *(a) the request is manifestly frivolous or vexatious; or*
>
> *(b) the work involved in processing the request would substantially and unreasonably divert the resources of the public body."*

[44] Record Vol 1, page 170, Answering Affidavit, para 117.

[45] Record Vol 3, page 427, Judgment, para 43.

Services of South Africa Act 43 of 1996 with regard to the management and care of these public records in its custody.[46] This non-compliance could not form part of the justification for refusing access to the information in terms of section 45.

78. Further, the Court did not consider what steps SARB could take in order to reduce its alleged workload. In **CCII Systems**, the Court pointed to the benefit of a pragmatic *via media* for dealing with a dispute as to which documents had to be produced, where a large volume of documents is involved.[47] The Court was empowered to grant any order that was just and equitable (section 82 of PAIA), but failed to consider and explore the possibility of a *"pragmatic via media"* in respect of the records of Mr Hill. For example:

    78.1. SARB could identify the files that appear to have the most relevance and deal with the documents in those files;[48] or

    78.2. SARB could produce an index of what is in the boxes, and invite SAHA to identify those categories of documents which are of the greatest interest to it, and limit the exercise to those documents.

PUBLIC INTEREST OVERRIDE

79. We submit that to the extent that SARB showed that some the records fall within the ambit of the exemptions, the public interest in disclosure of the documents

[46] Record vol 2, page 382, Replying Affidavit, para 144.

[47] *CCII Systems (Pty) Ltd v Fakie and others (Open Democracy Advice Centre as amicus curiae)* NNO 2003 (2) SA 325 (T) at para 22.

[48] Record Vol 2, page 383, Replying Affidavit, para 151.

manifestly outweighs the harm contemplated in any of the exemptions. The records must therefore be disclosed under section 46 of PAIA.[49]

80. Section 46 contemplates a two-part test, involving consideration of whether disclosure of the requested information would:

    80.1. reveal evidence of "a substantial contravention of, or failure to comply with, the law"; and

    80.2. "the public interest in the disclosure of the record clearly outweighs the harm contemplated in the provision in question." [50]

81. The provisions are mandatory. If these conditions are met and the information officer does not grant access, the court will order him/her to do so.[51] The Court is required to consider the public interest in disclosure, and then weigh this against any harm that may arise. The "harm" is limited to the harm which the exclusionary sections seek to avoid, not other factors which in the opinion of the public body may favour or not favour disclosure. Section 46 does not entail a balancing of factors as to whether or not the record should be disclosed.

82. The Court a quo misapplied the test in section 46 by weighing a range of factors put forward by SARB that, in its view, would favour or would not favour the disclosure of the information. The learned judge endorsed SARB's approach and held that "*SARB cannot be faulted for considering other factors relevant to*

[49] Record Vol 1, page 39, Founding Affidavit, para 102.

[50] *De Lange and Another v Eskom Holdings Limited and Others* 2012 (1) SA 280 (GSJ) at para 135.

[51] *Qoboshiyane* at para 10. See also *De Lange* at para 133, which was upheld on appeal in *BHP Billiton Plc Inc and Another v De Lange and Others* 2013 (3) SA 571 (SCA). See also *De Lange* at para 137.

establishing the public interest in the disclosure of the information."[52] This included SARB's view that SAHA's intention to include the requested information in a book published and distributed in South Africa was "*not a pressing issue*" in the public interest, that the documents may result in "*speculative and unsubstantiated commentary*"[53] and that the information was contained in "*documents collected by the SARB decades ago*".

83. On this basis, the Court found that the public interest in disclosure of the record does not outweigh the harm contemplated in the exclusion ground.[54] The Court had not, however, considered the harm contemplated by the exclusion ground or weighed this harm against the interests of public disclosure.

84. SAHA contends that the contents of the records are of public interest and importance.[55] It provides a series of considerations that demonstrate that the public interest in disclosure outweighs the harm contemplated in any of the exemption provisions.

    84.1. The events – the alleged economic crimes – are events of great importance in South Africa's history.

    84.2. Very little is known about the nature and extent of corruption under apartheid.[56]

---

[52] Record Vol 3, page 429, Judgment, para 54.

[53] Record Vol 3, page 429, Judgment, para 54.

[54] Record Vol 3, page 429, Judgment, para 55.

[55] Record Vol 1, page 40, Founding Affidavit, para 106.

[56] Remarkably, SARB says that it is "not in a position to comment" on the assertion in the founding affidavit that very little detail is publicly known of economic crimes that occurred during apartheid as a result of the pervasive culture of secrecy at the time: "The allegation is vague, unsubstantiated and speculative": Record Vol 1, page 187, Answering Affidavit, para 156.2.

84.3. The lack of knowledge is a result of the culture of state secrecy. There is a strong public interest in not perpetuating the results of that culture.

84.4. There is a right to truth about the economic crime that took place in the final decades of apartheid.

84.5. Many of these illicit activities were carried out with the objective of supporting the apartheid state. The public has the right to know information that sheds light on how and by whom the apartheid state and system were supported.

84.6. In some of these transactions the SARB itself was suspected of irregular conduct.

84.7. The disclosure of this information would allow researchers and the public to gain a better understanding of corruption under apartheid.

84.8. Disclosure would confirm the SARB's constitutionally required commitment to transparency and accountability.

84.9. It would assist with democratic transformation of the state and our society. Hidden histories undermine the democratic consolidation.

85. The primary harms that SARB alleges will occur in respect of <u>all</u> of the requested records if they are disclosed are:

85.1. Abuse of information gathering powers of the SARB, and therefore damage to the economic interests of South Africa;[57]

[57] Record Vol 1, page 140, Answering Affidavit, para 56.1.

85.2. Prejudice to future supply of similar information or information from the same or similar sources.[58]

86. There is simply no factual evidence whatsoever that the disclosure of any particular record obtained during the SARB investigations would result in any of these harms. There is simply a blanket allegation, without any facts to support it, and without any attempt to link the alleged harm to the specific records which SAHA seeks.

87. The documents are about events from 1 January 1980 to 1 January 1995. Section 44 of the Act (the operations of public bodies) "*does not deal with historical situations*".[59] The time which has elapsed is also plainly relevant to section 46. It is inherently unlikely that disclosure of information provided more than 20 years ago, in a different political dispensation, and from institutions that may no longer even exist, would prejudice the future supply of information to SARB.

88. SARB states that it "*places significant reliance*" on the disclosure of relevant information to it through the cooperation of parties such as banks and authorised dealers.[60] But it acknowledges that it has other means of procuring necessary information through the powers afforded to it by the Exchange Control Regulations.[61]

[58] Record Vol 1, page 139, Answering Affidavit, para 56.

[59] *CCII* at para 333.

[60] Record Vol 1, page 132, Answering Affidavit, para 42.

[61] Record Vol 1, page 132 - 133, Answering Affidavit, para 42 – 43.

89. The blanket claim, without any factual underpinning, is simply far-fetched and untenable. It amounts, in substance, to a claim that SARB is not subject to PAIA and to section 32(1)(a) of the Constitution

90. SARB seeks to justify non-disclosure by asserting that disclosure may result in "speculative" and "unsubstantiated" commentary.[62] This is the classic defence of the censor: the truth should not be disclosed, because some people may make "speculative" or "unsubstantiated" comments on it. This approach is fundamentally inconsistent with a democratic society in which there is not only a right of access to information, but also a right to freedom of expression which includes *"freedom to receive or impart information or ideas"*.[63] By raising this contention, SARB demonstrates that it is out of touch with the spirit that animates the democratic order. It is, regrettably, still wedded to the culture of secrecy.

91. SARB then seeks to justify non-disclosure on the ground that SAHA's interest is merely "academic": there is no pressing or current issue.[64]

92. SAHA fails to understand the fundamental recognition in our Constitution that in order to avoid repetition of the wrongs of the past, it is necessary to know and understand what happened in the past. This is not an "academic" matter – it is fundamental to building a just society. Those who do not know and understand history are doomed to repeat it.

93. The information concerns alleged serious violations and criminal conduct. The founding affidavit demonstrates that serious allegations are already in the public

[62] Record Vol 1, page 160 and page 172, Answering Affidavit, para 91.1 and para 125.1.

[63] Section 16(1)(b) of the Constitution.

[64] Record Vol 1, page 160 and page 173, Answering Affidavit, para 91.2 and para 125.2.

domain.[65] The public has the right to know the facts, and to know what the records of public bodies reveal in that regard. It is simply untenable that disclosure and speech regarding allegations of serious violations and criminal conduct during apartheid should be limited by SARB on the basis that it thinks the matter is "academic".

94. SARB contends that disclosure may infringe privacy rights of the companies and the trust which are referred to in the documents.[66] This is not substantiated by any facts. The documents refer to events which occurred more than 20 years ago. SARB has not demonstrated that these entities still exist, let alone made any attempt to contact them. SARB may sever personal details of third parties in order to protect the personal information of natural persons. And severance is also available to deal with any other demonstrated harm. A "privacy" allegation, unsubstantiated by any facts, provides no basis for blanket non-disclosure.

95. For all these reasons, we submit that notwithstanding the existence of any valid ground of refusal relied on by SARB, the records ought to be disclosed in the public interest as contemplated by section 46 of PAIA. The Court should have found that SARB failed to adduce evidence to lay a factual foundation for its allegations of harm, and that to the extent that any harm might arise, the public interest in disclosure outweighed any such harm.

[65] See for example: Record Vol 1, page 41 - 49, Founding Affidavit, paras 110 – 111, para 114, para 115, para 116, para 118, 120 and 121.

[66] Record Vol 1, page 166, Answering Affidavit, para 104.2.

SEVERABILITY

96. The Court erred in finding that SARB has complied with its duties under section 28 of PAIA (para 59), that the exemptions raised by SARB "*relate to respective categories of documents*", and that "*the SARB has shown that the documents cannot be found therefore the issue of severability cannot apply*." (para 58)

97. Section 26(1) of the Act deals with severability:

> *"If a request for access is made to a record of a public body containing information which may or must be refused in terms of any provision of Chapter 4 of this Part, every part of the record which-*
>
> *(a) does not contain; and*
>
> *(b) can reasonably be severed from any part that contains,*
>
> *any such information must, despite any other provision of this Act, be disclosed.*

98. In other words, it is necessary to consider every part of every record. Where part can be disclosed, it must be disclosed.

99. SARB makes it impossible to undertake this exercise, by putting up blanket refusals based on a blanket justification:

99.1. It describes the records by category rather than individually; and

99.2. It does not disclose what is the information in the records which must be refused.

100. In **CCII Systems**, the respondent took a similar approach. He objected to disclosure on the grounds that the documents contained information which had been supplied in confidence by third parties on a guarantee of confidentiality,

and that a breach of that guarantee might jeopardise his ability to carry out his functions in the public interest. He said that the documents were so voluminous that he could not reasonably be expected to analyse them in order to identify which of them were protected from disclosure. He also raised the defence that the volume of documents so vast that processing them would substantially an unreasonably divert resources from his core business.

101. The Court criticised that approach. It found that the respondent had failed to discharge the onus in respect of the statutory grounds other than volume:

> *[16] In my view, and because of the onus created in s 81, it will be necessary for the information officer to identify documents which he wants to withhold. A description of his entitlement to protection is to be given, one would imagine, as in the case of a discovery affidavit in which privilege is claimed in respect of some documents. The question of severability may come into play. Paragraphs may be blocked out or annexures or portions may be detached. The provisions of s 82 of the Act read with s 80 cover the case where there is a dispute about the question whether a document or only a portion thereof is to be disclosed and the decision of the Court is required to rule whether a document is protected in whole or in part.*
>
> *[17] The approach of the respondents, even in respect of the reduced record, makes it impossible to evaluate whether the respondents justifiably claim privilege in respect of documents and whether portions thereof are not to be given access to. In the result I agree with Mr Rogers that the only objection which has in fact been raised is the volume objection.*

102. We submit that this aptly describes the position in this matter. The SARB's failure to disclose what there is in the documents which requires non-disclosure, and what else there is in the document, makes it impossible to find <u>to what extent</u> there is a justifiable statutory exclusion. The defences must therefore fail.

103. An example of this is the reference in the answering affidavit to a draft letter from the Exchange Control Department to the Department of Finance regarding an

article in the Sunday Times (28/7/1991) about Mr Palazzolo.[67] This plainly refers to the Sunday Times article described in the founding affidavit, in which it was reported that Mr Palazzolo was described in an internal Reserve Bank document as a "*highly exceptional case*", and that "*unnamed senior authorities*" had intervened to authorise the bending of exchange control rules in order to allow R14.5 million in Financial Rand to be released to Mr Palazzolo.[68] Mr Ellis stated that he could find no evidence of the "internal reserve bank document" referred to in the Sunday Times article.[69] The SARB has refused, without any explanation, to make disclosure of a draft Reserve Bank letter which deals with that very article. It has not explained whether there is something particular in that letter which prevents disclosure; if so, what it is; or whether (and if so, why) no part of the letter may be disclosed.

104. There is one redaction in the information placed before the Court, which is unexplained and which SARB does not attempt to justify. SARB quotes the finding on the electronic database in respect of Mr Palazzolo, which states that the matter was discussed with a person whose name has been excised, and that it was decided that the investigation would be closed.[70] There is no explanation for why the name of one of the people responsible for that decision should be excised.

105. SARB has not attempted to give effect to its obligation under section 59. It does not even attempt to show, in relation to any one of the documents that it refuses

[67] Record Vol 1, page 151, Answering Affidavit, para 77.9.

[68] Record Vol 1, page 47, Founding Affidavit, para 121.

[69] Record Vol 1, page 148, Answering Affidavit, para 75.

[70] Record Vol 1, page 151, Answering Affidavit, para 77.10.

to disclose, that it has considered whether there is part which may be disclosed – and if not, why the exemption ground applies to every part of that document.

106. The true reason for this is that SARB's true attitude is that it is entitled to refuse to disclose any document in this possession. We repeat that SARB's position amounts, in substance, to a claim that it is not subject to PAIA and to section 32(1)(a) of the Constitution

107. The Court should have found that where SARB had located a requested record and relied on a Chapter 4 exemption to refuse disclosure of information contained in that record, section 59 required it to consider and then explain, in respect of each record, and in respect of categories of records:

    107.1. Whether there is any part of the record that does not contain the refused information;

    107.2. Whether there is any part of the record that can be reasonably severed from the part that contains the refused information.

108. The Court should have found that SARB failed to comply with its obligation to undertake this mandatory exercise.

COSTS

109. The Court a quo directed that SAHA pay the costs of the application. It provided no reasons for the decision to depart from the normal rule regarding costs in constitutional matters.

110. It is by now well established that in constitutional litigation, an unsuccessful litigant in proceedings against the State ought not to be ordered to pay costs.[71] The Constitutional Court has repeatedly asserted this principle, and upheld appeals where courts have failed, without justifiable basis, to apply it.[72]

111. A court may depart from this general principle if the constitutional grounds of attack are frivolous or vexatious – or if the litigant has acted from improper motives or there are other circumstances that make it in the interests of justice to order costs.[73]

112. SAHA sought to enforce its rights under section 32 of the Constitution and PAIA (a constitutional statute) against the SARB, which is an organ of state.

113. The Court a quo accepted that SAHA is a non-profit, non-governmental organisation with the objective of ensuring public access to historical records relating to struggles for justice and to prevent the loss of such records.[74]

114. The Court a quo did not apply the general rule set out in *Biowatch*. It did not make any finding that the litigation was vexatious, frivolous or manifestly inappropriate, or that SAHA's conduct was worthy of censure. We submit that no such finding could have been justified. The issues are genuine and substantive, and the application raises constitutional considerations relevant to the adjudication.[75]

---

[71] *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) para 21.

[72] See for example *Niekara Harrielall v University of Kwa-Zulu Natal* [2017] ZACC 38.

[73] Biowatch, para 20 and 22 – 24.

[74] Record Vol 3, page 419, Judgment, para 6.

[75] *Biowatch* at para 25.

CONCLUSION

115. We submit that the appeal should be upheld, and SARB should be ordered to give SAHA access to the records it seeks in respect of Mr Blaauw, Mr Palazzolo and Mr Hill.

116. In the alternative, in respect only of Mr Hill, we submit that the Court should order SARB to engage in an exercise of the kind ordered by the Court in the **CCII** case, in order to achieve a pragmatic *via media* which prevents a blanket refusal in respect of every part of every document, and which has regard to the resources which will be involved in achieving this.

117. We submit that the Court a quo misdirected itself in not applying the *Biowatch* principle, and if the appeal fails on the merits, it should be upheld in respect of costs. We submit that the same principles and considerations apply in respect of the costs of this appeal.

118. We submit that also in accordance with Biowatch, if the appeal succeeds, SARB should be ordered to pay the costs, including the costs of two counsel.

Geoff Budlender SC

Nasreen Rajab-Budlender

Frances Hobden

Counsel for the appellant

29 May 2019

Chambers, Cape Town and Sandton

TABLE OF AUTHORITIES

1. *Afriforum v Emadlangeni Municipality* [2016] ZAGPPHC 1222 (27 May 2016) unreported judgement of the Gauteng Division, Pretoria, Case no A286/2015 *
2. *BHP Billiton PLC Incorporated and another v De Lange and others* [2013] 2 All SA 523 (SCA) *
3. *Biowatch Trust v Registrar, Genetic Resources and Others* 2009 (6) SA 232 (CC) *
4. *Brummer v Minister for Social Development and Others* 2009 (6) SA 323 (CC)
5. *Burger v Rand Water Board and another* 2007 (1) SA 30 (SCA)
6. *CCII Systems (Pty) Ltd v Fakie and others (Open Democracy Advice Centre as amicus curiae)* NNO 2003 (2) SA 325 (T) *
7. *Judicial Service Commission and another v Cape Bar Council (Centre for Constitutional Rights as amicus curiae)* 2012 (11) BCLR 1239 (SCA); 2013 (1) SA 170 (SCA) *
8. *MEC for Roads and Public Works, Eastern Cape, and Another v Intertrade Two (Pty) Ltd* 2006 (5) SA 1 (SCA)
9. *Minister for Provincial & Local Government v Unrecognised Traditional Leaders, Limpopo Province (Sekhukhuneland)* 2005 (2) SA 110 (SCA)
10. *My Vote Counts NPC v Minister of Justice and Correctional Services and Another* 2018 (8) BCLR 893 (CC); 2018 (5) SA 380 (CC) *
11. *Niekara Harrielall v University of Kwa-Zulu Natal* [2017] ZACC 38
12. *Oriani-Ambrosini v Sisulu, Speaker of the National Assembly* 2012 (6) SA 588 (CC)
13. *President of the RSA and others v M & G Media Ltd* 2012 (2) SA 50 (CC) *
14. *AVUSA Publishing Eastern Cape (Pty) Ltd v Qoboshiyane NO and Others* (829/2011) [2011] ZAECPEHC 42; 2012 (1) SA 158 (ECP) (20 October 2011)
15. *Transnet Ltd and another v SA Metal Machinery Co (Pty) Ltd* 2006 (6) SA 285 (SCA)
16. *Van Niekerk v Pretoria City Council* 1997 (3) SA 839 (T)