



IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG DIVISION, PRETORIA

DELETE WHICHEVER IS NOT APPLICABLE

- (1) REPORTABLE: **NO**
- (2) OF INTEREST TO OTHER JUDGES: **NO**
- (3) REVISED: **NO**
- (4) Date of hearing: 21 January 2022

A handwritten signature in black ink, appearing to be "J. M. M.", is written over the text "REVISED: NO".

CASE NO: 47599/2016

In the matter between:

**FRANKLIN D PENNINGTON
GAIL JACKSON PENNINGTON**

**First Plaintiff
Second Plaintiff**

And

**THE MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT
OF THE REPUBLIC OF SOUTH AFRICA**

First Defendant

**THE MINISTER OF POLICE OF
THE REPUBLIC OF SOUTH AFRICA**

Second Defendant

**THE MINISTER OF HOME AFFAIRS OF
THE REPUBLIC OF SOUTH AFRICA**

Third Defendant

SUPPLEMENTARY REASONS FOR ORDER

NYATHI J

A. INTRODUCTION

[1] Further to the reasons that I handed down on 24 January 2022, I have been requested by counsel for both the Applicant (Defendant) and the Respondent (Plaintiff) to make a supplementary ruling on the Defendant's prayer 2.3, namely that:

“2. According to the provisions of Uniform Rule 33(4) the following questions will be decided separately before any evidence is led ... 2.3 The question whether any of the Defendants can be held liable for the alleged malicious prosecution of the First and/or Second Plaintiffs, due to the fact that the Plaintiffs did not join the National Prosecuting Authority and/or the National Director of Public Prosecutions as a party or parties to the action.” (My emphasis).

[2] On behalf of the Plaintiff, reference is made to Section 179(6) of the Constitution of the Republic of South Africa which provides as follows:

“The Cabinet member responsible for the administration of justice must exercise final responsibility over the prosecuting authority.”

[3] Further reference is made to Section 33(1) of the National Prosecuting Authority Act 33 of 1998, which provides as follows:

“The Minister shall, for purposes of section 179 of the Constitution, this Act or any other law concerning the prosecuting authority, exercise final responsibility over the prosecuting authority in accordance with the provisions of this Act.”

[4] The above provisions could not be any clearer in so far as to the functionary who bears responsibility for the actions of the prosecuting authority. At any rate what is pleaded is that the clerk of the court (“the appeals clerk at the Johannesburg Regional Court”) was unable to compile a record for purposes of prosecuting the intended appeal by the Plaintiffs.¹ The clerk of the court also resorts under the Minister of Justice.

[5] I am not persuaded that the complaint relating to non-joinder is based on legal substance.

¹ Particulars of claim, Par 30 and 31

[6] Accordingly, the Applicant/ Defendant's prayer 2.3 is dismissed. Costs are reserved.



J.S. NYATHI
Judge of the High Court
Gauteng Division, Pretoria

Date of Supplementary reasons: 26 January 2022

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