THE SUPREME COURT OF APPEAL OF SOUTH AFRICA
JUDGMENT

Reportable
Case No: 777/2016

In the matter between:

MINISTER OF JUSTICE AND CORRECTIONAL SERVICES **APPELLANT**

and

JANUSZ JAKUB WALUS **RESPONDENT**

Neutral citation: *Minister of Justice and Correctional Services v Walus* (777/2016) [2017] ZASCA 99 (18 August 2017)

Coram: Maya P, Shongwe ADP, Mbha and Van Der Merwe JJA and Schippers AJA

Heard: 29 May 2017

Delivered: 18 August 2017

Summary: Parole – application therefor brought by respondent serving sentence of life incarceration for murder in terms of s 136(1) of the Correctional Services Act 111 of 1998 – appellant's omission to consider widow of deceased's victim impact statement and the failure to furnish the respondent therewith constituted material procedural irregularities in terms of s 6(2) of the Promotion of Administrative Justice Act 3 of 2000 vitiating the refusal to place the respondent on parole – decision remitted for the appellant's reconsideration.

ORDER

On appeal from: Gauteng Division of the High Court, Pretoria (Janse Van Nieuwenhuizen J sitting as court of first instance):

1 The appeal is upheld with no order as to costs.
2 The matter is remitted to the appellant for his reconsideration and decision within 90 calendar days of this order.

JUDGMENT

Maya P (Shongwe ADP, Mbha JA, Van Der Merwe JA, Schippers AJA concurring):

[1] The crisp issue in this appeal is whether the Gauteng Division of the High Court, Pretoria (Janse Van Nieuwenhuizen J) erred in reviewing and setting aside the decision of the appellant, the Minister of Justice and Correctional Services (the minister), not to place the respondent on parole, on the basis that it was irrational and unreasonable. The appeal is with the leave of this Court.

[2] The background facts are simple. On 15 October 1993 the respondent, Mr Janusz Jakub Walus, was convicted of the murder of the late Mr Thembisile 'Chris' Hani (the deceased) and the illegal possession of a firearm. The trial court (the Witwatersrand Local Division per Eloff JP) found it especially aggravating that the

respondent and his co-accused,[1] 'simply arrogated to themselves the right to destroy the life of a person because of their own political perceptions'. The court concluded that the murder was a calculated, cold-blooded assassination of a defenceless victim for which the perpetrators showed no remorse. It therefore sentenced the respondent to death for the murder and five years' imprisonment for the illegal possession of a firearm.[2] On appeal against the death sentences, this Court, on 7 November 2000, held that the 'atrocious crime [of murder] demands the severest punishment which the law permits'. Accordingly, this Court commuted the death sentences to life imprisonment, antedated to the date of sentence and ordered the sentence in respect of the other count to run concurrently with the sentence of life imprisonment.[3]

[3] On 10 April 2015, following a hearing of the respondent's application for parole held in November 2013,[4] the minister decided not to place him on parole at that stage (the decision). By then the respondent had served 21 years and six months of his sentence. The decision was couched as follows:

'1. The placement of the offender on parole is not recommended at this stage.

2. A further profile of twelve (12) months is hereby approved.

3. In the interim, the Department is to assist the offender in the following:-

3.1 Restorative Justice Process:

It appears from the various reports that the offender has indicated a willingness to be afforded an opportunity to personally apologize to the victim's family. In the light of this, I am of the view that it is crucial that he be afforded this opportunity to participate in this restorative justice process. This

[1] Mr Clive Derby-Lewis, who is now deceased.

[2] Mr Derby-Lewis was also sentenced to death for the murder and five years' imprisonment for the illegal possession of a firearm and unlawful possession of ammunition, which were taken together for purposes of sentence.

[3] Following upon *S v Makwanyane & another* 1995 (3) SA 391 (CC) which outlawed capital punishment. This decision declared the death sentence, in terms of s 277(1)(*a*), (*c*), (*d*), (*e*) and *(f)* of the Criminal Procedure Act 51 of 1977 and all corresponding provisions of other legislation in any part of the national territory in terms of s 229 of the Constitution of the Republic of South Africa Act 200 of 1993, which sanctioned capital punishment, unconstitutional and accordingly invalid.

[4] The respondent had previously been considered for placement on parole in June 2011. That application was also unsuccessful.

process will, to an extent, restore the balance and the harm caused to the victim's family hopefully, as well as the community as a whole. Furthermore, I am certain that this process will also assist the offender [to] come to terms with the crime committed as well as to accept responsibility for the crime and thereby contribute towards his own healing and rehabilitation pathway. This can be achieved either through the VOD and/or VOM process or whichever process is deemed appropriate by the qualified professionals.

3.2 Security:

The Department, together with other relevant structures should advise on the security threats, if any, that might exist should the offender be released out on parole.'

[4] Aggrieved by the decision, the respondent launched application proceedings in the court a quo on 4 June 2015. He sought the review and setting aside of the decision, an order in terms of s 8(2) of the Promotion of Administrative Justice Act 3 of 2000 (PAJA) placing him on parole with immediate effect on such conditions as the court deemed appropriate under s 65 of the Correctional Services Act 8 of 1959 (the 1959 Act) and ancillary relief. The respondent raised a number of review grounds. He alleged, inter alia, that the minister's recommendation of a further profile in 12 months' time could not be given effect because the deceased's family refused any contact with him and the Department of Correctional Services (the department) was unwilling or unable to facilitate a victim and offender dialogue. Moreover, it was ultra vires and showed bias and mala fides as it rendered his release dependent on the deceased's family.

[5] It was also alleged that the minister failed to consider all the relevant facts and circumstances including that the respondent was rehabilitated as he had complied with prison rules, showed remorse, completed all programs offered by the department, was apolitical and accepted the new democratic dispensation. The minister also failed to apply the 1959 Act and the policy and guidelines applicable thereunder,which were in

force when the murder was committed, as he ignored the recommendations of the National Council for Correctional Services and the Parole Board. And the respondent was discriminated against because his case was treated as a political matter whereas he was an ordinary offender. Thus the decision was materially influenced by errors of law and fact, irrelevant considerations were taken into account and relevant considerations were ignored and the decision was not rationally connected to the purpose for which it was taken, the purpose of the empowering law, the information before the minister and the reasons given for it.

[6] Lastly, the respondent alleged that he was not furnished with the representations made by the deceased's wife (Mrs Hani) in a victim impact statement which was attached to his application documents submitted to the minister. In his view, the representations were deliberately removed from his profile either before the record was served on his attorneys or before the record was referred to the minister for his decision. In either case the mala fide intention was to deny him due process and indicated bias, so he contended. He was accordingly deprived of an opportunity to respond to the representations, if so advised. Thus a mandatory and material procedure was not complied with. This amounted to a reviewable procedural irregularity and thus vitiated the decision, so it was argued.

[7] The minister denied the allegations of bias and incompetence as well as the arguments that the result was a foregone conclusion or that there was a possibility of delay if the matter was remitted for his reconsideration. He explained that he had followed the proper procedure in making the decision. He stated that he was not furnished with the victim impact statement. In his view, the respondent was not prejudiced by the victim representations as he did not consider them in making the decision. But he stated that they would only have bolstered his refusal to place the

respondent on parole had they been placed before him.

[8] On 10 March 2016, the court a quo decided the matter in the respondent's favour and granted the relief sought. Thus, the decision was set aside and orders were made placing the respondent on parole and remitting the matter to the minister to impose the necessary parole conditions within 14 days of the date thereof. The court a quo's judgment was based on the finding that the minister's decision was neither reasonable nor rational. In the court's view, the decision overemphasised the nature of the crime committed by the respondent and the remarks of the sentencing court (which harshly criticised it) and failed to balance, fairly and equally, all the criteria for parole selection which it was satisfied the respondent met.

[9] The court a quo found that referring the matter back to the minister for the reconsideration of the respondent's application would cause unnecessary delay to the respondent's prejudice whereas all the relevant facts which informed the decision and placed it in as good a position to determine the matter as the minister were before it. The court was convinced by the respondent's contentions that the minister's decision was, in any event, a foregone conclusion because (a) of the refusal by the deceased's family to forgive the respondent despite his repeated attempts to apologise to them and their consistent opposition to his release and (b) he had shown bias by stating that representations made by the deceased's family opposing the respondent's release, which had not been placed before him when he made the decision, would have only fortified his decision not to grant parole. On the strength of these findings, the court a quo decided that a substitution order granting parole was just and equitable relief.

[10] In written submissions filed by the parties on appeal before us, the essence of the dispute and the parties' respective contentions remained unchanged. The

respondent's eligibility for placement on parole under the transitional provisions of 136(1) of the Correctional Services Act 111 of 1998 (the Act)[5] was common cause between them. It was also not in dispute that that the guidelines contained in Chapter VI of the Correctional Services B-Order, commonly referred to as the Parole Board Manual, particularly the 'Criteria for Parole Selection' set out in Chapter VI(1A)(19) thereof, are to be applied in the consideration of the placement on parole of offenders in the respondent's position. The essential issue was whether the minister applied these criteria properly when he made the decision.

[11] According to the appellant, the court a quo misunderstood its role and failed to distinguish between the appeal and review processes. As a result, the court impermissibly concerned itself with whether the minister was right in concluding that the negative factors militating against the respondent's placement on parole outweighed those favouring his placement on parole. Instead, the court should only have determined whether the decision was one that a reasonable decision-maker could reach by striking a reasonable balance between the competing factors in favour and against the respondent's placement on parole. Moreover, the court a quo unlawfully replaced the exercise of the minister's discretion concerning the respondent's placement on parole with its own value judgment and usurped his functions as the decision-maker in violation of the doctrine of separation of powers, so it was contended. The respondent, on the other hand, persisted that the decision was rightly

[5] Which apply to offenders whose death sentences were commuted to life incarceration (*Van Vuren v Minister of Correctional Services & others* 2012 (1) SACR 103 (CC); 2010 (12) BCLR 1233 (CC)) and read: '[a]ny person serving a sentence of incarceration immediately before the commencement of Chapters IV, VI and VII is subject to the provisions of the Correctional Services Act, 1959 (Act 8 of 1959), relating to his or her placement under community corrections and is to be considered for such release and placement by the Correctional Supervision and Parole Board in terms of the policy and guidelines applied by the former Parole Boards prior to the commencement of those Chapters.'

reviewed because it was not supported by the information placed before the minister, as was the minister's refusal of the application to accomodate restorative justice which was clearly impossible in the circumstances.

[12] As a result of an exchange with counsel just before the hearing of the appeal, the parties were given leave to file further written arguments. This was to enable them to address questions which they had not envisaged during the preparation for the appeal (seemingly because the relevant legal point was not pursued at the hearing a quo) namely; (a) whether the minister's omission to consider the victim impact statement gave rise to a procedural irregularity in the decision-making process; (b) if it did, whether it constituted a reviewable procedural irregularity; and (c) if it did, what a just and equitable order would be under s 172(1) of the Constitution[6] read with s 8 of PAJA.[7]

[13] At the subsequent hearing it was forcefully argued for the respondent that the

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[6] The provisions read:
'(1) When deciding a constitutional matter within its power, a court –
(a) must declare that any law or conduct that is inconsistent with the Constitution is invalid to the extent of its inconsistency; and
(b) may make any order that is just and equitable, including –
(i) an order limiting the retrospective effect of the declaration of invalidity; and
(ii) an order suspending the declaration of invalidity for any period and on any conditions, to allow the competent authority to correct the defect.'

[7] Which provides:
'(1) The court or tribunal, in proceedings for judicial review in terms of section 6(1), may grant any order that is just and equitable, including orders–
(a) directing the administrator–
(i) to give reasons; or
(ii) to act in the manner the court or tribunal requires;
(b) prohibiting the administrator from acting in a particular manner;
(c) setting aside the administrative action and–
(i) remitting the matter for reconsideration by the administrator, with or without directions; or
(ii) in exceptional cases–
(aa) substituting or varying the administrative action or correcting a defect resulting from the administrative action; or
(bb) directing the administrator or any other party to the proceedings to pay compensation;
(d) declaring the rights of the parties in respect of any matter to which the administrative action relates;
(e) granting a temporary interdict or other temporary relief; or
(f) as to costs.'

decision fell to be reviewed as an irregularity under s 6(2) of PAJA[8] because the minister was biased and failed to comply with a mandatory and material procedure when he made it. It was conceded on the minister's behalf that factually a procedural irregularity had occurred albeit that it did not constitute a material deviation amounting to a ground of review. The minister's half-hearted concession was, in my view, correct. And the procedural irregularity began when the parole board submitted the respondent's profile for the minister's consideration on the basis of information, which included the victim impact statement submitted to it, without affording the respondent an opportunity to respond thereto. It was completed when the minister made the decision without considering those representations because they were not

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[8] The section reads:
'(2) A court or tribunal has the power to judicially review an administrative action if –
(a) the administrator who took it –
(i) was not authorised to do so by the empowering provision;
(ii) acted under a delegation of power which was not authorised by an empowering provision; or
(iii) was biased or reasonably suspected of bias;
(b) a mandatory and material procedure or condition prescribed by an empowering provision was not complied with;
(c) the action was procedurally unfair;
(d) the action was materially influenced by an error of law;
(e) the action was taken –
(i) for a reason not authorised by the empowering provision;
(ii) for an ulterior purpose or motive;
(iii) because irrelevant considerations were taken into account or relevant considerations were not considered;
(iv) because of the unauthorised or unwarranted dictates of another person or body;
(v) in bad faith; or
(vi) arbitrarily or capriciously;
(f) the action itself –
(i) contravenes a law or is not authorised by the empowering provision; or
(ii) is not rationally connected to –
(aa) the purpose for which it was taken –
(bb) the purpose of the empowering provision;
(cc) the information before the administrator; or
(dd) the reason given for it by the administrator;
(g) the action concerned consists of a failure to take a decision;
(h) the exercise of the power or the performance of the function authorised by the empowering provision, in pursuance of which the administrative action was purportedly taken, is so unreasonable that no reasonable person could have so exercised the power or performed the function; or
(i) the action is otherwise unconstitutional or unlawful.'

placed before him as he alleged – a version I am bound to accept on the basis of *Plascon-Evans*.[9] The only question is whether the omissions constituted a reviewable procedural irregularity under PAJA, having regard to the purpose of the victim representations.

[14] The relevant test is trite[10] and was recently reiterated in *AllPay Consolidated Investment Holdings (Pty) Ltd & others v Chief Executive Officer, South African Social Security Agency & others*.[11] There the court, dealing with questions of procedural fairness and lawfulness in a procurement matter, said:

'To the extent that the judgment of the Supreme Court of Appeal may be interpreted as suggesting that the public interest in procurement matters requires greater caution in finding that grounds for judicial review exist in a given matter, that misapprehension must be dispelled. So too the notion that, even if proven irregularities exist, the inevitability of a certain outcome is a factor that should be considered in determining the validity of administrative action.

This approach to irregularities seems detrimental to important aspects of the procurement process. First, it undermines the role procedural requirements play in ensuring even treatment of all bidders. Second, it overlooks that the purpose of a fair process is to ensure the best outcome; the two cannot be severed. On the approach of the Supreme Court of Appeal, procedural requirements are not considered on their own merits but instead through the lens of the final outcome. This conflates the different and separate questions of unlawfulness and remedy. If the process leading to the bid's success was compromised, it cannot be known with certainty what course the process might have taken had procedural requirements been properly observed.

Once a ground of review under PAJA has been established there is no room for shying away from it. Section 172(1)*(a)* of the Constitution requires the decision to be declared unlawful. The consequences of the declaration of unlawfulness must then be dealt with in a just and equitable order under s 172(1)*(b).* Section 8 of PAJA gives detailed legislative content to the Constitution's

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[9] *Plascon-Evans Paints Ltd v Van Riebeeck Paints (Pty) Ltd* 1984 (3) SA 623 (A) at 634-635.

[10] See, for example, *Administrator, Transvaal & Others v Zenzile & others* 1991 (1) SA 21 (A) at 37C-F; *Logbro Properties CC v Bedderson NO & others* 2003 (2) SA 460 (SCA) paras 24-25.

[11] *AllPay Consolidated Investment Holdings (Pty) Ltd & others v Chief Executive Officer, South African Social Security Agency & others* 2014 (1) SA 604 (CC) paras 23-25.

"just and equitable" remedy.'

[15] Our courts have, under common law, also been under caution to guard against the possible blurring of the distinction between procedure and merit for the same reason, articulated as follows:

'Procedural objections are often raised by unmeritorious parties. Judges may then be tempted to refuse relief on the ground that a fair hearing could have made no difference to the result. But in principle it is vital that the procedure and the merits should be kept strictly apart, since otherwise the merits may be prejudged unfairly.'[12]

[16] Summed up, the principles are the following. The inevitability of a certain outcome is not a factor to be considered in determining the validity of the decision. Therefore, neither party may argue that the consideration of the victim impact statement by the minister would make no difference. The proper approach is rather to establish, factually, and not through the lens of the final outcome, whether an irregularity occurred. Then the irregularity must be legally evaluated to determine whether it amounts to a ground of review under PAJA. In this exercise the materiality of any deviance from the legal requirements must be taken into account, where appropriate, by linking the question of compliance to the purpose of the provision before concluding that a review ground under PAJA has been established. So, if the process leading to the decision was compromised, it cannot be known with certainty what the administrator would have finally decided had the procedural requirements been properly observed.

[17] In terms of s 299A of the Criminal Procedure Act 51 of 1977,[13] when a court

[12] Wade *Administrative Law* 6 ed (Oxford University Press, New York 1988) at 533-4.
[13] Inserted by s 6 of the Judicial Matters Second Amendment Act 55 of 2003.

sentences a person to imprisonment for, inter alia, murder, it shall inform any immediate relative of the deceased, if he or she is present that he or she has a right, subject to the directives issued by the Commissioner of Correctional Services, inter alia, to make representations when placement of the prisoner on parole is considered. This right is echoed in s 75(4) of the Act which provides:

'Where a ... relative is entitled in terms of the Criminal Procedure Act, to make representations or wishes to attend a meeting of a [Parole] Board, the National Commissioner must inform the Board in question accordingly and that Board must inform the ... relative in writing when and to whom he or she may make representations.'

And where the Case Management Committee submits a report, together with the relevant documents, to the Correctional Supervision and Parole Board (the parole board) regarding the possible placement of a prisoner on parole in terms of s 42(2)*(d)(*vii) of the Act, that prisoner must be informed of the contents of the report and be afforded the opportunity to submit written representations to the parole board under s 42(3) of the Act. After considering the report and, in the light of any other information (which includes a relative's victim impact statement),[14] the parole board may, in the case of a prisoner serving life incarceration, make recommendations to the minister on granting of parole in terms of s 75(1)*(c)* of the Act.[15] It is clear from these provisions that all relevant information ie the full record of the proceedings, must be considered for a proper decision on the placement of a prisoner on parole. The victim impact statement and the representations in response thereto by the prisoner seeking parole unquestionably form a substantive requirement in that process.

[18] In the affidavit containing Mrs Hani's victim representations, she alleged that the information in the respondent's application was incomplete because various

[14] *Derby-Lewis v Minister of Correctional Services & others* 2009 (6) SA 205 (GNP) at 218A.
[15] See also s 78 (1) and (4) of the Act, incorporated on 31 July 2004, which expressly incorporate restorative justice in the consideration of parole.

essential documents ie portions of his trial record, portions of his application to reopen his trial, his application for amnesty to the Truth and Reconciliation Commission (the TRC) and his application to review the TRC's decision, had not been furnished to the parole board. The respondent never apologised or showed any genuine contrition for the murder. He continued to withhold the full truth about the murder, including the identities of the other conspirators, which he once threatened to divulge to the media, had given contradictory accounts about who exactly was involved in the crime and refused to denounce his political beliefs which he claimed motivated the murder.

[19] As indicated, none of these profound allegations were considered by the minister when the decision was made. Neither were they brought to the respondent's attention for his consideration and one simply does not know what answers, if any, he may have given had he been granted that opportunity. In that case the minister's assertion that the victim impact statement 'would have further militated against the [respondent's] placement on parole' is obviously misguided. It overlooks that he would have had to consider the respondent's representations as well and that it is unknown what impact they would have had on the decision. And by the same token, his decision if the matter is remitted for his reconsideration cannot be a foregone conclusion. That said, the omissions constitute a fatal procedural irregularity, due regard being had to the governing statutory injunctions set out above. They constitute a breach of s 6(2(*b*) of PAJA as a mandatory and material procedure or condition prescribed by an empowering provision was clearly not complied with.

[20] Having thus found, it is unnecessary to deal with the merits of the appeal. The only question is what would be a just and equitable remedy in the circumstances. Both parties were adamant that the matter should not be remitted; the minister's argument being that the decision was sound whereas the respondent raised the same concerns

expressed by the court a quo ie bias and incompetence on the minister's part, that his decision is a foregone conclusion and the court's ability to substitute the decision on the information at its disposal. I am not persuaded by any of the parties' submissions in this regard. In my view the respondent's fears are more perceived than real as they have no basis on the papers. I have already rejected the contention that the minister's decision is a foregone conclusion in the absence of the respondent's representations. And for that very reason, this Court is not in a position to substitute its own decision. In the words of Megarry J in *John v Rees* [1970] Ch 345; [1969] 2 All ER 274 (CH) at 402:

'As everybody who has anything to do with the law well knows, the path of the law is strewn with examples of open and shut cases which, somehow, were not; of unanswerable charges which, in the event, were completely answered; of inexplicable conduct which was fully explained; of fixed and unalterable determinations that, by discussion, suffered a change.'

Regarding delay, the minister made it clear that he would be in a position to decide the matter within a short period were it remitted for his reconsideration. There is simply no evidence of bias on his part or an inability to make a reasonable decision other than a miscomprehension of the relevant law which required him to consider the respondent's representations too.

[21] In my view, the matter should be remitted to the minister for a fresh decision regarding whether the respondent should be placed on parole, taking into account Mrs Hani's victim impact statement dated 30 October 2013 and the respondent's response, if any, thereto. Counsel for the minister indicated that he would be in a position to finalise the matter within 90 calendar days of the date of this order in that eventuality. I consider this a reasonable period. I am however not inclined to mulct the respondent with the costs of the appeal despite the minister's success, because the procedural irregularity was not of his doing. In any event, the minister did not insist on a costs order. I do not propose to deal with the submissions on the respondent's so-called

changed circumstances which his counsel made from the Bar as they have no foundation in the appeal record and bear no relevance for present purposes.

[22] It remains to determine whether it was open to this Court, in the first place, mero motu to raise the legal point as neither party relied upon it and it was also not addressed in the court a quo's judgment. The direction requiring further argument on the issue was based solely on this Court's prima facie view that Mrs Hani's victim impact statement, which was part of the appeal record, contained information that was highly relevant to the decision and should have been considered in the making thereof.

[23] The duty of an appellate court is to ascertain whether the court a quo came to a correct conclusion on the case before it.[16] Its role is generally limited to deciding issues that are raised in the appeal proceedings and it may not, on its own, raise issues which were not raised by the appellant. However, where a point of law is apparent on the papers (even where it has been expressly abandoned) but the common approach of the parties proceeds on a wrong perception of the law, and its consideration on appeal would involve no unfairness to the party against whom it is directed, the court is not only entitled, but is also obliged, mero motu, to raise the point of law and require the parties to deal therewith.[17] Otherwise it would be bound to make a decision that is premised on an incorrect application of the law, despite the accepted facts, merely because a party failed to raise the legal point, as a result of an error of law on his

[16] *Cole v Government of the Union of SA* 1910 AD 263 at 272.
[17] *CUSA v Tao Ying Metal Industries* 2009 (2) SA 204 (CC); 2009 (1) BCLR 1 (CC); [2009] 1 BLLR 1 (CC) para 68.

part.[18] That would infringe the principle of legality.[19]

[24] As appears above, the existence of the victim impact statement, its relevance to the making of the decision and the legal contention that the respondent was not given an opportunity to consider its contents and respond thereto, if he was so minded, were common cause and were pertinently raised in the affidavits. The legal point ie the procedural fairness of the manner in which the decision was made, raises no new factual issues; there is, therefore, no possibility that its consideration would result in unfairness to any of the parties.[20] Accordingly, this Court was entitled mero motu to raise the legal point and to require argument thereon.

[25] In the result the following order is made:

1 The appeal is upheld with no order as to costs.

2 The matter is remitted to the appellant for his reconsideration and decision within 90 calendar days of the date of this order.

MML MAYA

PRESIDENT

[18] *Van Rensburg v Van Rensburg en andere* 1963 (1) SA 505 (A) at 510A; *Alexkor Ltd & another v The Richtersveld Community* & others 2004 (5) SA 460 (CC) paras 43-44.

[19] *Paddock Motors (Pty) Ltd v Igesund* 1976 (3) SA 16 (A) at 23D-H; *Carmichele v Minister of Safety and Security (Centre for Applied Legal Studies Intervening)* 2001 (4) SA 938 (CC) paras 33-39.

[20] *Paddock Motors (Pty) Ltd* ibid; *Alexkor Ltd & another v The Richtersveld Community & others* 2004 (5) SA 460 (CC) paras 43-44.

APPEARANCES

For the Appellant:	Mr MTK Moerane SC (with TWG Bester SC)
	Instructed by: The State Attorney, Bloemfontein
For the Respondent:	Mr R Du Plessis SC (with L Kellermann)
	Instructed by: Julian Knight & Associates Inc, Pretoria
	Rossouw Attorneys, Bloemfontein