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E. MOOSA, WAGLAY & PETERSEN

ATTORNEYS AND CONVEYANCERS

ESSA MOOSA
BASHEER WAGLAY B. Proc.
EDWIN JOHN PETERSEN B.A.LL.B.

Assisted By: SELWYN HOCKEY B.A.(Soc.Sc.)B.A. LL.B.

Consultant: NADEEM HUMAN B.Proc.

2ND FLOOR
MELOFIN CENTRE
KLIPFONTEIN ROAD
ATHLONE 7764
CAPE TOWN
SOUTH AFRICA
P.O. BOX 152
ATHLONE 7760
CAPE TOWN
SOUTH AFRICA

TELEPHONE NO. 697-1500
TELEX NO. 5-20304
FAX NO. 697-1821
DOCEX NO. DX2. ATHLONE

OUR REF.: EM13380/sm **DATE:** 11/5/1993

YOUR REF:

The Secretariat
Multi Party Forum
P.O. Box 307
ISANDO
1600

Dear Sirs

LEGAL COSTS OWING TO THE STATE FOR HUMAN RIGHTS ABUSES

We act for a number of clients who were involved in cases against the State during the dying stages of the apartheid era, in respect of human rights abuses. In these cases, the costs were eventually awarded against the Applicants by the Courts. Representations made to the State to waive such costs in some of these matters, were unsuccessful. We now wish to place this matter on the agenda of the Multi Party Forum for consideration.

Before dealing with the motivation, we wish to deal very briefly with the facts of some of the matters:

1. **MANDELA BIRTHDAY COMMITTEE AND DR A A BOESAK vs R DURING N.O.: MINISTER OF LAW AND ORDER**

   1.1 In and during 1989, a Committee comprising representatives of various organisations was formed to celebrate the birthday of Dr Nelson Mandela who was in prison at the time. Dr A A Boesak was a member of the Mandela Birthday Committee. The celebration was to be held at the University of the Western Cape.

   1.2 The celebration was banned by Brigadier R During, the Regional Commissioner of Police. The ban was challenged by the Mandela Birthday Committee and Dr A A Boesak. The Supreme Court of the Cape of Good Hope set aside the ban of the celebration. The State appealed against the decision and the Appellate Court reversed the decision of the Supreme Court and awarded costs for the State against the Mandela Birthday Committee and Dr Boesak.

1.3 The costs amounts to R24 718,58. Representation was made to the Minister of Law and Order to waive the costs against both the Mandela Birthday Committee and Dr A A Boesak, but such representation was rejected. A subsequent offer of R5 000,00 as part-payment of the amount in settlement of the matter was also refused.

2. **RASHIDA PARKER vs THE MINISTER OF LAW AND ORDER and ANOTHER**

2.1 Applicant's husband is a printer, was detained in terms of the Emergency Regulations on two occasions, namely 12 June 1987 and 22 January 1988. On the first occasion, the police also closed his printing business and ordered his staff to leave the premises. Applicant's husband was detained for allegedly printing pamphlets for community-based organisations.

2.2 In the first instance, the Applicant brought an application to the Supreme Court to declare the detention of her husband and the closure of his business unlawful. The Applicant succeeded with her application and her husband was released and the business was re-opened.

2.3 The State took the matter on appeal and the Appellate Division reversed the decision of the Lower Court. Costs were awarded against the Applicant. The costs amount to R23 600,01 plus interest.

2.4 In the second instance, the Supreme Court declared the detention as lawful and awarded costs against the Applicant. The Applicant's husband was however released before the Court gave judgment in the matter. The costs amount to R24 596,27 in the second matter.

2.5 Representations were made to the Minister of Law and Order to waive the costs in both matters, but he has refused to do so.

3. **AUDREY GUNN vs THE MINISTER OF LAW AND ORDER and OTHERS**

3.1 In 1985, Applicant's daughter was held in terms of Section 29 of the Internal Security Act.

3.2 Applicant's daughter was subsequently released and charged with a minor offence of which she was acquitted.

3.3 Applicant is a pensioner who has no assets other than an interest in an old aged village which is presently under judicial management.

3.4 Representation has been made for the Minister of Law and Order to waive the costs, but the matter is still under consideration.

4. **P LOGGENBERG AND 76 OTHERS (PRISON WARDERS) vs THE COMMISSIONER OF CORRECTIONAL SERVICES AND 2 OTHERS**

4.1 Applicants who are prison warders stationed at Pollsmoor Prison, brought an application to the Supreme Court to review certain decision of the presiding officer who was conducting an enquiry in terms of the Prison Regulations to determine whether the Applicants were fit to remain within the service of the prison department.

4.2 The enquiry was instituted following action taken by the Applicants who were members of the Police and Prison Civil Rights Union (Popcru) to protest against discrimination and injustices within the Department of Correctional Services.

4.3 At the enquiry the Applicants raised certain preliminary objections, namely that the Presiding Officer had no jurisdiction to hold the enquiry and that he was not legally competent to hold such enquiry. The objections were rejected. The Applicants then took his decision on review.

4.4 The Supreme Court dismissed the application with costs, and a Petition to the Appellate Division for leave to appeal was refused.

4.5 The Enquiry, however, continued and the Presiding Officer made certain recommendations to the Commissioner of Correctional Services. The Commissioner, however, has not yet made his findings in respect of this matter.

4.6 The costs of the original action amounts to approximately R60 000,00.

5. **M R ROHAN vs THE MINISTER OF LAW AND ORDER**

5.1 The Applicant was arrested on 8 April 1989 in Durban and held in terms of Section 29 of the Internal Security Act. On 28 April 1989 he was charged with 47 counts of security offences.

5.2 After our client was charged and brought to Court, the security police continued interrogating him despite the fact that Applicant made it clear to the security police that he is not prepared to answer any questions put to him. The security police continued putting pressure on Applicant and he brought an urgent interdict against the Minister of Law and Order for an order restraining the security police from harassing client.

5.3 The Court granted an interim order which the State opposed and on the return day, the Court dismissed the application with costs. The costs amounted to R7 647,03.

5.4 Our client was subsequently convicted on two counts of sabotage and possession of arms, ammunition and explosives. He was sentenced effectively to five years in prison. He was released in terms of the Groote Schuur Minutes after serving 14 months in prison.

5.5 Applicant who is a journalist by profession, was an ANC operative motivated by a desire to bring about justice in this country.

6. **CHRISTOPHER RUTLEDGE vs THE MINISTER OF LAW AND ORDER**

6.1 Applicant's minor son aged 16 years was detained on 29 June 1987, firstly under Section 29 of the Internal Security Act and was subsequently held in terms of the State of Emergency.

6.2 Applicant brought an urgent application to court to secure his release. The State opposed the application and while the application was pending, Applicant was released. The application was subsequently dismissed with costs.

6.3 The Minister of Law and Order is holding Applicant responsible for the costs. Applicant is adament that the State had no right to detain her son without trial. At the time he was only 16 years old and a high school pupil. He was never convicted of offence.

6.4 Applicant is adament that as a matter of principle, she refuses to pay the cost in this matter and is quite prepared to go to jail in order to vindicate herself.

MOTIVATION

1. All these matters are of a public interest nature and involved important principles of basic human rights and fundamental freedoms, such as freedom of expression, freedom of association, freedom of assembly, detention without trial and racial discrimination within the workplace and unfair labour practices. The Court actions were essentially aimed to establish in our own legal system a culture of basic human rights and fundamental freedoms through pronouncements by our judiciary. On the highest level, our judiciary failed to play the role of judicial activism. Some Judges in the Lower Court who gave judgments on the basis of judicial activism, had such decisions reversed in the Higher Court. Unfortunately, the Applicants had to bear the costs personally for such judicial uncertainties on matters of fundamental importance to the citizens of this country.

2. These principles which Applicants were trying to establish in our legal system through Court pronouncements, are now being advocated by various parties in their proposed Bill of Rights for a new South Africa. This, no doubt, has vindicated the action of the Applicants in trying to establish a culture of human rights through our Courts, but in which they had failed to their detriment. Most of the parties to the Multi Party Forum, so we understand, are supporting the inclusion of a Bill of Rights in the new South African Constitution.

3. At Codesa 1, the Government through its duly authorised Minister, apologised for the hurt apartheid has caused to the majority of the citizens of this country. This included the Applicants. The oppressive laws and practices which the Applicants had challenged were the product of apartheid. By expecting these Applicants to pay the legal costs of the Government is adding insult to injury.

4. Recently, the State President, Mr F W De Klerk, expressed his regret at the treatment meted out to people of colour and said that if he had the benefit of hind-sight, the Nationalist Party would not have supported a policy of apartheid. He apologised for apartheid.

5. The State meted out different treatment to its own officials and members of the public. Where State officials lost their cases and costs were awarded against such officials, not only did the State pay the costs of such officials, but also exempted them from refunding such costs to the State. This constitutes manifest unfair practice.

6. The appeal by Dr Nelson Mandela "let bygones be bygones" in the interest of national reconciliation, is being undermined by the Government by exacting legal costs arising out of the Apartheid era.

7. In other countries where the people suffered under oppressive regimes, citizens also challenged laws and actions which violated basic human rights. In many such cases the citizens lost such cases and costs were awarded against such citizens. The incumbent governments in such countries waive such costs in the interest of reconciliation. A case in point is Zimbabwe and India.

MULTI PARTY FORUM

1. This matter was referred to Codesa 1 and 2, but Codesa 2 deadlocked before this matter could be resolved.

2. This matter is now referred for resolution to the Multi Party Forum and we have been instructed by our clients to place this matter on the agenda of such Multi Party Forum.

We shall be pleased if you could place this matter on the agenda of the Multi Party Forum for discussion and resolution.

Kindly let us know what action has been taken by you in this matter and in due course what agreement was arrived at between the parties at the Multi Party Forum on this matter.

While the matter is being discussed at the Multi Party Forum, kindly ask the Government to stay any proceedings for the recovery of the costs in the various matters.

Yours faithfully
E. MOOSA, WAGLAY & PETERSEN

per:

E. MOOSA

DLB
SPOTQUICK

E.MOOSA & ASSOCIATES
P.O. BOX 152
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