



IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CIVIL CASE NO: 249/16

In the ex parte application of:

**THE COMMISSIONER OF THE
ANTI-CORRUPTION COMMISSION**

APPLICANT

IN RE:

**THE COMMISSIONER OF THE
ANTI-CORRUPTION COMMISSION**

APPLICANT

AND

GIDEON DLAMINI

FIRST RESPONDENT

FRED NGERI

SECOND RESPONDENT

SINDILE NGERI

THIRD RESPONDENT

Neutral citation: *Ex Parte Commissioner of the Anti-Corruption Commission vs Gideon Dlamini and Two Others (249/2016) 2016 SZHC 206 (October 2016)*

CORAM:

M.C.B. MAPHALALA, CJ

SUMMARY

Criminal law – *ex-parte* application for the entry and searching of premises, seizure of property and consequent arrest in terms of sections 11, 12 and 13 of the Prevention of Corruption Act No. 3 of 2006 – the basis of the application is that investigations conducted by the Commission had established a *prima facie* case against the respondents for contravening sections 21, 23, 41, 42 and 57 of the Act warranting their prosecution;

Held that the applicant has failed to establish a *prima facie* case against the respondents warranting the granting of the orders sought – application dismissed.

JUDGMENT 12 OCTOBER 2016

[1] An *ex-parte* application was brought by the Commissioner of the Anti-Corruption Commission seeking orders to enter and search the premises of the respondents with the sole purpose of seizure of properties and consequently arrest them.

[2] The Anti-Corruption Commission was established in terms of the Prevention of Corruption Act No. 3 of 2006. The purpose of the Act is to investigate and punish corrupt activities. The Commission consists of a Commissioner and two Deputy Commissioners¹, as well as other officers² to assist the Commission in the performance of its functions under the Act.

[3] The Commissioner and Deputy Commissioners are appointed by the King on the advice of the Judicial Service Commission and hold offices for a period of five years; the officers may be re-appointed for a single term on such terms and conditions as may be determined.³ The Act expressly provides that the Commissioner and Deputy Commissioners shall be independent in the performance of their functions, and, that they shall not be subject to the direction or control of any person or authority.⁴ The independence of the Commission in the performance of its functions accords with justice, fairness and the rule of law; and, it further provides for the protection of the fundamental rights and freedoms entrenched in our Constitution. In addition the

¹ Section 3 (1) of the Act

² Section 3 (2) of the Act

³ Section 4 (1) and (2) of the Act.

⁴ Section 4 (4) of the Act

independence of the Commission prevents possible abuse of the Commission.

[4] The Commission is empowered by law to appoint investigating officers and other support staff to assist the Commission in the performance of its functions after due consultations with the Minister of Justice⁵. The office of the Commission is a public office, and, it is subject to the laws and regulations applicable to the public service⁶.

[5] The function of the Commission is generally to prevent corruption by investigating all complaints of alleged corruption and refer appropriate cases to the Director of Public Prosecutions; however, the Commission may decline to conduct an investigation into any complaint alleging an offence under the Act or to proceed further with an investigation if the Commission is satisfied that the complaint is trivial, frivolous, vexatious or not made in good faith.⁷

Where the Commission declines to investigate or to proceed

⁵ Section 8 (3) of the Act

⁶ Section 8 (3) of the Act

⁷ Section 10 of the Act

further with an investigation, it is not required to disclose the reasons for such a decision.⁸

[6] The Commissioner may conduct the investigations himself or may authorise any officer of the Commission in writing to investigate allegations of corruption.⁹ However, the Commissioner or an officer authorised by him in writing is precluded by law from entering or searching any premises or arresting any person under investigation without a court order issued by a Judge in chambers on the application of the Commissioner or the officer of the Commission authorised by the Commissioner in writing.¹⁰

[7] The application to enter and search premises in order to seize property and consequently effect an arrest is brought *ex parte* without notice to the person under investigation. If the application succeeds, the investigating officer together with other officers from the Commission as well as police officers will enter the said premises without notice, conduct the search on the premises, motor vehicles, receptable, offices, residences and

⁸ Ibid footnote 7

⁹ Sections 11 and 12 of the Act

¹⁰ Section 13 (1) and (2) of the Act

business premises of the person under investigation and consequently have the person arrested.¹¹

[8] Sections 11, 12, and 13 of the Act undermine and contravene the principle of *audi alteram partem*, with regard to the entry and searching of premises as well as the seizure of property, and, the consequent arrest of the person being investigated. The powers of the Commission in this regard are far-reaching and have a devastating effect on the dignity of the person being investigated.¹² The right of the individual against arbitrary search or entry into the premises is undermined.¹³

[9] The drastic nature of the Act flies in the face of the Constitution which provides the following:

“18. (1) The dignity of every person is inviolable.

(2) A person shall not be subjected to torture or to inhuman or degrading treatment or punishment.

....

22. (1) A person shall not be subjected –

¹¹ Ibid footnote 10

¹² Section 18 of the Constitution

¹³ Section 22 (1) of the Constitution

(a) to the search of the person or the property of that person;

(b) to the entry by others on the premises of that person;

(c) to the search of the private communications of that person, except with the free consent of that person first obtained.

(2) Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision that –

(a) is reasonably required in the interests of defence, public safety, public order, public morality, public health, town and country planning, the development and utilisation of mineral resources, or the development or utilisation of any other property in such a manner as to promote the public benefit;

(b) is reasonably required for the purpose of promoting the rights or freedoms of other persons;

(c) authorises an officer or agent of the Government or of a local government authority, or of a body

corporate established by law for public purposes, to enter on the premises of any person in order to inspect those premises or anything on those premises for the purposes of any tax, rate or due or in order to carry out work connected with any property that is lawfully on those premises and that belongs to that Government, authority, or body corporate as the case may be;

(d) authorises, for the purposes of enforcing the judgement or order of a court in any civil proceedings, the entry upon any premises by order of a court, except so far as, in respect of paragraph (c) or (d) that provision or, as the case may be, the thing done under the authority of that government, local authority or body corporate is shown not to be reasonably justifiable in a democratic society.”

[10] The powers of the Commission under sections 11, 12, 13 and 17 of the Act are not supported by section 22 (2) of the Constitution. To that extent these sections of the Act are unconstitutional. Section 17 of the Act seeks to give immunity to the Commission in respect of the exercise of its powers under sections 11, 12, and 13 of the Act, which as I have pointed out, are unconstitutional.

Incidentally, the Constitution is the Supreme law of the land, and, if any other law is inconsistent with the Constitution that other law shall to the extent of the inconsistency be void.¹⁴ The King and Ingwenyama and all the citizens of Swaziland have the right and duty at all times to uphold and defend the Constitution.¹⁵ Any person who by himself or in concert with others by any violent or other unlawful means suspends or overthrows or abrogates this Constitution or any part of it, or attempts to do any such act or aids and abets in any manner any such person commits the offence of treason.¹⁶

[11] In order to ameliorate the drastic nature of the Act, the Legislature has provided that the investigator or officer designated in writing by the Commissioner to investigate would lodge an application in writing and specify the grounds for the application. The application should establish a *prima facie* case warranting prosecution.¹⁷

¹⁴ Section 2 (1) of the Constitution

¹⁵ Section 2 (3) of the Constitution

¹⁶ Section 2 (3) of the Constitution

¹⁷ Section 13 (3) of the Constitution

[12] The Black's Law Dictionary defines a *prima facie* case as follows:¹⁸

“The Establishment of a legally required rebuttable presumption or the production of enough evidence to allow the court to infer the fact at issue and rule in the party’s favour.”

[13] Hoffmann and Zeffert defines *prima facie* evidence as follows:¹⁹

“Like so many terms in the Law of Evidence, *prima facie* evidence is used in two different senses. It sometimes means evidence upon which a reasonable man could find in favour of the party adducing it; that is to say, the amount of evidence which a plaintiff must produce in order to avoid having absolution decreed at the end of his case, or which would be sufficient to prevent an accused from being discharged at the end of the prosecution’s evidence. It is often said that in the absence of such evidence, there is no case to answer but the refusal of absolution or the discharge does not necessarily mean that an answer is required. The defendant or accused may close his case at once and still succeed. In this sense, therefore, a ruling that a party has made out a *prima facie*

¹⁸ Eight edition; Bryan A. Garner at page 1228.

¹⁹ The South African Law of Evidence, fourth edition, Butterworths Publishers, 1988 at pages 596 and 597.

case means only that his opponent runs the risk of losing if he offers no evidence

....

The principles of *prima facie* evidence apply to civil and criminal cases alike.”

[14] Stratford JA in *ex-parte: The Minister of Justice in Re Rex v. Jacobson & Levy*²⁰ had this to say:

“*Prima facie* evidence in its more usual sense, is used to mean prima facie proof of an issue the burden of proving which is upon the party giving that evidence. In the absence of further evidence from the other side, the *prima facie* proof and the party giving it discharges his onus. It is not, however, in every case that the burden of proof can be discharged by giving less than complete proof on the issue; it depends upon the nature of the case and the relative ability of the parties to contribute evidence on that issue. If the party, on whom lies the burden of proof, goes as far as he reasonably can in producing evidence calls for an answer then, in such a case, he has produced

²⁰ 1931 AD 466 at 478-479; *Marine & Trade Insurance Co. Ltd Van der Schyff* 1972 (1) SA 27 (A) 37

***prima facie* proof, and, in the absence of an answer from the other side, it becomes conclusive proof and he completely discharges the onus of proof. If a doubtful or unsatisfactory answer is given, it is equivalent to no answer and the *prima facie* proof, being undestroyed, again amounts of full proof.”**

[15] Justice D. Van Zyl AJ in the Labour Court of South Africa remarked follows:²¹

“16. The usual meaning of *prima facie* evidence as contended by Mr. Tiedemann is *prima facie* proof of an issue, the onus of proving which is upon the party giving that evidence and which proof becomes conclusive proof of an issue in the absence of evidence in rebuttal.”

[16] In the case of *Alberto Makwakwa and Six Others v. S.*²² the court was called upon to decide whether there was *prima facie* evidence to warrant a prosecution of the appellants in their country of origin in Lesotho on charges of murder, attempted murder,

²¹

²² Appeal Case No. A 294/2010

robbery, kidnapping, illegal possession of firearm, contravening the Internal security Act of Lesotho, and, in particular conspiracy to kill the Prime Minister of Lesotho. The appellants were arrested in South Africa for being illegal immigrants, and, it was subsequently alleged that they participated in the failed coup *d'état* in Lesotho.

[17] The Government of Lesotho sought the extradition of the appellants to face prosecution in Lesotho. Section 9 of the South African Extradition Act 67 of 1964 requires that a magistrate should hold an enquiry to determine if there is sufficient evidence to warrant a prosecution in the foreign State, and, if satisfied to commit that person to await the decision of the Minister of Justice. The magistrate found that there was sufficient evidence. The appellants lodged an appeal to the Free State High Court in Bloemfontein.

[18] On appeal the court held that the magistrate's finding that there is *prima facie* evidence to warrant a prosecution of the appellants cannot be faulted. The appeal was dismissed.

Justice C.J. Musi who delivered the judgment of the court had this to say:²³

“[26] As indicated above the contentious point is whether the magistrate’s finding that there is *prima facie* evidence to warrant a prosecution for the offences means that there is sufficient evidence warranting a prosecution. The appellants, by implication, also dispute that the certificate complies with the prescripts of the Act.

[27] It is clear from the Act and the extradition treaty between the Republic of South Africa and the Kingdom of Lesotho that where a certificate in terms of section 10 (2) is relied upon the prosecuting authority in charge of the prosecution of the case in the Kingdom of Lesotho must certify that there is sufficient evidence under the law of the Kingdom of Lesotho to warrant the prosecution of the fugitive.

[28] In this matter the certificate contains a summary of the available evidence and a statement that “there is a *prima facie* case against the suspects on the offences for which extradition is sought.”

²³ At paragraphs 26, 27, 28, 29, 33 and 34.

[29] The deviation, by the prosecutor of the Kingdom of Lesotho, from the words used in the Act and the treaty is part of the problem because it necessitates an inquiry into whether a *prima facie* case or *prima facie* evidence is tantamount to sufficient evidence to warrant a prosecution.

....

[33] An enquiry in terms of section 9 of the Act is not a criminal trial. Its purpose is to enable the magistrate to determine whether there is sufficient evidence to warrant a prosecution for the offence in the foreign State. It is not necessary for the prosecutor to place all the evidence needed to prove the guilt of the person beyond reasonable doubt before the magistrate. The prosecutor need only place admissible and reliable evidence before the magistrate during the enquiry which if accepted at the subsequent trial may be enough to prove that the person has committed the offences for which s/he is sought. Conversely if the evidence is of such poor quality or unreliable that it is obvious to the magistrate that there are no reasonable prospects that the evidence would be accepted at the subsequent trial the magistrate may find that there is insufficient evidence to warrant a prosecution.

[34] It is therefore clear that what is required by the section is adequate admissible proof to warrant a prosecution. The evidence must be sufficient for the purpose of instituting a prosecution and not sufficient to prove the guilt of the person.”

[19] Furthermore, the powers of the Commission undermine the fundamental rights of the person under investigation, and, in particular the presumption of innocence as well as the right to remain silent.²⁴ The Act requires that the person investigated should submit a sworn statement on the allegations and further furnish books of accounts and other information:²⁵

“11. (1) In the performance of the functions of the Commission under this Act, the Commissioner may-

(a) authorize in writing any officer of the Commission to conduct an inquiry or investigation into alleged or suspected offences under this Act;

(b) require any public officer or person to answer questions concerning the duties of any other public officer or person and order the production for inspection of any orders, directives, office

²⁴ Section 21 (1), (2) (a) and (9) of the Constitution.

²⁵ Sections 11 and 12 of the Act

instructions relating to the duties of such other public officer or person;

(c) require any person in charge of any Ministry, Department or other establishment of the Government or head, Chairman, Manager or Chief Executive Officer of any public body or private body to produce or furnish within such time as may be specified by the Commissioner, any document or a certified true copy of any document which is in the possession or under the control of that person and which the Commissioner considers necessary for the conduct of investigation into alleged or suspected offence under this Act.

(2) In the performance of the duties under this Act, the Commissioner or, if acting under the authority of a warrant issued for that purpose by or on behalf of the Commissioner, an officer of the Commission, shall have-

(a) access, where necessary with a court order, to all books, records, returns, reports, data stored electronically on computer or otherwise and any other documents relating to the functions of any Government Ministry, Department or other establishment, or parastatal, public body or private body;

(b) access at any time, where necessary with a court order, to the premises of any Government Ministry,

Department or other establishment, or parastatal, public body or private body, or to any vessel, boat, train, aircraft or any vehicle if the Commissioner or officer has reason to suspect that any property acquired in contravention of this Act has been placed, deposited or concealed in that vessel, boat, train, aircraft or vehicle .

(3) Any person who accompanies or assists the Commissioner, the Deputy Commissioner or any officer of the Commission to enter into any premises or upon any vessel, boat, train, aircraft or any vehicle, as the case may be, shall enjoy the same immunity as is conferred upon the Commissioner or an officer of the Commission in terms of section 17.

12. (1) Where it appears to the Commissioner that an offence under this Act may have been committed by any person, the Commissioner may for the purposes of an investigation of that offence authorize an investigating officer to exercise the following powers, that is, to-

(a) investigate the acquisition of any property (whether movable or immovable) in or outside Swaziland by or on behalf of that person, during such period as may be specified in the authority;

(b) require that person to furnish and produce all relevant information and documents in respect of-

(i) all expenditure incurred by that person personally or in respect of the spouse, children or parents of that person;

(ii) all liabilities incurred by that person, the agent or trustee of that person and specifying in respect of each such liability whether it was incurred jointly (and, if so, with whom) or severally;

(iii) any money acquired or sent outside Swaziland during the period as may be specified in the authority;

(c) investigate and inspect any bank account or other account of whatever description or kind and any banker's books or company books of, or relating to, the person named or otherwise identified in the authority;

(d) require from any person production of any accounts, books or company books of, or relating to, the person named or otherwise identified in the authority and the disclosure of all or any information relating to those accounts, books or documents;

(e) take originals or certified true copies of any accounts, books or documents or any relevant entry in those accounts, books or documents;

(f) require any person who is being investigated to furnish the investigating officer with a sworn statement containing any information referred to in paragraphs (a) and (b).

(2) Any person, who has been lawfully required under subsection (1) to disclose any information or to produce any accounts, books or documents to an investigating officer shall, notwithstanding any other law to the contrary, comply with that requirement.

(3) Any person who-

(a) without reasonable excuse fails or neglects to disclose any information or to produce any accounts, books or documents required by an investigating officer under subsection (2); or

(b) obstructs an investigating officer in the execution of an authority made under subsection (1),

commits an offence and shall, on conviction, be liable to a fine not exceeding fifty thousand Emalangeni or to imprisonment not exceeding five years or to both.

(4) Where, in any proceedings for an offence under Part III, it is proved that the person charged with the offence refused to furnish a sworn statement required in terms of subsection (1) (f) when requested to do so that refusal shall, unless reasonable cause is shown, be treated as supporting any evidence given on

behalf of the prosecution, or as rebutting any evidence given on behalf of the defence as regards the manner of the acquisition of the properties mentioned in paragraph (1) (a).

(5) The information referred to in paragraph (1) (f) shall be admissible as evidence during the trial of that person and if that person submits to be a witness, that information may be used in cross-examination and for purposes of impeaching the credibility of that person.

[20] The question before this court is whether the evidence adduced by the applicant does establish a *prima facie* case against the three respondents under investigation. The applicant has alleged that the offences committed relate to the contravention of section 21, 23, 24, 41, 42 and 57 of the Act. The applicant has further alleged that the respondents “organized themselves into a criminal enterprise with the main purpose of committing various crimes through a contentious Public Private Partnership arrangement which involves setting up an online trading platform through the partnership organisation”.²⁶

²⁶ Paragraph 7.1 of the affidavit of the Investigating Officer Siphon Mathew Mthethwa.

[21] Furthermore, the applicant alleged that “the parties have a long term standing relationship which eventually developed into a corrupt relationship”.²⁷ Similarly, the applicant alleged that, “the parties connived, hatched a strategy to set up a special purpose vehicle through this fictitious Public Private Partnership between the small Enterprise Development Company (SEDCO) and NGERI Group Holdings (NGH). The Public Private Partnership was used to lure unsuspecting businesses and Swaziland’s co-operating partners (Embassies) to make donations. The parties purported that the donor funds were going to be used to fund activities of the Public Private Partnership, when in fact this was not true”.²⁸

[22] The applicant makes a further contention in its affidavit:²⁹

“7.4 The investigations conducted by the ACC have uncovered that the setting up of the Public Private Partnership was not constituted in terms of the Public Private Policy and Government Procedures. This criminal conduct was born as a result of the relationship between the parties which led to a series of undue advantages

²⁷ Paragraph 7.2 of the affidavit of the investigating officer Sipho Mathew Mthethwa

²⁸ Paragraph 7.3 of the affidavit of the investigating officer

²⁹ Paragraph 7.4 of the affidavit of the investigating officer.

given and/or received by the parties involved as a result of the abuse of public office by breaching set out legal rules, duties, government operational rules/procedures and advices outlining Public Private Partnerships formation. The conduct eventually prejudiced the Swaziland Government and private business.”

[23] It is common cause that the respondents conceived a business idea to establish a Public Private Partnership consisting of an electronic online trading platform that would provide a market for small businesses in the country and further advertise these businesses and sell their merchandise online. Donations were sought and obtained from certain companies within the country towards establishing the business. The donations received were small ranging from E5 000.00 (five thousand emalangeni) to E36 000.00 (thirty six thousand emalangeni) save for the Embassy of Qatar which donated E1 366 133.71 (one million three hundred and sixty six thousand one hundred and thirty three emalangeni seventy one cents).

[24] A Memorandum of Understanding was eventually concluded with SEDCO to operate the business, and, a bank account was opened at First National Bank in Mbabane where the donations were deposited. The second and third respondents were signatories of the account as well as the beneficiaries of the account.

[25] It is apparent from the evidence that Government procedures and regulations with regard to the establishment of a Public Private Partnership may not have been observed. However, this is a far cry from establishing a *prima facie* case warranting the prosecution of the respondents under the Act.

[26] The applicant has failed to establish a *prima facie* case against the respondents under the Act. There is no *prima facie* evidence that the respondents organized themselves into a criminal enterprise with the purpose of committing the alleged crimes. Furthermore, there is no *prima facie* evidence that the sole purpose of establishing the Public Private Partnership was intended to be used as a vehicle to lure unsuspecting donors or that the Public Private Partnership was a fake hatched and connived by the

respondents to defraud possible donors. The evidence adduced does not establish a corrupt relationship between the respondents as alleged or at all.

[27] The applicant has alleged that the conduct of the respondents prejudiced the Swaziland Government but there is no *prima facie* evidence that has been adduced in support of this allegation. It is not disputed that the Government of Swaziland did not commit any funds to the Public Private Partnership established by the respondents.

[28] The fight against the scourge of corruption is important in the development and sustenance of a country's economy. Corruption is a cancer that needs to be uprooted if a country is to achieve its development objectives. However, the urge and desire to fight corruption should not be done at the expense of the fundamental rights and freedoms which are specially entrenched in our Constitution. Every allegation of corruption has to be critically analysed and assessed by the court in order to ascertain the existence of a *prima facie* case warranting prosecution.

[29] It is not disputed that the first respondent was not a signatory to the bank account. There is no *prima facie* evidence that he received any part of the money withdrawn from the account. Furthermore, there is no *prima facie* evidence that he was aware of the withdrawals of the monies from the account or that he was a party to the said withdrawals. Similarly, I am not convinced that the withdrawal of the money was part of a design by the respondents to defraud the donors.

[30] The Prevention of Corruption Act does not define what is meant by corruption; however, the Act outlines the essential elements of the offence. In this regard the Act provides:³⁰

“42 (1) Subject to the provisions of subsection (2), a person who directly or indirectly -

(a) demands or accepts or agrees or offers to accept any advantage whether for the benefit of that person or of another person; or,

(b) gives or agrees or offers to give any other person any advantage whether for the benefit of that other person or of another person, is guilty of

³⁰ Section 42 of the Act.

the offence of corruption and liable on conviction to the penalty prescribed under section 35(1).

(2) For an offence to be committed under subsection (1), the act complained of must cause that person or influence another person to act in a manner –

(a) that amounts to the

(i) illegal, dishonest, unauthorized, incomplete or biased; or,

(ii) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual, fiduciary or any other legal obligation;

(b) that amounts to

(i) the abuse of a position of authority;

(ii) a breach of trust; or

(iii) the violation of a legal duty or a set of rules;

(c) designed to achieve an unjustified result; or

(d) that amounts to any other unauthorized or improper inducement to do or not to do anything.”

[31] A critical analysis of section 42 of the Act does assist this court to formulate a definition of corruption. Another offence which is closely related to corruption is Fraud, which often is mistaken for corruption. The offence of corruption consists in the misuse of entrusted power for private gain. Fraud on the other hand is the unlawful and intentional making of a misrepresentation which causes actual and/or potential prejudice to another.

[32] The evidence adduced by the applicant does not disclose the offence of corruption as defined in section 42 of the Act; hence; no *prima facie* case has been established warranting the prosecution of the respondents. The allegation by the applicant that the first respondent abused his powers and public office for private or personal gain has not been established. A *prima facie* case constitutes *prima facie* evidence of commission of the offence.

[33] In the quest to protect and advance the individual rights and freedoms, the Constitution provides the following:

“14. (1) The fundamental human rights and freedoms of the individual enshrined in this Chapter are hereby declared and guaranteed, namely –

(a) respect for life, liberty, right to fair hearing, equality before the law and equal protection of the law;

(b) freedom of conscience, of expression and of peaceful assembly and association and of movement;

(c) protection of the privacy of the home and other property rights of the individual;

(d) protection from deprivation of property without compensation;

(e) protection from inhuman or degrading treatment, slavery and forced labour, arbitrary search and entry; and

(f) respect for rights of the family, women, children, workers and persons with disabilities.”

(2) The fundamental rights and freedoms enshrined in this Chapter shall be respected and upheld by the Executive, the Legislature and the Judiciary and

other organs or agencies of Government and, where applicable to them, by all natural and legal persons in Swaziland, and shall be enforceable by the courts as provided in this Constitution.

(3) A person of whatever gender, race, place of origin, political opinion, colour, religion, creed, age or disability shall be entitled to the fundamental rights and freedoms of the individual contained in this Chapter but subject to respect for the rights and freedoms of others and for the public interest.

[34] Sections 11, 12, 13 and 17 of the Prevention of Corruption Act No. 3 of 2006 contravene the fundamental rights and freedoms of the individual as enshrined in the Constitution; however, this Court has not been called upon to determine their constitutionality. For present purposes it suffices that this Court, after due consideration, has come to the conclusion that the applicant has failed to establish a *prima facie* case warranting the prosecution of the respondents as required under the Act.

[36] Accordingly, the court makes the following order:

1. The application is dismissed.

M.C.B. MAPHALALA
CHIEF JUSTICE

For Applicant

Senior Crown Counsel
Ncamsile Masuku