



**IN THE HIGH COURT OF SOUTH AFRICA
WESTERN CAPE HIGH COURT, CAPE TOWN**

09:56 To 09:58

Case No: **SS124/07**

In the matter between:

LEGAL AID SOUTH AFRICA

Applicant

VS

THE STATE

1st Respondent

GARY WALTER VAN DER MERWE

2nd Respondent

PAUL KILIAN

3rd Respondent

**APPLICATION FOR LEAVE TO APPEAL
REASONS FOR ORDER HANDED DOWN ON 16 FEBRUARY 2010**

YEKISO, J

[1] When this matter was provisionally on the roll on 18 November 2009, I directed the office of Legal Aid South Africa, Cape Town to request and to subsequently compile a report relating to the accused's personal and financial circumstances and, in particular, whether the accused meet the means test for purposes of being granted legal aid assistance. I directed that the report be made available to me by no later than Monday, 30

November 2009. The required report was subsequently made available to me during the afternoon of Monday, 30 November 2009.

[2] On basis of the report furnished to me by Legal Aid South Africa which, amongst others, contained both the accused's personal circumstances as well as financial circumstances, I could not come to the conclusion that the accused were, in the first instance, possessed of assets in the order of R120m in the instance of the first accused and, R14m in the instance of the second accused, nor could I conclude that the accused were possessed of assets, in the form of ownership, to the value asserted by Legal Aid South Africa. Included in the report, was refusal by Legal Aid South Africa to grant legal aid assistance to both accused. I was then of the firm view that, and because of the complexity of the issues in the forthcoming trial, involving as they do tax evasion and violation of the laws relating to value added tax, to allow the matter to proceed to trial without legal representation in respect of both accused would result in substantial injustices.

[3] When the matter was once again on the roll, provisionally, on 2 December 2009, I issued an order, a copy whereof was furnished to Legal Aid South Africa, both the accused as well as counsel for the state. I may record that an officer from Legal Aid South Africa was present in court on all occasions when the matter was before me until a date I handed down the order on 2 December 2009.

[4] Legal Aid South Africa has since noted an appeal against the order dated 2 December 2009 on the basis as set out in its application for leave to appeal. The application for leave to appeal was argued before me on Tuesday, 16 February 2010 when, after hearing argument by counsel for Legal Aid South Africa and counsel for the state, I dismissed the application for leave to appeal. I did not then furnish reasons for the order I gave and indicated that reasons therefor would be furnished in due course.

[5] When the matter was argued before me on Tuesday, 16 February 2010 I raised with counsel for Legal Aid South Africa an issue of whether Legal Aid South Africa does have the necessary capacity, and therefore *locus standi*, to note an appeal in respect of proceedings in which it is not a party and in circumstances where Legal Aid South Africa was not exercising a right in terms of section 35(3)(o) of the Constitution of the Republic of South Africa, particularly, in view of the fact that Legal Aid South Africa is not an accused person in a matter before me as the right in terms of section 35(3)(o) of the Constitution is a right conferred on an accused person.

[6] I was subsequently addressed by counsel for Legal Aid South Africa as well as counsel for the state and at the conclusion of the argument I was not persuaded that whatever relief Legal Aid South Africa may have arising from the order I issued on 2 December 2009, is that of an appeal in circumstances where Legal Aid South Africa was not joined as a party in the proceedings.

[7] Despite what I have stated in paragraph [6] hereof, I also heard argument as regards the merits of the application for leave to appeal and at the conclusion of argument by both parties I came to the conclusion that there is no reasonable prospect that another court could find that I erred in handing down the order I did on 2 December 2009.



N J Yekiso, J

Date: 19 February 2010
