

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

Case number:

In the matter between:

<b>JUSTICE ALLIANCE OF SOUTH AFRICA</b>	First Applicant
<b>ANDRE WILLIAMS</b>	Second Applicant

and

<b>THE GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA</b>	First Respondent
<b>THE MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT</b>	Second Respondent
<b>THE MINISTER OF CORRECTIONAL SERVICES</b>	Third Respondent
<b>THE MINISTER OF POLICE</b>	Fourth Respondent
<b>THE DIRECTOR OF PUBLIC PROSECUTIONS: WESTERN CAPE</b>	Fifth Respondent
<b>JOHANNES LOMBARD N.O.</b>	Sixth Respondent
<b>THE LEGAL AID BOARD OF SOUTH AFRICA</b>	Seventh Respondent
<b>THE SOUTH AFRICAN POLICE SERVICE</b>	Eighth Respondent

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**NOTICE OF MOTION**

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**PLEASE TAKE NOTICE** that application will be made on behalf of the above-named Applicants on a date to be arranged with the Registrar of the Honourable Court for orders in the following terms:

1. It is declared that the Second Applicant was unlawfully, wrongfully, and in violation of his constitutional rights, detained for an unacceptably lengthy period by the Third Respondent;
2. It is declared that the conduct of the First Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
3. It is declared that the conduct of the Second Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
4. It is declared that the conduct of the Third Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;

5. It is declared that the conduct of the Fourth Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
6. It is declared that the conduct of the Fifth Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
7. It is declared that the conduct of the Sixth Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
8. It is declared that the conduct of the Seventh Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;
9. It is declared that the conduct of the Eighth Respondent, in permitting or failing to take proper action to prevent the detention in custody of the Second

Applicant from 12 July 2006 until 3 June 2009, was inconsistent with the Constitution and invalid;

10. It is declared that the Second Applicant is entitled to delictual and constitutional damages for the period in which he was unlawfully, wrongfully and unconstitutionally detained;

11. It is declared that the Respondents are jointly responsible for ensuring that the constitutional rights of children in the criminal justice system are protected, and in particular that they are not detained save as a measure of last resort for the shortest appropriate period of time;

12. The Respondents are to pay, jointly and severally, the one paying the other to be absolved, the costs of the Applicants, including the costs incurred by the employment of three counsel; and

13. Further and/or alternative relief.

**PLEASE TAKE NOTICE FURTHER** that the affidavits of **JOHN JACKSON SMYTH** and **ANDRE WILLIAMS** are annexed hereto in support of this application.

**PLEASE TAKE NOTICE FURTHER** that the Applicants have appointed the offices of their attorneys set out below as the address at which they will accept notice and service of all process in these proceedings.

**PLEASE TAKE NOTICE FURTHER** that that if the Respondents desire to oppose the granting of the order sought in this notice of motion, they shall—

- (a) within five (5) days after receipt of the notice of motion and annexed affidavits, deliver notice in writing to the Applicant that they intend to oppose, and shall in such notice appoint an address with eight (8) kilometres of the office of the Registrar at which they will accept notice and service of all process in such proceedings; and
- (b) within fifteen (15) days after delivery of the notice of intention to oppose, file their answering affidavits, if any.

**PLEASE TAKE NOTICE FURTHER** that if no such notice of intention to oppose is given, the application will be made on **27 MAY 2010** at **10h00** or so soon thereafter as counsel can be heard.

**KINDLY ENROLL THE MATTER FOR HEARING ACCORDINGLY.**

DATED at CAPE TOWN on        APRIL 2010.

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**GRANT GUNSTON INC**

Attorneys for the Applicants

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TO: **THE REGISTRAR**  
High Court  
**CAPE TOWN**

AND TO: **THE GOVERNMENT OF THE REPUBLIC  
OF SOUTH AFRICA**  
**c/o The State Attorney**  
Attorneys for the First Respondent  
4<sup>th</sup> Floor  
22 Long Street  
CAPE TOWN  
8001

AND TO: **THE MINISTER OF JUSTICE AND  
CONSTITUTIONAL DEVELOPMENT**  
**c/o The State Attorney**

Attorneys for the Second Respondent  
4<sup>th</sup> Floor  
22 Long Street  
CAPE TOWN  
8001

AND TO: **THE MINISTER OF CORRECTIONAL  
SERVICES**

**c/o The State Attorney**

Attorneys for the Third Respondent  
4<sup>th</sup> Floor  
22 Long Street  
CAPE TOWN  
8001

AND TO: **THE MINISTER OF POLICE**

**c/o The State Attorney**

Attorneys for the Fourth Respondent  
4<sup>th</sup> Floor  
22 Long Street  
CAPE TOWN  
8001

AND TO: **DIRECTOR OF PUBLIC PROSECUTIONS:  
WESTERN CAPE**

Fifth Respondent  
115 Buitengracht Street  
CAPE TOWN

8001

AND TO: **JOHANNES LOMBARD N.O.**

Sixth Respondent

Bellville Magistrate's Court

Voortrekker Road

BELLVILLE

7530

AND TO: **THE LEGAL AID BOARD OF SOUTH AFRICA**

Seventh Respondent

5<sup>th</sup> & 6<sup>th</sup> Floor Nedbank Building

85 St George's Mall

CAPE TOWN

AND TO: **THE SOUTH AFRICAN POLICE SERVICE**

Eighth Respondent

231 Pretorius Street

PRETORIA