
SUBMISSIONS BY MATAMELA CYRIL RAMAPHOSA, PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, MADE IN TERMS OF RULE 129G(1)(C)(iii) OF THE NATIONAL ASSEMBLY RULES, TO THE INDEPENDENT PANEL APPOINTED IN TERMS OF RULE 129D OF THE NATIONAL ASSEMBLY RULES

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1. I hereby respond to the allegations made against me in the motion in terms of section 89 of the Constitution of the Republic of South Africa, 1996, and Rule 129A to 129I of the National Assembly Rules (*"the Rules"*). The full motion was published in the Announcements, Tablings and Committee Reports (*"the ATC"*) of 17 October 2022.

INTRODUCTORY REMARKS

2. Before I turn to a detailed response to these allegations, I reiterate my commitment to fulfilling the tenets of the oath I took on 15 February 2018 and again on 25 May 2019.
3. I have endeavoured, throughout my tenure as President, not only to abide by my oath but to set an example of respect for the Constitution, for its institutions, for due process and the law. I categorically deny that I have violated this oath in any way, and I similarly deny that I am guilty of any of the allegations made against me.
4. These submissions will be structured as follows:
 - 4.1. I will set out the facts that gave rise to the allegations made against me;
 - 4.2. I will then clarify certain of the statements made by me on this matter to date;
 - 4.3. I will then detail the constitutional principles, law and rules applicable to this process;
 - 4.4. I will address certain additional points that I would like the panel to consider in evaluating my response; and

4.5. I will address each charge in turn.

FACTUAL BACKGROUND

5. Certain of the facts set out below are not within my personal knowledge. That which appears from the context not to be within my personal knowledge has been gleaned from affidavits which have been submitted to several institutions investigating this matter, which information was asked of me and my legal team, as a result of which I have had sight of them. I am advised that these affidavits are confidential (they were submitted to the South African Reserve Bank or the Public Protector's Office) and as such, cannot be annexed hereto.
6. Phala Phala Wildlife is a game farm situated in Limpopo, in the Bela Bela local municipality. The registered owner of the farm, on which the farming operations are conducted, is the Tshivhase Trust, my family trust. Phala Phala Wildlife is the operating entity of Ntaba Nyoni Estates CC ("Ntaba Nyoni"), the close corporation through which game farming operations are run. I am the sole member of Ntaba Nyoni. Its operations are managed and run by its employees. Mr Hendrik von Wielligh ("*Mr von Wielligh*") was the General Manager of Ntaba Nyoni at all relevant times.
7. Phala Phala Wildlife game farming operations started in 2010. The cattle farming operations started in 2001 in Mpumalanga province. Game and cattle farming have become a personal passion of mine; one I share with many other heads of state on our continent including former heads of states like Nelson Mandela who also had cattle in his farmstead in Qunu in the Eastern Cape.
8. In the book I wrote, "Cattle of the Ages", published in 2017 and focused on a special breed of cattle (which breed I facilitated to be brought from Uganda and recognised as a stud breed in South Africa) – the Ankole, I said the following of my love of cattle in particular – which has extended to wildlife more broadly –

Somewhere in the depths of my soul is the connection my father had with his cattle, the hills of Khalavha and his people. A man only feels it – or perhaps comes to understand what it is he was feeling all along – when he gets older

and wiser, and has come to fully sense his own mortality and comprehend the significance and miracle of life. My love for cattle could well be a reflection of my father in me; or of some form of agency on behalf of my father, Samuel Mundzhedzi Ramaphosa, who herded his father's and uncle's cattle while growing up in Khalavha, Venda (my ancestral home), in Northern Limpopo. As in most African cultures, cattle are a sign of wealth and stature among my father's people ... For my part, I first fell in love with cattle – or rather, discovered how deep in me was my father's own love for cattle – when I acquired a farm in the Mpumalanga province of South Africa. I guess I wanted to have a place where I could have my own cattle to follow in my father's footsteps and to honour his memory and my heritage.”

9. Phala Phala Wildlife farms with animals such as buffalo, sable, roan, black and white impala, wildebeest, kudu and other antelopes within a game reserve type of environment. Ankole cattle are also bred and kept on the farm. The wild animals and cattle we farm with reproduce and their numbers almost double on an annual basis. To manage the increasing numbers one has either to cull or sell some of them. At Phala Phala Wildlife we do what many game farmers do, we either cull or sell the excess animals.
10. There are a number of buildings situated at Phala Phala Wildlife. One of these buildings is a private residence that I occupy on occasion when I visit the farm. Separate to that building are a set of other buildings, including a large office and conference building called the Bayeto Centre, and hospitality buildings such as individual rooms – much like a game lodge – lounge areas, a kitchen and an area in which food can be served to guests.
11. The premises at Phala Phala are used for extended family gatherings, but also for educational camps for young people, for which special facilities were built, as well as to host meetings and workshops of a number of non-governmental organisations that I am associated with, such as the Adopt a School Foundation, and the Cyril Ramaphosa Education Trust which is a bursary scheme for university students, offering, over and above bursaries, nurturing, financial support, mentorship and psychological and social grounding to the students.

12. For some time in late 2019, Mr von Wielligh and I had discussions about disposing of buffalo that were substandard and were a financial drain on the operations of Phala Phala Wildlife in that they were costing a great deal of money in terms of veterinary services and feeding. The view that had been taken was that they should be sold as a parcel because this made better financial sense than selling them individually. I had advised Mr von Wielligh that there were potential buyers of these buffalo from the Middle East and other African countries. The disposal of animals in this manner is not unusual. For example, Phala Phala Wildlife has just finalised a transaction for disposing of a parcel of buffalo that will soon be exported to a country in the Middle East, following the fulfilment of various regulatory processes such as the extraction of blood from the buffalo to test for various diseases, export permits and other regulatory processes that are required for the transportation of wild animals.

13. On 26 December 2019, I went to Phala Phala. While there, the Lodge Manager, Mr Ndlovu, informed me about what had transpired the previous day at the farm. At the time, the General Manager Mr von Wielligh was on leave. Mr Ndlovu said that:
 - 13.1. Mr Mustafa Mohamed Ibrahim Hazim, a citizen of Sudan ("*Mr Hazim*"), came to the farm to view buffalos that were for sale. Mr Ndlovu showed Mr Hazim the buffalos in Camp 6 and Mr Hazim identified those that he liked the look of. Mr Hazim made payment in cash in the sum of US\$580,000 to Mr Ndlovu. It was a payment for purchase of a number of the buffalo referred to above, based on information Mr Ndlovu gave Mr Hazim regarding the price of each of the animals he had identified and decided to buy.

 - 13.2. Mr Ndlovu, upon receipt of the money, gave Mr Hazim an acknowledgement of receipt and informed him that he would inform me about what had transpired. A copy of this receipt is attached marked "**MCR 1**". After Mr Hazim had left Phala Phala, Mr Ndlovu took the money and locked it in the safe at the Bayeto Centre office.

14. When Mr Ndlovu spoke to me on 26 December 2019, the cash he had received was still in the safe at the Bayeto Centre. I was heading to Cape Town for the remainder of the festive season and since Mr von Wielligh was away, I said the money ought to be kept on the

farm until Mr von Wielligh would have the opportunity to process matters related to the transaction and thereafter have the money banked. I left the farm on 27 December 2019.

15. Mr Ndlovu was due to go home on leave on 30 December 2019. He felt uncomfortable about leaving the money in the safe at the Bayeto Centre because he was concerned that several staff members had access to the safe. He decided that the safest place to store the money was inside my private residence on the farm. He stored the money below cushions of a sofa in a spare bedroom that is hardly ever used, inside my private residence, because he thought it was the safest place, as he believed nobody would break into the President's house.

16. I have no personal knowledge of the theft itself. The following is what I can attest to personally:

16.1. On 10 February 2020 – the day after the theft – I was advised by Mr von Wielligh that there was a security breach at Phala Phala farm. At the time, I was in Addis Ababa, to chair the African Union Assembly Summit Meeting. Mr von Wielligh sent footage to me from the CCTV cameras situated outside my private residence at Phala Phala, which shows intruders who were seeking to enter my private residence. I then arranged for Major-General Rhooode, the head of the Presidential Protection Service (“PPS”), to visit me in my room, at our hotel in Addis Ababa. At our meeting, I informed Major-General Rhooode that I had received information that there had been a breach of security at Phala Phala and requested him to attend to the matter and report back to me. I had a lengthy session of the African Union Heads of State Summit meeting ahead of me, which in fact only ended at 3am the following morning.

16.2. Soon after the security breach was reported to me, Mr Ndlovu contacted me to tell me that the money that he had kept in my house had been stolen.

16.3. On my return from Addis Ababa I went straight to Cape Town to attend a Cabinet meeting and thereafter to prepare for the State Of Nation Address.

- 16.4. At some point during the second half of February 2020, which is the soonest my schedule allowed, I visited Phala Phala for the purpose of examining and being fully briefed on what had happened and confirming that money was stolen.
- 16.5. Some days after returning from Phala Phala, I asked Major-General Rhooode to meet me at my residence in Hyde Park, Johannesburg. I informed him that money from the sale of game was missing from my private residence at the Phala Phala. Only then was the General made aware that, in addition to a security breach, a theft had taken place.
- 16.6. It was agreed that Major-General Rhooode would confer with his superiors and revert to me on the way forward. I trusted that General Rhooode would take the necessary steps from a security point of view regarding my safety following the security breach at my residence , and take any other steps required to report and deal with the information I had shared with him.
17. Following the housebreaking and theft, a decision was taken by General Rhooode to deploy Presidential Protection Service (“PPS”) personnel at Phala Phala. The PPS personnel deployed at Phala Phala are there to ensure my safety and to ensure that there is no breach of security at my private residence. Before this breach of security and theft I had always resisted PPS advice to have my residence at Phala Phala guarded when I was not in residence. This was meant to save the state’s costs. But it has now been brought to my attention that there are always a number of potential risks I am exposed to if my private residence, which I visit on occasion, is not guarded at all times.
18. I reported the housebreaking and theft to General Rhooode as he is responsible for ensuring my safety and security in view of the position I occupy. I expected that he would do all that is necessary and take any other steps required in response to the information I had shared with him.

COMMENT ON STATEMENTS ATTRIBUTED TO ME

19. For the Panel's benefit, below I detail an accurate recording of the statements attributed to me and my office and which are being held against me in the motion approved by the Speaker.
20. In Limpopo, on 5 June 2022, I said the following in an address to the Limpopo Provincial Conference of the African National Congress (from 1:05:05 to 1:09:21 of the YouTube clip cited in the allegations):

*"I acknowledge that there is much public interest and concern about claims that have been made in a criminal complaint against me. I remain fully focused on the tasks that I have been given by the people of our country. And I want to reaffirm that I was not involved in any criminal conduct and once again I pledge my full cooperation with any form of investigation. Now due to the investigation, I will not really be able to engage deeply or further on this matter as we should allow the due process to take place. However, I would like to say that **I'm a farmer. I am in the cattle business and the game business.** And through that business, which has been declared in Parliament and all over, **I buy and I sell animals.** Sometimes people buy these animals – and some of the people who bought some of the animals some of them are here – I do it yes, through, the sales are sometimes through cash or sometimes through transfers. Some of the people who are offshore customers and who are sometimes local, they come through and buy animals and some of them come also also to hunt on the farm. And so **this that is being reported was a clear business transaction of selling animals.** The amount involved is far less than what has been bandied in the press. Ba bang this morning ba re ke R1billion. Ba bang ba re ke US\$4 million and so forth. I want to say it's far less. Some are casting aspersions about me and money. I want to assure you comrades that all this was money from proceeds from selling animals. I have never stolen money from anywhere, be it from our taxpayers, be it from*

anyone. I have never done so, and will never do so. I have never stolen money from our taxpayers. My integrity as a leader will never allow me to do so. I will never be able to do so. Now I will continue to fight corruption. I want to make it clear that I will continue to fight corruption and some of these things are clearly, they have their own political agenda and we are all aware of that, but it will not deter me from fighting corruption because I have never stolen taxpayers money. That I have never done, and so therefore I will cooperate with any process. The renewal process that we are involved in comrades is such that all of us must dedicate ourselves to become the type of leaders who will stand up and be able to say 'we are here to serve our people, we are here to make sure that our people get a better life'. That is what drives me. That is what makes me wake up every morning. To serve our people and nothing else. Thank you very much kea leboga" (I have only highlighted the words of this statement contained in 'charge 1')

21. On 2 June 2022 a 'tweet' was issued on my office's behalf. Its full text is worth repeating, as it is the basis of 3 out of the 4 purported charges:

"PRESIDENCY RESPONDS TO CLAIMS BY MR ARTHUR FRASER

The Presidency has been made aware through a media statement that Mr Arthur Fraser has laid a complaint with the South African Police Service against President @CyrilRamaphosa.

President Ramaphosa is clear that there is no basis for the claims of criminal conduct that have been made against him in Mr Fraser's statement.

The Presidency can confirm that a robbery took place at the President's farm in Limpopo on or around 9 February 2020 in which proceeds from the sale of game were stolen.

The President was attending an African Union summit in Addis Ababa at the time the incident occurred. On being advised of the robbery, President Ramaphosa reported the incident to the head of the Presidential Protection Unit of the South African Police Service for investigation. President Ramaphosa stands ready to cooperate with any law enforcement investigation of these matters.

President Ramaphosa remains resolute in leading the fight against corruption, restoring the integrity and capability of public institutions and overcoming the legacy of state capture, and will not be deterred by disinformation campaigns.”

22. The allegations against me do not specify which portion of this long tweet (published as a thread) provides proof of what is alleged.

THE SECTION 89 PROCESS

23. The removal of the President is governed by **section 89 of the Constitution**. Its first subsection provides that –

“The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –

(a) a serious violation of the Constitution or the law;

(b) serious misconduct; or

(c) inability to perform the functions of office.”

24. The Rules adopted by the National Assembly on 11 September 2018 to govern processes conducted in terms of section 89 of the Constitution define the terms relevant to this process.

- 24.1. They provide that “serious misconduct” is “unlawful, dishonest or improper behaviour performed by the President in bad faith”. (underlining added)

24.2. “A serious violation of the Constitution or the law” is defined as “*behaviour by the President amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith”.* (underlining added)

25. The Rules further provide that, once a motion in terms of section 89 has been deemed to be in order by the Speaker, the Speaker refers it to the Independent Panel.¹

26. Rule 129G(1)(b) of the National Assembly enjoins the Panel to “*consider any preliminary inquiry relating to a motion proposing a section 89 enquiry, referred to it by the Speaker, and ... make a recommendation to the Speaker, within 30 days, whether sufficient evidence exists to show that the President: (i) committed a serious violation of the constitution or law; [or] (ii) committed a serious misconduct*” (sic).

ADDITIONAL MATTERS FOR THE PANEL’S CONSIDERATION

The formulation of charges 3 and 4

27. I point out that Section 89 makes it plain that the ground for my removal can only be a serious violation of the Constitution or the law or serious misconduct. It is unclear in charges 3 and 4 whether the allegation is that I committed a serious violation of the Constitution, or the law, or serious misconduct. This renders these charges defective in my respectful view. However, on the basis that they are put to me in this format, I will respond to the allegations contained therein.

The evidence intended to support the charges against me

28. Although the primary focus of these submissions is to answer the charges against me and provide supporting evidence therefor, it would be amiss of me not to address the existence, weight and relevance of the evidence that is seemingly intended to support the purported charges against me.

29. In terms of Rule 129G(1)(c)(ii) of the National Assembly Rules, the Independent Panel appointed in terms of Rule 129D of the National Assembly Rules (“*the Panel*”) was

¹ Rule 129C(1)

enjoined to provide me with all information available to it relating the inquiry. It did so in two steps:

29.1. On 21 October 2022, I received a letter from the Panel, to which was annexed a bundle of documents, indexed, and paginated from pages 1 to 343.

29.2. I was informed, in this letter, that members of the National Assembly had been called upon to provide further relevant information to the Panel and had until 27 October 2022 to do so. I received this additional information just before 5pm on 28 October 2022. It contained 1312 additional pages of information, and 10 video and audio files of various lengths. I appreciate that the Rules enjoin the Panel to share with me all information it receives, without filter.² Since the various parties in Parliament have seen fit to send such information to the Panel, I believe it necessary to state the following in relation to this additional information submitted by the ATM, EFF and UDM:

29.2.1. The bulk of the information contains images or facts of which I have no knowledge whatsoever. This relates to annexures IP20,³ IP24 to IP47, IP49 and IP50. These consist in the main of photographs of the identity documents and passports of persons, of persons standing next to cars, or persons that have seemingly been arrested.

29.2.2. A large number of articles and media releases from various sources are annexed (IP51 to IP80) to the ATM's submissions. I can confirm that IP53 and IP54 are press releases from my office. It is difficult for me to respond to the ATM's submissions to the extent that they are based on contents of newspaper reports, commentary and analytical articles.

29.2.3. I would submit that I ought not be asked to respond to information the sharing of which is prohibited by law, or that is unlawfully obtained. I submit further that this may apply to the information obtained from the Office of the

² Rule 129G(1)(c)(ii)

³ The one entitled ID2

Public Protector of South Africa if it was not shared or supplied by her office with her authorisation, as well as Mr Arthur Fraser's letter to the DPCI, dated 23 June 2022, which appears to have been leaked in some form.

29.2.4. Nonetheless and for the sake of ensuring the Panel has as much information and facts before it as possible and in line with my commitment to fully assist the work of the Panel, I will, where I am able, deal with the contents of these documents.

29.2.5. Some of the submissions made to the Panel attempt to broaden the motion in terms of section 89 of the Constitution that was accepted by the Speaker and published by Parliament. I understand the Rules deal with what these submissions need to cover to address the motion as published in the ATC of 17 October 2022, accepted by the Speaker and referred to this Panel.

29.2.6. I submit that Mr Fraser's letter to the DPCI is based purely on hearsay. Its contents do not demonstrate that he has personal knowledge of any matters of which he speaks and his letter, as I read it, is aimed at 'directing' the DPCI's inquiries. With respect, Mr Fraser's letter does not provide proof of his allegations. Although I will not respond to each allegation contained therein, as I do not deem them relevant to the charges to which I am called on to answer, the allegations contained in Mr Fraser's letter⁴ about Dr Bejani Chauke, my political adviser, being involved in the sourcing and storage of the money that was stolen from Phala Phala Wildlife are false. Kindly see in this regard an affidavit by Dr Chauke marked annexure "**MCR 2**".

30. I now turn to address each of the charges.

⁴ IP13 at para 5.2, p 356

CHARGE 1

The Allegation

31. In terms of what is labelled '**charge 1**', it is alleged that I am guilty of a serious violation of section 96(2)(a) of the Constitution, in that –

31.1. I stated at an ANC event that *"I'm a farmer, I am in the cattle business and the game business... I buy and I sell animals.... This that is being reported was a clear business transaction of selling animals"*, and

31.2. According to the charge, I am *"actively running [my] farming business"*, and therefore, I *"misled the nation"* when, in 2014, I allegedly stated that all my business interests *"would be managed by a blind trust"*.

Applicable law

32. The **Constitution** enjoins me to *"uphold, defend and respect the Constitution as the supreme law of the Republic; and [promote] the unity of the nation and that which will advance the Republic."*⁵ In exercising my presidential powers it is incumbent upon me to abide by the principle of legality.

33. I, together with the members of my Cabinet and deputy ministers, must act in accordance with a code of ethics prescribed by national legislation.⁶

34. We may not undertake any other paid work, act in any way that is inconsistent with our office or expose ourselves to any situation involving the risk of a conflict between our official responsibilities and private interests; nor shall we use our position or any information entrusted to us, to enrich ourselves or improperly benefit any other person.⁷

35. The legislation referred to in section 96(1) of the Constitution is the **Executive Members Ethics Act 82 of 1998**. The Act requires that a code of ethics be compiled that all Cabinet

⁵ Section 83(b) and (c) of the Constitution of the Republic of South Africa, 1996

⁶ Section 96(1) of the Constitution of the Republic of South Africa, 1996

⁷ Section 96(2) of the Constitution of the Republic of South Africa, 1996

members must abide by,⁸ and sets out the essential elements of the code. The Executive Ethics Code was promulgated in terms of the Act as Proclamation number 41 of 28 July 2000, in government gazette 21399 (*“the Code”*). It provides in relevant part that –

- 35.1. Members of the Executive must *“perform their duties and exercise their powers diligently and honestly; fulfill all the obligations imposed upon them by the Constitution and the law; and act in good faith and in the best interest of good governance; and act in all respects in a manner that is consistent with the integrity of their office or the government.”*⁹
- 35.2. In deciding whether members of the Executive have complied with these obligations, it is necessary to take into account the promotion of an open, democratic and accountable government.¹⁰
- 35.3. In addition to the above, members of the Executive may not, among others, receive remuneration for any work or service other than for the performance of their functions as members of the executive.¹¹
- 35.4. Members must declare conflicts of interest and withdraw from situations where these exist.¹²
- 35.5. Where members hold financial or business interests which may give rise to a conflict of interest in the performance of their functions as a member of the executive, they must, within two months of assuming office, or within two months of acquiring such interest, or any longer period as the President may determine, either dispose of such interest, or place the administration of the interest under the control of an independent and professional person or agency.¹³

⁸ Section 2(1) of the Executive Members’ Ethics Act 82 of 1998

⁹ The Code clause 2.1

¹⁰ The Code clause 2.2

¹¹ The Code clause 2.3 (g)

¹² The Code clause 3

¹³ The Code clause 3.6

35.6. *“When the administration of a member’s interest has been placed under the control of a person as contemplated in [the paragraph above], the member may not, during the course of his or her term as member, have any communication with or give any instructions to that person regarding the interest or the administration or control thereof, save for the purposes of complying with any legal requirement in respect of such interest, or to give instructions to sell such interest.”*¹⁴

35.7. Members must disclose to the Secretary of Cabinet all their financial interests as detailed in clause 6 of the Code.¹⁵ *“When a member makes [such] a disclosure ..., the member must confirm in writing to the Secretary that the member receives no remuneration other than as a member of the executive.”*¹⁶

35.8. These disclosures are contained in a register, which has a confidential part and a public part.¹⁷ Only the President or Premier, as the case may be, the Public Protector, the Secretary concerned, and staff designated by the Secretary, have access to the confidential part of a register, and its contents must not be disclosed.¹⁸ The public portion of the register is accessible to any person, during office hours.¹⁹

36. Compliance with obligations set out in section 96 of the Constitution is done by abiding by what is provided for in the Executive Members Ethics Act and the Code.

Additional facts relevant to this charge

37. As regards **my business interests** generally:

37.1. The day after my election as Deputy President of the African National Congress, in December 2012, I released a media statement indicating my intention to review my business interests to avoid potential conflicts. I attach this statement as annexure

¹⁴ The Code clause 3.7

¹⁵ The Code clause 5

¹⁶ The Code clause 5.6

¹⁷ The Code clause 7.1

¹⁸ The Code clause 7.3 and 7.4

¹⁹ The Code clause 7.5

“**MCR 3**”. Although I did not, at that stage, serve in government, I decided to dispose of the businesses that operated in sectors that were highly regulated (such as mining, banking and financial services) and to retain non-regulated assets. I made this decision because the highly regulated assets had the potential to present conflicts of interest in the senior position that I now occupied in the governing party. I was concerned about any perception that I could potentially have influenced regulatory choices made in government that could directly benefit companies that operated in the sectors, in the mining sector for example, where permission to be able to engage in the activity or industry in question is sought from and granted by a government department.

37.2. On 26 May 2014, I was appointed Deputy President of the Republic. In terms of the Code, I was required within two months of assuming office to dispose of financial interests that gave rise to conflicts of interest or place the administration of such interests under the control of an independent and professional person or agency. I complied with this legal obligation in full:

37.2.1. On 26 May 2014, Shanduka, the group from which I was disposing my interests, announced that it had entered negotiations with the Pembani Group on a transaction that would see me disposing of my interest in the Shanduka Group. The announcement is attached marked “**MCR 4**”. I issued a statement (annexed marked “**MCR 5**”²⁰) indicating that, “*in the interim*”, pending finalization of the transaction, my family’s interests would be held in “*blind trusts*”. This was an interim measure meant to safeguard the integrity of the office I would occupy. In the end, it was deemed unnecessary – as will appear clearly below. Assets that could give rise to a conflict were disposed of.

37.2.2. On 24 July 2014, I submitted a declaration of my interests to the Cabinet Secretary, then Dr Cassius Lubisi, and asked the President to extend the deadline for the disposal of my assets, as he is entitled to do in terms of clause

²⁰ Available online at <https://www.thepresidency.gov.za/content/statement-deputy-president-ramaphosa-management-his-business-interest%E2%80%8F>

3.6 of the Code, quoted at paragraph 35.5 above. A copy of my letter to the President is annexed hereto marked “**MCR 6**”;

37.2.3. On 15 August 2014, President Zuma extended the period for me to dispose of my business interests by four months. I annex the relevant Presidential minute as annexure “**MCR 7**”.

37.2.4. On 25 November 2014, I wrote a letter to the President (annexed marked “**MCR 8**”) in which I informed him that, pending required regulatory approvals, I had disposed of my shareholding in Shanduka Group. In doing so, I had met the requirement of rule 3.6 of the Executive Ethics Code regarding the disposal of business interests that may give rise to a conflict of interest. I further advised the President that, although not a requirement of the Executive Ethics Code, the remainder of my business interests from the Shanduka transaction were being placed in a trust managed by independent and professional persons. I committed “*not [to] give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions to sell such interest*”. I informed the Cabinet Secretary as well in a similar letter of equal date, annexed marked “**MCR 9**”.

37.2.5. On 26 November 2014, Shanduka announced a restructuring of the group that saw my divestment from the group (the announcement is attached marked “**MCR 10**”). Shanduka would retain the bulk of its businesses that operated in regulated sectors, and dispose of certain assets in ‘non-regulated’ sectors, such as property, to me.

37.2.6. I have repeated the matter of my divestment from all regulated industries in public regularly since 2014, including at the State Capture Commission. I did so again in the National Assembly on 29 September 2022 in response to a question by Hon. Zungula, MP.²¹

²¹ IP12, para 21, p 350

37.2.7. I remain the sole member of Ntaba Nyoni. I have systematically declared this, and any other financial interests, with the Secretary of Cabinet and, when I was a member of Parliament, to the relevant Parliamentary authorities. In all instances, my membership/directorship of Ntaba Nyoni has been reflected in the public section of the declaration; it is therefore readily available for those wishing to see it, contrary to the assertions by the ATM.²² Ntaba Nyoni was never part of the Shanduka Group and therefore not part of those assets affected by the Shanduka divestment process detailed in paragraph 37.2 above.

Response to the charge

38. Ntaba Nyoni, which operates as Phala Phala Wildlife, is a separate legal entity. I am the sole member of the close corporation but I do not work for it and do not get any remuneration from Ntaba Nyoni. From the inception of Ntaba Nyoni in and around 2001 I have invested my and my family's money to fund its operations largely at a loss. To suggest that I undertake paid work on or through the farm is mistaken. I plainly do not. While I have an interest in Ntaba Nyoni as a game and cattle farming operation, I do not conduct any paid work on or in relation to the farm as referred to in section 96(2)(a) of the Constitution.

39. On the allegations contained in charge 1 specifically:

39.1. I am entitled to retain assets or financial interests where no conflict of interest would arise, if these are declared. The ATM and EFF's proposition that I have misconstrued my obligations in this regard²³ is entirely without merit. I do not perform paid work for Ntaba Nyoni – nothing I said has ever suggested as much – nor do I receive remuneration for work or service other than my functions as President in the service of the people of South Africa. Much like a shareholder of a company, who receives no remuneration, I am not on any payroll other than that of the Presidency.

²² IP20, para 100.3, p 1368

²³ IP16 at para 1.1.3, p 421; IP12 at para 32, p 353

39.2. The evidence shows that, in December 2014, I disposed of the financial interests that could give rise to a conflict in the performance of my functions as Deputy President and later as President. It was entirely my choice to place the remaining 'non-regulated' financial interests from the Shanduka transaction in the hands of an independent and professional person or agency. As I stated in the National Assembly on 29 September 2022 (the full transcript of which appears in annexure **MCR11**),

"initially the intention was to set up a blind trust, but then I did say that I do not intend to be in any other form of business other than the agricultural sector which I have declared. That is why in the end no such trust was formed because this is the sum total of what I get involved in."

39.3. I have also disclosed my property holdings.

39.4. The ATM claims that the SARB letter provides proof to support the 'charge' that I am actively running my farm business, as it was directed to me. The SARB letter provides no such proof. The SARB directed its queries to me not because it determined I was actively involved in managing the farm business but, as appears from its letter to my legal representatives, because it was acting on media reports to which my office had responded. The SARB asked me to get information from the very persons the ATM claims were its correct interlocutors – the manager of the farm and its relevant employees. The ATM's characterisation of and reliance on this letter is misinformed and misplaced.

39.5. Charge 1 is based on an error of law. The ATM seems to labour under the impression that I am forbidden from having any financial or business interests, or even investing in such interests. No such blanket prohibition exists.

39.6. Although it was not included in this charge, it bears mentioning that my membership of Ntaba Nyoni does not give rise to a conflict of interest between my official responsibilities and private interests. In any event mere statements that such a conflict exists are made without any effort at indicating how I am allegedly conflicted.

39.7. The EFF asserts that I failed to declare the foreign currency received from Mr Hazim and then stolen from my home. This is not included in any of the charges that I face. For completeness however I am cooperating, as indicated above, with the inquiries by the SARB on this matter.

39.8. Allegations are made that I have not met my tax obligations.²⁴ Ntaba Nyoni is a tax registered and compliant entity and to my knowledge is not under investigation by the South African Revenue Service in respect of this matter.

CHARGE 2

The Allegation

40. In terms of ‘charge 2’, it is alleged that I am guilty of a serious violation of the law in that I failed to abide by the duty provided for in section 34(1) of the Prevention and Combating of Corrupt Activities Act 12 of 2004, read with the South African Police Service Amendment Act 10 of 2012. This duty obliged me to report the housebreaking and theft at my property to a senior police official in the Directorate for Priority Crime Investigation. It is further alleged that my reporting this incident to General Rhooode of the Presidential Protection “Unit” was allegedly not in compliance with the relevant section of the Act, and was “irregular and unlawful”, proof being the lack of a case number in this matter. The basis for this allegation is the content of a tweet by my office published on 2 June 2022.

Applicable law

41. In terms of the **Preventing and Combating Corrupt Activities Act 12 of 2004** (“*the PRECCA*”), “*a person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed ... the offence of theft, ... involving an amount of R100,000 or more, must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation referred to in section 17C of the South African Police Service*”

²⁴ IP16 at para 1.1.4, p 421

Act 68 of 1995” (underlining added).²⁵ Failure to abide by this duty is an offence.²⁶ Upon receipt of such a report, it is incumbent upon the relevant police official to take it down and provide an acknowledgement of receipt of such report.²⁷ For the purposes of the relevant section of the PRECCA, persons holding a position of authority are listed as including directors general, heads of national or provincial departments, public officers and the senior management service, a member of a close corporation and executive managers of banks, among others.²⁸ It has been accepted however that this obligation also falls on members of the Executive.²⁹

Response to the charge

42. On the allegations contained in charge 2:

42.1. The PRECCA places an obligation on persons in positions of authority who know or ought reasonably to have known or suspected that any other person has committed an offence (including the offence of theft involving an amount of R100,000 or more), to report such knowledge or suspicion.

42.2. As previously stated, I have no personal knowledge regarding the theft itself. Similarly, I have no knowledge or suspicion, and cannot reasonably be expected to have knowledge, of the perpetrators. Therefore, I submit that there was no duty on me to report the theft in terms of section 34 of the PRECCA.

42.3. The objective of PRECCA is to address corruption and hold those responsible for corruption accountable. That is why the DPCI is the body to whom a report of corrupt activities must be made, in terms of section 34 of PRECCA. It could not have been intended that a dedicated corruption fighting unit such as the DPCI should investigate every and any theft involving an amount of R100 000 or more.

²⁵ Section 34(1) of the PRECCA

²⁶ Section 34(2) of the PRECCA

²⁷ Section 34(3)(a) of the PRECCA

²⁸ Section 34(4) of the PRECCA

²⁹ See in this regard *President of the Republic of South Africa v Office of the Protector and Others* 2018 (2) SA 100(GP); 2018 (5) BCLR 609 (GP) at paras 119 and 120

42.4. It could never have been the intention of the PRECCA to specifically place a duty on ‘a person of authority’ to report an offence committed by a person not falling within the sphere of relationship relevant to the person’s position of authority. The duty placed on a person of authority to report an offence in terms of the PRECCA must be interpreted to arise only in respect of a person who is known, or ought reasonably to have been known, or suspected to have committed an offence by virtue of that person’s position of authority. This is so particularly because a failure to report such knowledge or suspicion constitutes an offence. Respectfully, the idea that the failure by a ‘person of authority’ to report an offence committed by someone unknown to them and not falling within the sphere of relationship relevant to that person’s position of authority would constitute an offence in terms of the PRECCA is incorrect.

42.5. The format of the form³⁰ to be used by the responsible DPCI official when taking down a report in terms of section 34 of the PRECCA requires extensive details from the person holding a position of authority as contemplated in section 34(4) of the PRECCA. Part 3 of the form requests the *“Full Names, Identity number of Date of Birth and contact details of person(s) allegedly involved in offence(s), as well as his/her/their position held and the role that he/she/they played in the commission of such offence(s).”* This information would only be available to a person in a position of authority in respect of a person who is alleged to have committed the offence and who is known to them.

42.6. I am advised that this interpretation of the PRECCA gives effect to the purpose for which the legislation was enacted.

42.7. The PRECCA further makes it clear that taking steps to ensure the matter is reported to the correct official of the DPCI is sufficient. I reported the housebreaking and theft of money from my residence at the farm to a senior police official, General Rhooode.

³⁰ Annexure A to GN 1028 of 7 December 2012: Directions by the national head of the directorate for priority crime investigation (DPCI) within the South African Police Service in terms of [section 34 \(3\) \(a\)](#) of the Act (*Government Gazette* No. 35949)

- 42.8. My reporting this theft to the head of the Presidential Protection Service substantially complies with the duty to report such an event or cause such an event to be reported to the appropriate DPCI police official. I was not in control of the process followed after I reported the matter to Major-General Rhooode. I can only assume that it was conducted in accordance with the rules and regulations of the SAPS governing such matters
- 42.9. The housebreaking and theft made plain the ongoing security risks to which I am exposed. As the person primarily responsible for my safety and security as head of state, I needed to bring the housebreaking and theft to Major-General Rhooode's attention to allow him to take the necessary steps to ascertain the extent of such a risk as housebreaking, within the confines of approved SAPS processes. My statement to the National Assembly in response to a question by the EFF³¹ confirms this. In this respect, I refer to relevant sections of the unrevised Hansard, a copy of which is annexed hereto marked "**MCR 11**", and specifically to its pages 160 and 161.³²
- 42.10. The lack of a case number is not a matter over which I have any control.
- 42.11. Nothing in the tweet referred to is evidence of anything other than that I stood ready to cooperate with any law enforcement investigation of these matters. I was confirming my commitment to my obligations in terms of relevant legislation – the opposite of the allegations made.
- 42.12. The 'facts' listed by the EFF³³ are disputed in their entirety. There is no evidence whatsoever to contradict the evidence of Mr Nldovu and Mr Hazim regarding the amount stolen on the farm, or the evidence of General Rhooode under oath of what he did, and did not do. I have no knowledge of the audio clip the EFF

³¹ IP12 at para 23, p 352, first paragraph

³² MCR 11 p 143 to p 161

³³ IP12 at para 7

has provided as evidence of this.³⁴ I do not recognise the voices nor is the source or authenticity of this audio clip verified.

CHARGE 3

The Allegation

43. In terms of what is labelled '**charge 3**', it is alleged that I am guilty of serious misconduct, *"by violating section 96(2)(b) of the Constitution read with section 83(b) of the Constitution"* in that I had a member of the Presidential Protection 'Unit' (General Rhooode) deal with security issues on my private farm. Since, it is alleged, my *"life and limb [were] not threatened by the burglary, ... General Rhooode had no business to be investigating anything at the Phala Phala Farm, as unlawful directed"* by myself. The basis for this allegation is also the content of the tweet by my office published on 2 June 2022, referred to in the paragraph above.

Applicable law

44. The **Presidential Handbook** outlines the services, support and benefits afforded to the President and Deputy President, their spouses, and former Presidents and Deputy Presidents and their spouses.

45. Its latest version is dated November 2015.³⁵ It contains guidelines on support provided to the President and Deputy President. A copy of the Handbook is annexed hereto marked **"MCR 12"**.³⁶

46. The Presidential Handbook provides that the *"South African Police Service (SAPS) takes full responsibility for the protection and security of the President and Deputy President at*

³⁴ IPV10 and IP12 at para 11, p 347

³⁵ It is available online at <https://www.thepresidency.gov.za/sites/default/files/Presidential%20Handbook.pdf>.

³⁶ Presidential Handbook clause 3.12

*all times during their term of office.*³⁷ This includes “*static protection at all official and private residences*”.³⁸

47. Costs of the provision of physical security measures are carried by the Department of Public Works and Infrastructure.³⁹ Costs related to relevant personnel are carried by the National Security Services, which includes the South African Police Service, the State Security Agency and the South African National Defence Force.⁴⁰

48. The **Presidential Protection Service** (“*the PPS*”) is an entity of the South African Police Service and falls under the command and control of its National Commissioner. Its mandate includes my protection, that of my immediate family, the protection of the Deputy President and his family, the protection of all former Presidents and Deputy Presidents – both in and outside South Africa – and the protection of visiting heads of state and government when they are in South Africa. This is reflected in the South African Police Service annual reports.⁴¹ In the most recent annual report of the South African Police Service, static protection and security breaches at what is termed ‘VIP residences’ are listed as performance indicators of the PPS.⁴²

Facts relevant to the charge

49. When I was appointed Deputy President of the Republic, I made the decision not to have dedicated security, provided to me by the PPS, assigned to my house at Phala Phala, notwithstanding that it falls within the definition of “*Private residence*” as defined in the Presidential Handbook. This was because it is not my primary residence and I felt it would be a waste of state resources to do so. General Rhoope confirms this in his statement annexed hereto marked “**MCR 13**”, at paragraph 7. Since the housebreaking and theft, however, and as late as 2020, physical security is provided at Phala Phala. Security

³⁷ Presidential Handbook clause 12.1

³⁸ Presidential Handbook clause 12.3.11

³⁹ Presidential Handbook clause 13.1

⁴⁰ Presidential Handbook clause 13.3 read with the Definitions in clause 1

⁴¹ See SAPS 2020/2021 Annual report page 256, available online at https://www.saps.gov.za/about/stratframework/annual_report/2020_2021/annual_report_2020_2021.pdf

⁴² SAPS 2020/2021 Annual report page 253

Personnel are posted there. Their accommodation at Phala Phala was built at my personal expense. No physical security measures, which would be carried by the Department of Public Works and Infrastructure, have ever been installed at Phala Phala.

Response to the charge

50. It is relevant to the allegations made against me in this charge that I also indicate my commitment to ensuring efficient, cost-effective and economic use of public funds.

51. Where my personal security is concerned, my inclination has always been towards limiting any excessive state expenditure. I realised, after the housebreaking and theft at my private residence at Phala Phala, that I may have been overly conservative in this regard. The risk to my and my family's safety, from anyone gaining unlawful access to my private space, was made plain to me.

52. On the allegations contained in charge 3:

52.1. This charge seems to contain 3 separate allegations:

52.1.1. That I exposed myself to a situation involving a risk of a conflict between my official responsibilities and private interests in having the PPS tasked with ensuring security at my farm;

52.1.2. That I exposed myself to a situation involving a risk of a conflict between my official responsibilities and private interests in having the head of the PPS attend to a burglary, which presented no threat to my "life and limb"; and

52.1.3. That I exposed myself to a situation involving a risk of a conflict between my official responsibilities and private interests in giving an unlawful direction to the head of the PPS.

52.2. The relevant prescripts govern the mandate of the PPS and this includes security of private residences of a person in my position. There can be no violation of the Constitution in the PPS fulfilling its assigned mandate. In any event, it is important to state that the PPS was not providing such security at the farm at the time of the housebreaking and theft.

52.3. I am perplexed by the assertion made by the ATM that unknown persons gaining unlawful access to my private space cannot be a potential threat to my “life and limb”. It is suggested that a housebreaking at my private residence is not a threat to my life. The fact that unknown persons may get inside my private residence is inevitably an indication of a possible threat to me personally. Breaking into my house surely gives them an opportunity to do all manner of things some of which can be dangerous, such as planting devices of whatever nature that may pose a threat to my safety and security on my return to the residence.

52.4. Security of my private residence is intrinsically linked to my position as President of the Republic and any security breach which I experience should properly be reported to Major-General Rhooode. The reporting of the housebreaking and theft to Major-General Rhooode was to ensure that he could properly fulfil his functions and was not in any way an instruction to investigate the matter beyond what was required for him to make a determination with regard to my safety and security and that of my private residence and my family.

52.5. As the ATM itself highlights,⁴³ the housebreaking and theft at my property is not reflected in the SAPS annual reports⁴⁴ because, at the time of the theft, my residence at Phala Phala was not under the protection of the PPS. This was not for nefarious purposes, as the ATM claims.⁴⁵ From the time I was appointed Deputy President I felt it was necessary to limit state expenditure at a private residence I rarely spent time in.

52.6. I have no knowledge of any ‘illegal team’ as claimed by the EFF⁴⁶ conducting illegal investigations. The only information I became aware of in the last 2 months can be found in paragraphs 11 and 12 of **MCR 13** from General Rhooode.

⁴³ IP20, para 69, p 1354

⁴⁴ IP16, para 3.3, p 425

⁴⁵ IP20, para 70, p 1354

⁴⁶ IP12 at para 7.3

52.6.1. General Rhooode attests in his affidavit⁴⁷ to the preliminary questioning of my staff that he conducted, in order to address the extent of the security breach and the threat to my property and that of my family.

52.6.2. No money was paid by me or anyone employed by Ntaba Nyoni or by General Rhooode to anyone in relation to the theft, let alone to conceal the crime as alleged.⁴⁸

52.6.3. The affected domestic worker has not been reinstated to Ntaba Nyoni's employ as alleged by the EFF.⁴⁹ She was in any event a temporary worker at the time of the theft and not in permanent employment.

52.6.4. In relation to the allegations of the detention and torture of people at Phala Phala, I have no knowledge whatsoever of such activities. Major-General Rhooode has confirmed that the allegations of detention and torture of people at Phala Phala, are untrue.

53. As regards the findings of the **Western Cape High Court** in their **judgment** of 9 September 2022, while it is unclear to me how these relate to 'charge 3' as asserted by the ATM, I wish to point out the following:

53.1. The ATM claims that this charge is supported by a judgment of the Western Cape High Court delivered on 9 September 2022.

53.2. It states that the court found that I "*acted in bad faith and was conflicted*" in my decision to suspend Adv Mkhwebane as Public Protector. It quotes paragraph 157 of the judgment.

53.3. The ATM claims that this "*constitutes irrefutable evidence*" that I exposed myself to the risk of a conflict between my official duties and my private interests.

⁴⁷ See IP19, paras 21 to 27, pp 1325 and 1326; and MCR 12

⁴⁸ IP12 at para 7.5, p 346

⁴⁹ IP12 at para 7.4, p346

53.4. The judgment is subject to confirmation by the Constitutional Court. The Constitutional Court is meant to hear argument in this matter later this month.

53.5. The very same bench of the Western Cape High Court found, in a judgment of 11 October 2022 annexed marked “**MCR 14**”, in an application in terms of section 18(1) and 18(3) of the Superior Courts Act 10 of 2013 by the suspended Public Protector, stated that –

“... the Constitutional Court makes the final decision whether the conduct of the President is unconstitutional. No order to this effect by any other court has any force until the Constitutional Court has pronounced on the issue.”⁵⁰

...

The judgment cannot be suspended. Nor can it be operationalized or executed simply because there is nothing that can operate or upon which execution can be levied. The relevant orders have not been confirmed and, irrespective of the wording used, there is nothing that can be suspended. The judgment has no independent existence but is conditional upon confirmation by the Constitutional Court.”⁵¹

54. I understand the reference made to the Western Cape High Court judgment of 9 September 2022 to be an unauthorised attempt to add charges to those approved by the Speaker and referred to the Panel. It ought to be deemed irrelevant. In any case, its contents have no bearing on the provision of security by the PPS as a result of the security breach at my private residence.

55. To the extent that it is alleged that during argument, in the matter referred to above that was heard in the **Western Cape High Court**, my counsel conceded that Major-General Rhooe investigated a matter pertaining to my private affairs, this is denied.

⁵⁰ *The Public Protector of South Africa v Speaker of the National Assembly and others, Case no 8500/2022, handed down on 11 October 2022, at para 55*

⁵¹ *Ibid.* para 75

CHARGE 4

The Allegation

56. In terms of what is labelled '**charge 4**', it is alleged that I am guilty of serious misconduct "*by violation of section 96(2)(b) read with section 83(b) of the Constitution*" in that I allegedly gave Major - General Rhooode an unlawful instruction to investigate the burglary on my private farm, and that this "*shows dishonesty and constitutes misconduct and unlawfulness*" on my part. The basis for this allegation is also the content of the tweet by my office published on 2 June 2022, referred to in the above two paragraphs.

Applicable law

57. Section 96(2)(b) of the Constitution stipulates that I may not act in any way that is inconsistent with my office, or expose myself to any situation involving the risk of a conflict between my official responsibilities and private interests.

58. Section 83(b) enjoins me to uphold, defend and respect the Constitution as the supreme law of the Republic.

Facts relevant to the charge

59. As detailed in paragraph 16 above, I reported a security breach to Major-General Rhooode. I informed Major-General Rhooode that there was a theft at my residence at Phala Phala. I requested Major-General Rhooode to attend to this incident insofar as it was within his roles and responsibilities to do so.

60. Major-General Rhooode subsequently told me that he had been instructed by the then Deputy National Commissioner of Police, Lt. Gen. Mfazi, to conduct a preliminary enquiry with a focus on my safety and threats to me, and thereafter to report back to him whereafter he would take over the case. General Rhooode speaks to this in his statement, marked "**MCR 13**".

Response to the charge

61. On the allegations contained in charge 4:

- 61.1. I gave no unlawful instruction to General Rhooode.
- 61.2. Contrary to the ATM's assertions that General Rhooode contradicted my statements in the National Assembly,⁵² the quote from his affidavit relates to the first instance I informed him of the break-in. He goes on to speak to my alerting him of the theft at a later date.⁵³
- 61.3. My instruction to the person responsible for my and my family's security was to look into a housebreaking, and determine the risk to our safety and security. This can hardly constitute "*misconduct and unlawfulness*" as alleged. As such, my instruction to General Rhooode falls squarely within his responsibilities and the mandate of the PPS.
- 61.4. It is clear that, by reporting the security breach and the theft to Major-General Rhooode, who holds the rank of major-general in SAPS, and by specifically requesting that Major-General Rhooode should attend to the matter, I had no intention of concealing the crime from the SAPS, or at all.
62. Furthermore, I did not 'hunt' for the perpetrators of the theft, as alleged,⁵⁴ nor did I give any instructions for this to take place.
63. Regarding the plethora of videos and photographs that are annexed to the EFF and ATM's submissions, and which are meant to relate to the theft on the farm:
- 63.1. Save for 2 of these, as will appear below, I have no knowledge of who took these, when they were taken, and in many cases, who the people are in the photos.
- 63.2. I did not instruct General Rhooode to recoup the lost money. I know nothing of any attempts to do so, by whom these might have been made or how they may have gone about it. I therefore have no knowledge of the arrests depicted.

⁵² IP16, para 3.2, p 425

⁵³ IP19, paras 16 to 20, pp 1323 and 1324

⁵⁴ IP12 at para 25, p 352

63.3. I can confirm that IP23 is an accurate depiction of the sign at the entrance of the farm.

63.4. I can also confirm the contents of video 1 as depicting my private residence on the farm and being taken from one of my security cameras.

63.5. General Rhooide can confirm that the photos contained in IP26 were taken when he was at the farm asking questions of employees present. I refer to his statement marked **MCR 13**.

63.6. Videos 2, 3, 4 and 5 are not depictions of my private residence or taken anywhere on Phala Phala, and videos 6 and 7 are evidently dramatized compilations of some of the other videos, including in video 6 portions of video 1, the only video that is, in fact, taken at Phala Phala.

63.7. The so-called “topographical image fence” in IP22 is not a map of Phala Phala Wildlife.

CONCLUSION

64. Based on the above, I respectfully submit that all of the ‘charges’ I have been called to answer are without any merit. In addition to the ‘charges’, several baseless allegations are made against me in the documents handed over to the Panel as set out in the bundle provided to me. Those which do not relate to the ‘charges’ or which on the face of it I deem not to have a bearing on the charges, I have not addressed in this response. The focus of this response has been to respond to the ‘charges’.

65. The complaints of the ATM, the UDM and the EFF are based on hearsay allegations. With respect, no evidence, let alone sufficient evidence, has been presented to prove that I committed any violation, let alone a serious violation of the Constitution or law, or serious misconduct as set out in the Constitution.

66. I ask that the Panel conclude that this matter ought not to be taken any further.

A handwritten signature in black ink, consisting of a large, stylized 'C' followed by a long, sweeping horizontal stroke that extends to the right.

Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa



This is to certify that

I Sylvester Ndlovu

Received a sum of \$ 580 000 US Dollars from Mr Hazim

on 25 December 2019 at Phala Phala Wildlife for the payment of 20 Buffaloes from

Camp 6.



Signed

Date: 25 December 2019

STATEMENT TO THE INDEPENDENT PANEL APPOINTED IN TERMS OF RULE 129D OF THE
NATIONAL ASSEMBLY RULES

I, the undersigned

BEJANI CHAUKE

do hereby state under oath that:

1. I am an adult male currently employed as Special Adviser to President Matamela Cyril Ramaphosa ("*the President*"), in the Presidency.

2. The facts to which I depose are within my personal knowledge, except where it is apparent from the context that they are not.

3. I have been shown the letter dated 23 June 2022 by Mr Arthur Fraser contained in the Independent Panel's bundle as IP13. I deny every allegation contained therein that relates to me being involved in illegal activities. Specifically –
 - 3.1. I have never brought foreign currency into South Africa illegally, for myself or for the President. I travel internationally as part of my work for the President, as his special envoy. Since my appointment as Special Adviser to the President on 1 June 2019 (for a period linked to the term of the President), my role is focused on political matters and on numerous occasions, the President has asked me to be his envoy to meet the heads of state or their representatives of various countries to discuss issues of national security or matters of a political nature. Since my appointment into the office, in addition to those countries that I have visited with the President and other

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countries I have visited on invitation from their heads of state, I have travelled to Chad, Namibia, Saudi Arabia, the Democratic Republic of Congo, the Central African Republic, Equatorial Guinea, Russia, Guinea Conakry, Togo, Kenya and Mozambique as the President's envoy;

3.2. I never concealed any amount of cash of any denomination in any couches or other furniture in my home or anywhere else, or participated in the transfer of furniture to the President's private residence;

3.3. The Mercedes Benz that Mr Fraser refers to in his statement is owned by one of my businesses, which is a restaurant and entertainment business in Limpopo;

3.4. I am the youngest of my siblings so reference to a younger sister of mine is pure fabrication;

3.5. I do own a home a Hyde Park but I never instructed a person named Themba Rikhotso to perform the renovations that I had undertaken;

3.6. I do not know Mr Zahir Vallie;


3.7. As a public servant I welcome a public audit being conducted into my affairs;

3.8. While I have met some of the persons referred to in paragraph 5.18 of Mr Fraser's letter, I deny the allegations relating to my participating in any investigation of the theft that took place at Phala Phala farm in February 2020;

3.9. I paid no money to anyone in relation to such an investigation.

Handwritten signature in black ink, appearing to be 'BZ' followed by a stylized flourish.

4. I trust the Panel will take the above into account in its consideration of the motion in terms of section 89 of the Constitution that the President is called on to answer.



BEJANI CHAUKE

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at JOHANNESBURG on this 4TH day of November 2022, and that it is, to the best of the deponent's knowledge, both true and correct and that he has no objection to taking the prescribed oath, and that the Regulations in Government Notice R.1258 of 21 July 1972 having been complied with.



COMMISSIONER OF OATHS

MUNIER ISMAIL
BA LLB (WITS)
Commissioner of Oaths Ex Officio
Practising Attorney RSA
3rd Floor, 1 Bompas Road
Dunkeld West, Johannesburg



**MEDIA STATEMENT BY SHANDUKA EXECUTIVE CHAIRMAN
19 DECEMBER 2012**

Shanduka Executive Chairman Cyril Ramaphosa said today:

“As a consequence of my election to the position of ANC Deputy President at the ANC’s 53rd National Conference in Mangaung, I have initiated a review of my interests in business.

“This is necessary to address any potential conflicts of interest, and to ensure that I can adequately perform the responsibilities of this position.

“In consultation with the ANC national officials, I am undertaking a process of engagement with several stakeholders on the implications of my election to this post.

“This will include a review of existing positions, responsibilities and obligations. It is intended that this process result in an arrangement that removes the possibility of any conflict of interest.

“I will make further public statements at the appropriate time.”

ENDS

For more information:

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082 572 7304**

**Thabo Leshilo
Fleishman-Hillard
082 466 8140
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A handwritten signature in black ink, appearing to be Cyril Ramaphosa's signature, with the initials "C.R." written below it.

Shanduka and Pembani combine to create a new black-controlled natural resources and industrial group

26 May 2014

Pembani and the majority shareholders in Shanduka, comprising Mr Cyril Ramaphosa's family trust, Jadeite Limited and Standard Bank, amongst others, announced today that they have entered into an agreement to combine their interests and create a new black-controlled natural resources and industrial holding group ("Group") (the "Proposed Transaction").

The Proposed Transaction will enable Mr Cyril Ramaphosa to exit his business interest in Shanduka to focus on his responsibilities in government, and ensure that his family's business interests do not conflict with his functions in government or fall within the ambit of any state-regulated sectors.

The Group will have a gross asset value in excess of R13.5 billion, which will give it significant scale with liquidity to pursue value creating opportunities in sub-Saharan Africa. The Group will be managed by a strong management team and board, chaired by Mr Phuthuma Nhleko, co-founder and Chairman of Pembani.

Mr Ramaphosa commented: *"This transaction is the culmination of a review of my business interests that I initiated soon after my election as ANC Deputy President in December 2012. Following a process of engagement with various stakeholders, we have arrived at an agreement that addresses the strategic objectives of all parties, bringing together two excellent organisations to create a new large black-controlled natural resources and industrial holding group. It enables me to leave Shanduka and eliminate any conflicts of interest confident that its founding vision of value creation, empowerment and transformation will continue through the new entity."*

Mr Nhleko commented: *"The Proposed Transaction creates an African champion. The combined entity will benefit from a strong capital base and it will continue to build on the individual platforms created by Shanduka and Pembani in the past. The shared long term vision and investment sector focus of the two entities makes the fit a very logical one."*

The Proposed Transaction is subject to the conclusion of a number of additional agreements and the fulfilment of conditions precedent, including the necessary

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regulatory approvals and consents of various third parties. It is anticipated that the Proposed Transaction will be implemented and completed before the end of 2014.

Pembani is an investment holding company that is co-founded and controlled by Mr Nhleko, currently Chairman and previously CEO of MTN Group. Pembani holds numerous investments in resources and industrial companies such as Engen, BHP Billiton Energy Coal South Africa, Exxaro and AfriSam.

Shanduka was founded in 2001 as a black-owned investment holding company. It is invested in a diverse portfolio of listed and unlisted companies, with key holdings in the resources, food and beverage industries. Shanduka is also invested in the financial services, energy, telecommunications, property and industrial sectors. The group has investments in South Africa, Mozambique, Mauritius, Ghana and Nigeria.

Jadeite Limited is a wholly-owned subsidiary of CIC International, which is controlled by China Investment Corporation.

The Standard Bank of South Africa Limited is acting as investment bank and facilitator to the Proposed Transaction.

Rand Merchant Bank, a division of FirstRand Bank Limited, and Werksmans Attorneys are acting as advisers to Pembani.

Bowman Gilfillan is acting as adviser to Shanduka's majority shareholders.

Standard Chartered Bank (Hong Kong) Limited and Baker & McKenzie are acting as advisers to Jadeite Limited.

A handwritten signature in black ink, consisting of a stylized, cursive name. To the right of the signature are the initials 'JA'.

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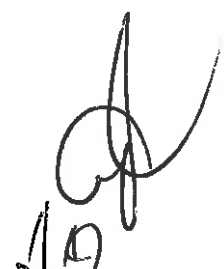
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THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA (L)


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Statement by Deputy President Ramaphosa on management of his business interest‏

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26 May 2014 - 12:00am

I Deputy President Cyril Ramaphosa, on Monday announced a transaction that will result in my divestment from Shanduka Group.

Shanduka's majority shareholders have entered into an agreement that will, among other things, result in my complete divestment from the Group. In the interim, my family's interests will be held in blind trusts.

Over the course of the last 17 months, I have stepped down from the boards of several companies on which I served and resigned as Shanduka Group executive chairman.

This is the culmination of a review of my business interests that I initiated soon after my election as ANC Deputy President in December 2012. It was intended to remove the potential for any conflict of interest and enable me to effectively perform the functions of my position.

In the course of the next few weeks, I will take any further practical steps necessary to ensure that I comply with requirements of the Executive Ethics Code and uphold the integrity of my office.

I will continue to be involved in the Shanduka Foundation, a non-profit organisation that works in the areas of school development, skills development and enterprise development.

Enquiries: Thabo Masebe on 082 410 8087

Issued by: The Presidency
Pretoria

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DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag 31000, Pretoria 0001

24 July 2014

Mr Jacob Zuma
President: Republic of South Africa
The Presidency
Private Bag X 1000
CAPE TOWN
0001

Dear Mr President,

As you may be aware, following my appointment to the position of Deputy President, I initiated a process to dispose of those business interests that may give rise to a conflict of interest with respect to the performance of my functions.

That process is currently underway and is expected to be completed shortly.

I therefore request an extension of the period in which I am required to dispose of such interests or place the administration of the interests under the control of an independent and professional person or agency be granted in terms of rule 3.5 of the Executive Ethics Code, 2000.

I anticipate that a period of four months from the date of 25 July 2014 would be sufficient.

In the interim, I hereby make a provisional declaration of my interests.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', written over a horizontal line.

MR CYRIL RAMAPHOSA

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"MCR 7"

81/172488

(Z 19E)



PRESIDENT'S ACT NO. 218

In terms of Paragraph 3.6 of the Executive Ethics code, published under Proclamation No. R41 in the Government Gazette No. 21399 of 28 July 2000, I hereby determine a Four (4) months period, with effect from 25 July 2014, for Mr C.M Ramaphosa to dispose of any financial or business interests that may give rise to a conflict of interest when performing his functions as a Deputy President of the Republic of South Africa or place the administration of such interests under the control of an independent and professional person or agency.

Given under my Hand at PRETORIA on this 15th day of AUGUST, Two thousand and Fourteen.

PRESIDENT



DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

25 November 2014

**Mr Jacob Zuma
President: Republic of South Africa
The Presidency**

Dear Mr President,

My correspondence of 24 July 2014, in which I requested an extension of the period in which I am required to dispose of business interests that may give rise to a conflict of interest in terms of rule 3.6 of the Executive Ethics Code, 2000, refers.

Please be advised that I have today informed the Secretary of Cabinet that I have consequently disposed of my shareholding in Shanduka Group, an investment holding company with assets in a number of 'regulated' industries. Certain elements of the disposal are dependent on regulatory approval. I have taken all the steps required for this to materialise and have every faith the relevant transactions will be approved.

Although not a requirement of the Executive Ethics Code, I have decided to place my remaining business interests in a trust managed by independent and professional persons. Guided by the Executive Ethics Code, I will not give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions to sell such interest.

I will update my disclosure of financial interests with the Secretary of Cabinet accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to be Cyril Ramaphosa's signature, written over a horizontal line.

CYRIL M RAMAPHOSA

A handwritten signature in black ink, appearing to be Jacob Zuma's signature, written in the bottom right corner of the page.



DEPUTY PRESIDENT: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

25 November 2014

Dr Cassius Lubisi
Secretary to Cabinet
The Presidency

Dear Dr Lubisi,

As you may be aware, on 24 July 2014 I wrote to the President requesting an extension of the period in which I am required to dispose of business interests that may give rise to a conflict of interest in terms of rule 3.6 of the Executive Ethics Code, 2000.

The President granted me an extension of four months from the date of 25 July 2014.

Please be advised that I have consequently disposed of my shareholding in Shanduka Group, an investment holding company with assets in a number of 'regulated' industries. These interests could have given rise to a conflict of interest.

Certain elements of the disposal are dependent on regulatory approval.

Although not a requirement of the Executive Ethics Code, I have decided to place my remaining business interests, all in 'unregulated' sectors, in a trust managed by independent and professional persons. Guided by the Executive Ethics Code, I will not give any instructions with respect to the management of these interests for the duration of my term in office, save for the purposes of complying with a legal requirement or to give instructions to sell such interest.

I will update my disclosure of financial interests accordingly.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', written over a circular stamp.

CYRIL M RAMAPHOSA

A handwritten signature in black ink, appearing to be 'C. Ramaphosa', written over a circular stamp.

MEDIA RELEASE**RAMAPHOSA DIVESTS FROM SHANDUKA**

26 November 2014. Shanduka Group today announced a restructuring of the group that sees the complete divestment of its founder and former Chairman, Deputy President Cyril Ramaphosa. This marks the completion of a process that Mr Ramaphosa initiated soon after his appointment as Deputy President to remove the potential for any conflict of interest.

In effecting Mr Ramaphosa's exit, Shanduka has disposed of certain assets in 'non-regulated' sectors to Mr Ramaphosa. These include properties and McDonald's South Africa. Shanduka Group will retain the bulk of its assets, predominantly in resources and energy.

Shanduka's new shareholding comprises Mabindu Trust (49.5%), a non-profit entity set up in 2002 and financed by Shanduka to promote enterprise development, the China Investment Corporation (33.6%) and Standard Bank (16.9%).

A proposed transaction announced earlier this year that would have seen a merger of the assets of Shanduka and Pembani Group was not successful, but discussions between CIC, Standard Bank, Pembani and other interested parties are ongoing.

Shanduka Group CEO Phuti Mahanyele said: "Shanduka is a successful and established investment holding company. Since our formation 13 years ago, we have built up a capable and experienced leadership team and skilled professionals. We will continue to pursue our vision of a black-owned and -managed company creating value for all our stakeholders."

#ENDS#

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About Shanduka Group

Shanduka Group is a black-owned and managed investment holding company established in 2001.
For more information on Shanduka, please visit our website at: www.shanduka.co.za

About Mabindu Trust

Mabindu Trust is a non-profit entity established in 2002 to hold a stake of 2.5% of the Shanduka Group. It was established to support small business development. In 2010 the trust's beneficiaries were extended to include education initiatives. Shanduka Black Umbrellas and Shanduka Black Pages are supported under Mabindu Trust. Mabindu Trust now owns 49.5% of the Shanduka Group.



TAKE 1660 - STARTS AT 17:08

QUESTION 18 - THE PRESIDENT OF THE REPUBLIC

SUPPLEMENTARY QUESTIONS, IN THE NAMES OF Mr V ZUNGULA, Ms TM JOEMAT-PETTERSSON, THE LEADER OF THE OPPOSITION AND Mr JS MALEMA, STANDING OVER FROM TUESDAY, 30 AUGUST 2022, ON QUESTION 11 TO BE DEALT WITH IN TERMS OF THE RESOLUTION OF THE HOUSE AS AGREED TO ON TUESDAY, 27 SEPTEMBER 2022

Question 11:

The SPEAKER: Thank you, hon President. Hon members, that brings us to the end of the questions which were scheduled for 29 September. Hon members, we now proceed to Question 11 and I would like to make the following statement.

Hon members, while it is the responsibility of the Speaker or any presiding officer to regulate proceedings in the House, it is not for the Speaker to prescribe how the President should respond to a question or make a political judgement on how a question has been responded to in the House.

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The issue of responses to outstanding supplementary questions has been widely canvassed in both the Chief Whips Forum and the National Assembly Programme Committee. Earlier this week this House agreed to a motion to schedule supplementary questions in respect of Question 11 of 30 August. The President responded to the initial question posed by hon Zungula on 30 August. Should a member not be satisfied with that response, there is now an opportunity to pose supplementary questions in the agreed order, and notwithstanding this, there are also further opportunities provided by the process of posing written questions.

Hon members, having clarified the matter, I will proceed to recognise members to ask supplementary questions as agreed by the programming structures and the House. Now, hon members, I have the following members and I will first start with hon Zungula who will raise the first supplementary question.

Mr V ZUNGULA: Speaker, firstly I need to correct you in your attempt to provide some misguided clarity. In the last session on 30 August when the President was asked this question, he responded and stated that he has been advised not to answer.

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Now, you can't come here, Speaker, and make it as if we were prescribing or we wanted you to prescribe how the President answers whereas, in his own words, he stated that he has been advised not to answer. That is one thing I wanted to clarify, but let me proceed with the supplementary question.

Mr President, when you joined government in 2014 you stated that you will hand over your business interests to a blind trust where you will not have any sight of your investments and the operations of the business interests. If this is the case, why were you the go-to person to take action in the Phala-Phala case by assigning the head of your protection unit to deal with the matter? Whoever the manager was when the crime was committed in Phala-Phala would have been the relevant person to take action. However, in this case it was yourself. It is you who confirmed to the House that you reported the case to the head of your protection unit.

The second question is why you have such intricate details ...

[Interjections.]

The SPEAKER: No, hon member. Hon member ... [Interjections.]

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IsiXhosa:

... haayi kaloku yimani.

English:

Order! Order! You may not ask more than one question as a supplementary question.

Mr V ZUNGULA: Speaker, it is one question. It is one question, Speaker.

The SPEAKER: Hon members ... [Interjections.]

Mr V ZUNGULA: Speaker?

The SPEAKER: Yes?

Mr V ZUNGULA: It is one question.

The SPEAKER: Okay, continue.

Mr V ZUNGULA: Thank you. Mr President, why do you have such intricate details such as money lost and the clients yet your business interests are supposedly held in a blind trust where

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you have no sight? Are you currently involved in any businesses wherein you buy and sell merchandise while at the same time you are the President of the country? Thank you.

The SPEAKER: Thank you, hon member. Yes, hon Dlakude?

The DEPUTY CHIEF WHIP OF THE MAJORITY PARTY: Thank you very much, hon Speaker. I think we should not move away from our Rules. Our Rules are clear, hon Speaker. A person is allowed to ask only one follow up question and not two. So, we must not set a precedent that we allow people to ask three questions. That is against the Rules, Speaker. Thanks.

The SPEAKER: Thank you, hon Dlakude. Hon Zungula, I am sure you are aware of this in terms of Rule 142. Yes, hon MkhaliPhi?

Ms H O MKHALIPHI: Speaker, it will be fair of you to leave hon Zungula because it is his question. So, just leave him ...

[Interjections.]

The SPEAKER: No, hon MkhaliPhi, is it a point of order?

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Mr H O MKHALIPHI: Yes, Speaker, it is a point of order. I am saying to you leave him to ask the question the way that satisfies him because this is his original question that was postponed because of your intervention. Secondly, the incoming president of South Africa, Julius Malema, is muted. So, can you unmute him Speaker so that he can do his follow up question? Thank you, Speaker.

The SPEAKER: Thank you. You may be seated. The hon the President.

The PRESIDENT OF THE REPUBLIC: Thank you, hon Speaker. The question was why the report was done by myself. Soon after it happened I was informed that theft had been committed and my manager informed me and I immediately informed General Rhooode as we were travelling and in Addis Ababa.

When things such as these happen I am informed like when a car overturns and there is an accident I am informed. Not that I will immediately be able to take somebody to hospital or whatever but I am informed because I am interested party on what happened. So, that is why I was informed and I was then

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able to inform a General of the police service who at the time was traveling with me in Addis Ababa.

With regard to all these interests I have declared, as I have said, my farming activities and my great passion for cattle farming and so on. I have declared the agricultural aspects or activities that I am involved in. That has been declared firstly here in Parliament and thereafter, when I became President, also to the secretary of the Cabinet. In addition, some properties that I personally own have also been disclosed.

I must say that initially the intention was to set up a blind trust, but then I did say that I do not intend to be in any other form of business other than the agricultural sector which I have declared. That is why in the end no such trust was formed because this is the sum total of what I get involved in. Do I sell and buy merchandise? No. Does the entity buy and sell cattle and animals? Yes, that is what it does. Why does it do so? Because they multiply and you either have to cull them or whatever, and that is the situation that we are in. Thank you, hon Speaker.

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The SPEAKER: Thank you, hon President. The second supplementary question will be asked by the hon T M Joemat-Pettersson.

Ms T M JOEMAT-PETTERSSON: Thank you very much, hon President. Hon President, the questions that you are being asked right now are actually a little bit outdated and they are not that important because, respectfully hon President, we welcome your commitment to co-operate with any and all investigations, and this is what you are doing. So, why are we nit-picking on something which you have already agreed to do? It is actually just repeating the very same thing over and over again.

It is important to assert the rule of law, which is what you have done. You have accepted due processes and accountability. This is what a good and true leader ... [Interjections.]

The SPEAKER: Order! Hon members ... Yes, hon member, I am sorry?

Mr B A RADEBE: Hon Speaker, we are allowed to hackle in the House but we cannot drown a speaker on the platform, please.

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The SPEAKER: Thank you. You may proceed hon ...

[Interjections.]

Ms H O MKHALIPHI: Speaker, can you protect us from German cut?

No man.

The SPEAKER: No, hon MkhaliPhi, don't do that please. Please don't do that. Hon President, please take your seat, hon Joemat is still on the floor.

Ms T M JOEMAT-PETTERSSON: Hon President ... [Interjections.]

The SPEAKER: No, hon MkhaliPhi, you are the most senior leader of your party who is here today. You are the Deputy Chief Whip you said a few minutes ago. I am not going to allow you to conduct yourself in that way. I expect ... [Interjections.]
No, you can't be hackling. Yes, you are. You are drowning the speaker, at least if you were not drowning the speaker. Now, please ... [Interjections.]

IsiXhosa:

... khawume kancinci sisi.

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English:

Please, point of order? Yes, what is the point of order?

Ms R N KOMANE: Thank you Speaker. I am raising a point of order on you, Speaker. Can you please be fair and consistent with all members of this House? You cannot treat members of the EFF as if they are step-children in this House. Whenever they raise their hands to raise their issues you suppress them, but whenever members of the ANC are hackling you are ...

[Inaudible.] [Interjections.]

The SPEAKER: Thank you very much ... [Interjections.]

Ms R N KOMANE: ... so, I am calling an order on you, Speaker.

[Interjections.]

The SPEAKER: ... please take a seat. [Interjections.]

An HON MEMBER: Point of order, please. I have been ...

[Interjections.]

The SPEAKER: Hon member, you know ... all of you, please just lower your hands. Lower your hands. Judith, lower your hand.

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Hon Mkhaliphi, please lower your hand! Will you please lower your hands! Lower your hands! Hon members, these supplementary ... [Inaudible.] ... hon Tina, khawume [wait.] I am addressing all of you. I am saying lower your hands. You had 45 minutes and you have already taken 15 minutes on this question. You have exactly 45 minutes on this. Stop wasting time, hon members, please. Thank you. Continue, hon Tina.

Ms T M JOEMAT-PETTERSSON: Hon President, would you update the House on your interactions with various state institutions such as the Public Protector, the South African Reserve Bank and the Directorate of Priority Crimes Investigations without compromising any confidence? Thank you.

The PRESIDENT OF THE REPUBLIC: Thank you, hon Speaker. As I said earlier, there are up to eight institutions that have been processing this matter and conducting thorough going investigations and I have been co-operating. In some instances they have asked questions of clarification which I have provided. I have been saying, to myself, that the process has been very thorough and I am actually impressed with the manner in which questions and supplementary questions have been raised to a point where I cannot fault them. I would not even

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say that there has been any form of bias against me because they have been very tough and thorough. So, my co-operation which, I articulated right at the beginning, has been solid and continues. They have also been interviewing many people around this and I have continued to say that I will co-operate in whatever manner that they deem necessary. So, I have not held back on this and that's what I believe is good for governance and accountability. Thank you, hon Speaker.

The SPEAKER: Thank you, hon President. Hon members, before I proceed to invite the next speaker on the supplementary question, I think this is the third time you have referred to hon Radebe as 'German cut'. Yes, hon members, he has done a German cut but his name is not German cut. Please, hon Radebe. Please, hon member. Please, I am making a plea. Hon members, you have a way of just distracting us from what we are doing. Whether it is German cut or boy cut or whatever but there is a cut done and that is not the name of the hon member ...

[Interjections.]

An HON MEMBER: Order, Speaker. Speaker is out of order.

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The SPEAKER: Hon member, please, let us not keep on referring to things which are not assisting us to move forward. Thank you. The third supplementary question will be asked by the hon the Leader of the Opposition.

The LEADER OF THE OPPOSITION: Thanks very much. Mr President, you actually divulged that you are entitled to private interest and I have seen your register and they have been declared and that goes beyond the question. The real question however is that in terms section 96 of the Constitution it says that you must act in a way and to avoid or expose yourself to any situation involving a risk of a conflict between your official responsibility and your private interest. Very clear about that, you may have private interests but there mustn't be conflict. Mr President, you said you reported the crime to General. The presidential protection unit is provided to you because you are the head of state and the President. It is a privilege you gain from your official title and not your business interests. I would advance Mr President that it is a conflict of interest for you to use General Wally Rhooode to go and recover debt that accrued into your private business interest using state resources. It should have been done through a police station

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for a case to be opened. I will advance Mr President to ask you, do you believe there is a conflict of interest? Thank you.

The PRESIDENT OF THE REPUBLIC: Thank you, hon Speaker. On this matter I honestly do not believe that I have exposed myself to a situation where there is a conflict of interest and to the extent that there could be that type of assertion ...

[Interjections.]

The SPEAKER: Mr President, I am really sorry, will you please raise your voice.

The PRESIDENT OF THE REPUBLIC: Oh, sorry. I am saying that to the extent that there could be that assertion. I know that the matter that you are referring to is being processed within the internal confines of the South African Police Service as to what General Rhoope did and what he did not do. In my own conclusion, there hasn't been a conflict of interest of the nature that you are talking about. That is why I have been saying that this matter does need to be fully ventilated through the various institutions, and once the institutions have ventilated this matter this is the issue that would then

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arise. As I am concerned, no, there has not been a conflict of interest and the matter is currently being looked into in that context by the South African Police Service. Thank you, hon Speaker.

Mr J S MALEMA: Thank you very much, Speaker. Mr President, I just want to ask, which procedure were you following by reporting to the General who is your main protector, because we are all equal before the law? What makes you think that somehow you are so special that you can report crime to some General? Crime gets reported at the charge office. The example you gave of a car that overturns, when a car has overturned they don't call you to call an ambulance, the people who are in that car that has overturned are the ones who call an ambulance. The person who called you to inform you about the crime that took place at Phala-Phala is the one that should have called the police or go to the police station to report the matter. Please accept that you abused your power and you thought there was something special about you, which is why you didn't take the Mma Malema approach who, when her chickens are stolen, goes to the Seshego police station and report the case. Because she is an ordinary person and you see yourself above and that is why you report crime to generals and not to

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the charge office. You abused your power as the President of the Republic and you ought to accept. There is no such a procedure. The person who called you ... you are a law student and people like calling you a lawyer but you are not a lawyer but a graduate of law. You know how crime gets reported. They taught you that at school - Law 101: How crime gets reported. You did not follow any of the things they taught you at school in dealing with this matter because ... [Interjections.]

The SPEAKER: Order, hon members.

Mr J S MALEMA: ... so please don't ... You have abused your office by reporting the matter to a General without following any of the prescripts ... [Interjections.]

The SPEAKER: Thank you, hon member. Thank you. The hon the President.

The PRESIDENT OF THE REPUBLIC: Thank you, hon Speaker. I am glad that hon Malema corrected himself. He initially said I am a law student ... [Interjections.] ... No, no, no I will correct you as well. Hon Malema I went beyond being a student;

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I am a law graduate. I did graduate with a law degree. You are right, yes, and I did my articles ... [Interjections.]

The SPEAKER: Order, hon members. Please, we are at the tail end of everything you will soon be out.

The PRESIDENT OF THE REPUBLIC: If you want me to explain - I did my articles and I started off with a small firm and I ended up with a big firm. I wrote my board exam and you can mark something negative about me but I passed the written part and I failed the oral. Soon thereafter I got approached by the Council of Unions of South Africa who said to me we want you to come and work for us ... [Interjections.]

Mr V ZUNGULA: That was not the question kodwa [though.]
Speaker ... [Interjections.]

The PRESIDENT OF THE REPUBLIC: No, no, no I am coming. Hon Zungula. [Interjections.]

The SPEAKER: Hon members, order! Order, hon Kekana ...
[Interjections.]

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The PRESIDENT OF THE REPUBLIC: I am giving you the context because ... [Interjections.]

The SPEAKER: No, hon President, please I think people are tired. Will you please just respond to this question and we close the session? Thank you, hon President, you may continue.

The PRESIDENT OF THE REPUBLIC: There are some members who would like to hear the story. So, let me regale them with the story. I then got approached by the Council of Unions of South Africa and then I made the choice to pursue the union route rather than to pursue the other one. So, in the end I never qualified as an attorney. I want to make that clear. I did not qualify as an attorney, I am however a law graduate.

Once the theft had occurred I was informed as I said. I guess I may be repeating myself but I also need to answer that. I don't believe I abused my power because I am surrounded by police officials and when I informed the General I was informing a police official. Even at the time, on the farm, my manager interacted with police officials who were involved with the whole process. I want to dispute the argument that I abused my power. I am not the type of person who will abuse my

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position or my power. So I did not, and having reported it to the police official I did believe that they will do what they need to do to ensure that this matter is properly handled. That is the extent to which I was able to handle this matter. So, in my book, hon Speaker, it was reporting the crime to the police when I informed a police General. Thank you very much.

The SPEAKER: Thank you, hon President. That concludes questions to the President. I thank the hon the President and that concludes the business of the day. The House is adjourned.

The House adjourned at 17:36.

NEM (Eng)/06.10.2022 / ND (Xho)/06.10.2022 / TAKE ENDS AT
17:36



MCR 12

THE PRESIDENTIAL HANDBOOK

NOVEMBER 2015



**THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA**

THE PRESIDENTIAL HANDBOOK

On support for the President, his or her spouse and dependent children,
and the Deputy President and his or her spouse.

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PREFACE

This Presidential Handbook provides guidelines for the administrative, logistical, security and general support services to be rendered by the state to the President, his or her spouse and dependent children, and the Deputy President and his or her spouse.

The objective of the Handbook is threefold:

- i. To ensure the provision of reliable and consistent support required for the President and Deputy President.
- ii. To provide a concise operational guide to relevant government departmental staff with clearly indicated responsibilities and duties, and by implication, lines of accountability.
- iii. To provide the authority for the relevant civil servants to make decisions and to empower departmental staff with respect to what is approved, permissible and what may fall outside of the level of support required to be given to the President and Deputy President.

In respect of this Handbook, matters of interpretation, clarification and/or decision are vested in the Secretary of Cabinet who may consult with Cabinet, if so required.

All public servants who provide services in terms of this Handbook are expected to acquaint themselves thoroughly with the provisions contained herein.

The Handbook may be reviewed triennially or whenever necessary.

I. DEFINITIONS

In this document, unless the context otherwise indicates:

Commercial aircraft	Any aeroplane or helicopter operated by an airline on regular routes used by the public
Constitution	The Constitution of the Republic of South Africa, 1996
Dependant child	A financially dependent child under the age of 18, and a financially dependent and unmarried child over the age of 18 but under 27 and studying full-time at a recognised secondary or tertiary institution
Approved independent international travel of the spouses	International travel of the spouses independent of the President or Deputy President but associated directly with government work or Government's Programme of Action and duly approved by the President
Intelligence agencies	The relevant units of the South African Police Service, the State Security Agency (SSA), and the South African National Defence Force
National Security Services	The South African Police Service (SAPS), the State Security Agency (SSA), and the South African National Defence Force (SANDF)
Official Residence	A state-owned residence designated by DPW for the use of the President or Deputy President
Private aircraft	Any aeroplane or helicopter not owned by the state or a registered airline
Private independent international travel of the spouses	International travel of the spouses independent of the President or Deputy President and not associated directly with government work or Government's Programme of Action
Private Residence	A privately owned house used by the President or Deputy President
Protector	A member of the SAPS Presidential Protection Service or SAPS VIP Protection Unit, allocated/appointed to provide security and/or driving services
Spouse	A person or persons legally married to the President or Deputy President by customary or civil marriage

2. ABBREVIATIONS

DIRCO	Department of International Relations and Cooperation
DPW	Department of Public Works
NSS	National Security Services
Parmed	Parmed Medical Aid Scheme (for members of the National Assembly and delegates to the National Council of Provinces)
POBF	Political Office-Bearers Pension Fund (for members of the National Assembly and delegates to the National Council of Provinces)
SAMHS	SA Military and Health Services unit of the South African National Defence Force.
SANDF	South African National Defence Force
SAPS	South African Police Service
SSA	State Security Agency

3. INTRODUCTION

- 3.1. In terms of the Constitution, the President is the Head of State, Head of the National Executive, and Commander-in-Chief of the Defence Force.
- 3.2. The President may only be elected from amongst the members of the National Assembly.
- 3.3. Upon election, the President ceases to be a Member of the National Assembly.
- 3.4. The Deputy President is appointed by the President from amongst the members of the National Assembly and remains a member of the National Assembly after appointment.
- 3.4. The President assigns powers and functions to the Deputy President.
- 3.6. The Deputy President is a Member of Cabinet and must assist the President in the execution of the functions of government.
- 3.7. The President and Deputy President remain in authority at all times for the full duration of their terms of office.
- 3.8. By virtue of this fact the state inevitably makes demands on the President and Deputy President which intrude on their private lives and that of their spouses in particular.
- 3.9. In this context it is reasonable that the State has to ensure that the requirements and services are provided to the President and Deputy President for them to execute their respective constitutional obligations and duties at all times.
- 3.10. These will out of necessity include the provision of certain services to the spouses of the President and Deputy President, and in the case of the President, his or her dependent children.
- 3.11. The requirements and services provided by the state in 3.10 arise also from considerations of security requirements, cost efficiency, practicality, the personal well-being, convenience and comfort of the President and the Deputy President
- 3.12. This Handbook seeks to provide a concise but substantive procedural guideline for the administrative, logistical, security and general support services provided by the state to a serving President and Deputy President.

4. STATE RESPONSIBILITY

- 4.1. The state through its different Departments and Agencies is responsible for the provision of all the requirements, services and arrangements and related expenses of the President and Deputy President in the normal course of executing their respective responsibilities and roles.
- 4.2. The state ensures that these requirements, services and arrangements are provided and made with due consideration for security requirements, cost efficiency, practicality, the personal well-being, convenience and comfort of the President, Deputy President, their spouses and dependents as the case may be.

5. INTEGRITY

- 5.1. The President and Deputy President as members of the Cabinet and executive in terms of the Constitution, must act in accordance with the Executive Members Ethics Act (No 82 of 1998) and the Executive Ethics Code (28 July 2000).
- 5.2. In terms of these statutes the President and Deputy President have to ensure that the necessary declarations are lodged with the Secretary of the Cabinet.
- 5.3. The Deputy President as a member of the National Assembly has to ensure that the necessary declaration is made in terms of parliamentary procedure and rules.

6. REMUNERATION

- 6.1. The President and Deputy President are remunerated in terms of the Remuneration of Public Office Bearers Act (No 92 of 1998).
- 6.2. This remuneration is paid by the Presidency as a direct charge against the National Revenue Fund.

7. PENSION

- 7.1. The President upon assuming office, ceases to be a member of the National Assembly and consequently, ceases to be a member of the Political Office-Bearers Pension Fund (POBF) should he have been a member.
- 7.2. Whatever pension benefit is due to the President as a result of prior membership to the POBF is processed in terms of the rules of the fund.
- 7.3. The State does not contribute to a pension fund on behalf of the President whilst he or she is in office.
- 7.4. When the term of the President comes to an end through resignation or completion of the electoral term, the President is entitled to a pension benefit as determined by the National Assembly in terms of the Remuneration of Public Office Bearers Act.
- 7.6. The Deputy President, on the other hand, remains a member of the National Assembly on appointment as Deputy President.
- 7.7. Accordingly, the state continues to contribute to the POBF on behalf of the Deputy President in his capacity as a member of the National Assembly in terms of the rules of Parliament and the POBF.
- 7.8. No additional provision in terms of pension benefit is made by the State upon the end of the term of the Deputy President.

8. MEDICAL AND HEALTH CARE

- 8.1. Upon assuming office, and whilst in office, the President and his or her spouse and dependent children receive all medical and health care services from and at the cost of the Surgeon-General through the SA Military and Health Services (SAMHS) of the South African National Defence Force (SANDF).
- 8.2. Upon assuming office and whilst in office, the Deputy President receives medical and health care services from the Surgeon General and at the cost of the Surgeon General through SAMHS of SANDF.
- 8.3. The Deputy President remains a member of the National Assembly on appointment as Deputy President and in terms of the rules of Parliament remains a member of the Parmed Medical Aid Scheme to which the state continues to contribute.
- 8.4. The Surgeon-General provides emergency, general medical and health care services to the President and the Deputy President through a team of physicians and environmental health officers who accompany them on all engagements.
- 8.5. All costs related to the physicians and environmental health officers in the execution of their duties in this regard (except in respect of costs set out in 8.6 below) are borne by the Surgeon-General through SAMHS of SANDF.
- 8.6. Should there be the need for the Surgeon-General and/or other related personnel to be in close proximity over an extended period to the President or his or her spouse and his or her dependents or the Deputy President, the Department of Public Works (DPW) shall make available at its expense suitable accommodation for this purpose.

9. LEAVE

- 9.1. The President takes leave as may be required.
- 9.2. The Deputy President takes leave upon agreement with the President.

10. SHORT TERM INSURANCE

- 10.1. The insurance cover for all personal effects in state owned and private residences of the President and Deputy President is for the account of the President and Deputy President respectively.

11. LEGAL REPRESENTATION

- 11.1. Legal representation is provided to the President and Deputy President by the State as necessary in terms of the State Attorneys Act read with the Public Finance Management Act (1999) and its regulations.

12. SECURITY

- 12.1. The South African Police Service (SAPS) takes full responsibility for the protection and security of the President and Deputy President at all times during their term of office.
- 12.2. The SAPS and the intelligence agencies cause that regular and comprehensive security assessments are done with regard to the President and Deputy President.
- 12.3. Protection and security measures of the President and Deputy President include, but are not limited to:
 - i. Regular security assessments in conjunction with the intelligence agencies.
 - ii. Static protection at all official and private residences and office accommodation used from time to time during the term of office.
 - iii. In-transit protection during all domestic and international movements.
 - iv. Regular vetting of protectors, medical personnel and other staff,
 - v. Screening of service providers.
 - vi. Static protection of aircraft.
 - vii. Regular revision of ICT security systems.

13. COST OF SECURITY MEASURES

- 13.1. The cost of the provision, implementation and maintenance of physical security measures at official and private residences used during the term of the President and Deputy President shall be carried by DPW in terms of office of the relevant policies at DPW and government legislation and regulations, as advised by the intelligence agencies.
- 13.2. DPW shall determine the permissible costs related to the provision, implementation and maintenance of physical security measures at official and private residences used during the term of office of the President and the Deputy President after due consideration and consultation with the National Security Services (NSS).
- 13.3. The costs related to security personnel, communications security and information security are borne by the NSS.
- 13.4. The cost of procurement, maintenance and running costs of motor vehicles for the use of ground transport in South Africa for the President, Deputy President and their spouses is borne by the SAPS.

14. DOMESTIC TRANSPORT OF THE PRESIDENT AND DEPUTY PRESIDENT

- 14.1. Transport for the President and Deputy President in South Africa is the responsibility, and for the account, of the state.
- 14.2. Ground transport for the President and Deputy President in South Africa is the responsibility and for the account of the SAPS in terms of the relevant security planning.
- 14.3. Air transport for the President and Deputy President in South Africa is the responsibility and for the account of SANDF, who may use SANDF aircraft or any aircraft chartered by the SANDF for the purpose.
- 14.4. The cost of in-flight catering on board aircraft utilised by the President and Deputy President is for the account of the Presidency, except where exigencies dictate otherwise, in which case the costs thereof are borne by SANDF.
- 14.5. The President and Deputy President have the prerogative to invite passengers to accompany him or her, on the official aircraft designated for his or her use, provided that there is space to accommodate the additional passenger or passengers in addition to the security, medical and necessary Presidency staff.
- 14.6. Each invited guest passenger not employed by the state, shall indemnify the state from any loss suffered by the passenger due to injury or otherwise.
- 14.7. For official purposes, private or commercial aircraft may be utilised by the Deputy President only in special circumstances, and after consultation with NSS.. For private travel, private or commercial aircraft may be used after consultation with NSS.
- 14.8. For official purposes, private aircraft may be utilised by the President only in special circumstances, and after consultation with NSS.

15. INTERNATIONAL TRANSPORT OF THE PRESIDENT AND DEPUTY PRESIDENT

- 15.1. Transport for the President and Deputy President during travel outside of South Africa is the responsibility, and for the account of the state.
- 15.2. The SANDF shall provide aircraft or charter for the purpose, and bear the costs thereof for all international air transport of the President and Deputy President.
- 15.3. The President and Deputy President have the prerogative to invite passengers to accompany him or her, on the official aircraft designated for his or her use, provided that there is space to accommodate the additional passenger or passengers in addition to the security, medical and necessary Presidency staff.
- 15.4. Each invited guest passenger not employed by the state, shall indemnify the state from any loss suffered by the passenger due to injury or otherwise.
- 15.5. Ground transport for the President and Deputy President during travel outside of South Africa is the responsibility of Department of International Relations and Cooperation (DIRCO) and is subject to the approval of the NSS.

- 15.6. The costs of ground transport, where not provided for by the host, are borne by DIRCO.
- 15.7. The cost of in-flight catering on board SANDF aircraft utilised for the President and Deputy President is for the account of the Presidency, except where exigencies dictate otherwise, in which case the costs thereof are borne by SANDF.
- 15.8. For official purposes, private or commercial aircraft may be utilised by the Deputy President only in special circumstances, and after consultation with NSS. For private travel, private or commercial aircraft may be used after consultation with NSS.
- 15.9. Should the Deputy President decide to make use of private or commercial aircraft for travel abroad for private purposes, the total flight costs of the Deputy President and his or her spouse shall accrue to the Deputy President, while the costs related to security arrangements, medical assistance and/or officials of government who have to accompany the Deputy President out of necessity are borne by the state.
- 15.10. For official purposes, private aircraft may be utilised by the President only in special circumstances, and after consultation with NSS.

16. ACCOMMODATION AND INCIDENTAL EXPENSES ON OFFICIAL AND PRIVATE TRAVEL OF THE PRESIDENT AND DEPUTY PRESIDENT

- 16.1. Accommodation and incidental expenses of the President and Deputy President whilst on official domestic travel are for the account of The Presidency.
- 16.2. Accommodation and incidental expenses of the President and Deputy President whilst on all official journeys abroad is arranged through, and paid for by DIRCO.
- 16.3. Accommodation and incidental expenses of the President and Deputy President whilst on private domestic and international travel are for the account of the President and Deputy President respectively.
- 16.4. The Presidency is responsible for any other expenses of the President or Deputy President on official and private domestic and international travel, which include the costs related to Presidency officials who have to accompany the President and Deputy President out of necessity. Other government departments such as the SAPS are responsible for the expenses of their own officials.

17. RESIDENTIAL ACCOMMODATION

- 17.1. The state, through DPW, provides both the President and Deputy President with state-owned housing stock to utilise as official residences in Cape Town and Pretoria, and additionally in the case of the President, an official residence in Durban.
- 17.2. The cost of furnishing, maintenance (including soft services such as the provision of flowers) and upkeep of these official residences is for the account of DPW.
- 17.3. The President and Deputy President may make use of state-owned accommodation in the rest of South Africa where available and subject to the security requirements.

- 17.4. The Presidency shall employ or deploy household staff to provide household and other services at official residences, as may be necessary.

18. SPECIAL ADVISERS AND PARLIAMENTARY COUNSELLOR

- 18.1. The President and Deputy President may employ Special Advisers as needed. These will be for the account of The Presidency.
- 18.2. The Speaker of the National Assembly appoints a Parliamentary Counsellor in terms of the rules of Parliament, from amongst the membership of the National Assembly for the President and Deputy President respectively.

19. STATE FUNERALS

- 19.1. In the event that a serving President or Deputy President passes away, a state funeral shall be arranged in terms of the approved Policy on State and Official Funerals.
- 19.2. The President shall be accorded a State Funeral Category 1, while the Deputy President shall be accorded a State Funeral Category 2.

20. FUNCTIONS AND RECEPTIONS

- 20.1. The President and Deputy President in the normal course of their duties and responsibilities whilst in office, host official functions and receptions, the cost of which are borne by the State. In addition, the President also hosts State functions paid for by the State.
- 20.2. Depending on the nature and status of the function, costs are shared between The Presidency, DIRCO and/or DPW.
- 20.3. The President and Deputy President and their spouses may host such other functions which may be private in total or part. Depending on the nature and status of the function, costs may be apportioned between the President or Deputy President, The Presidency, and any other relevant government department.

21. ORGANISATION OF SUPPORT SERVICES TO THE PRESIDENT AND DEPUTY PRESIDENT

- 21.1. The Presidency shall establish such organisational structure and employ the necessary personnel to coordinate and provide all administrative, logistical and general support services to the President and the Deputy President in accordance with relevant legislation, government prescripts and directives.

22. SUPPORT FOR SPOUSES OF THE PRESIDENT AND DEPUTY PRESIDENT

- 22.1. The spouses of the President and Deputy President have no constitutionally defined roles, obligations and responsibilities and as such are not remunerated by the state.
- 22.2. There are however expectations that the spouse or spouses of the President, where possible, and if requested, provide support to a serving President in the execution of his or her duties, and specifically so at state or official functions and receptions.
- 22.3. In addition, a spouse of the President may fulfil official functions in support, and in the interest, of the Republic.
- 22.4. From time to time the spouse of the serving Deputy President may be requested to provide support at official functions and receptions.
- 22.5. The State will provide reasonable administrative, logistical and other support to the spouses of the President and Deputy President to enable them to meet the expectations related to the nature of office of the President and Deputy President in a manner that permits them actively to pursue their own careers and interests if they so desire.
- 22.6. The state provides reasonable support to the President and his or her spouse to assist with the day-to-day logistical arrangements of dependent school-going children.
- 22.7. The Presidency shall establish such organisational structure, and employ or deploy personnel, to coordinate and provide administrative and logistical services to spouses of the President or Deputy President in accordance with relevant legislation, government prescripts and directives.
- 22.8. Personnel capacity will include the employment of at least a dedicated Private Secretary to the spouse of the President.
- 22.9. Spousal support may include the necessary project management capacity to assist in, and coordinate, activities of the spouse which are in support of Government's Programme of Action.
- 22.10. The Presidency further will provide to the spouses any reasonable office equipment and stationery to enable them to fulfil activities related to the support of Government's Programme of Action.

23. SECURITY SERVICES FOR SPOUSES OF THE PRESIDENT AND DEPUTY PRESIDENT

- 23.1. The SAPS takes full responsibility for all protection, security and related arrangements for the spouses of the President and Deputy President, both in South Africa and when abroad.
- 23.2. The costs of all security and planning arrangements, including personnel, for the spouses are carried by the SAPS.

24. INDEPENDENT TRAVEL AND TRANSPORT OF THE SPOUSES OF THE PRESIDENT AND DEPUTY PRESIDENT

- 24.1 The state may provide spouses of the President and Deputy President with a state-owned vehicle and a driver/protector for official and private use in South Africa.
- 24.2 The costs of procurement, maintenance and upkeep of these vehicles are carried by the SAPS.
- 24.3 The spouses of the President or Deputy President may make use of domestic commercial rail and air transport as and when necessary for their public or private purposes, the costs of which are borne by The Presidency.
- 24.4 A spouse of the President or Deputy President may travel abroad on state, official, or working visits of the President or Deputy President at the cost of The Presidency.
- 24.5 All independent international travel by spouses of the President or Deputy President for purposes of programmes supporting the work of the government is subject to the approval of the President. Such travel shall be budgeted for and managed in terms of the PFMA by the relevant organisational unit in The Presidency.
- 24.6 In respect of approved independent international travel by a spouse of the President or Deputy President, all costs will accrue to, and responsibilities for coordination of arrangements reside with, The Presidency, while DIRCO shall provide support with the normal protocol and related services and general assistance.
- 24.7 In respect of private independent international travel by a spouse of the President or Deputy President, all costs will accrue to the spouse or President or Deputy President as the case may be.
- 24.8 DIRCO may in such cases assist with the normal protocol and related services and assistance, while The Presidency may assist with the coordination of arrangements of the spouse.



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

**STATEMENT TO THE INDEPENDENT PANEL APPOINTED IN TERMS OF RULE 129D OF THE
NATIONAL ASSEMBLY RULES**

I, the undersigned

WALTHER PETER RHOODE

do hereby state under oath that:

1. I am an adult male currently employed at the South African Police Service ("SAPS"), as heads of the Presidential Protection Service ("*the PPS*") whose offices are situated in Sunnyside in Pretoria. I hold the rank of Major General in the SAPS and have led the PPS since 1 June 2018.
2. The facts to which I depose are within my personal knowledge, except where it is apparent from the context that they are not.
3. In my capacity as head of the PPS, I report directly to the National Commissioner of the SAPS. in addition I also report directly to the President, Matamela Cyril Ramaphosa.
4. My responsibilities include, but are not limited to, ensuring the physical, information and logistical security of the President, the Deputy President, all former Presidents and former Deputy Presidents, as well as their spouses. I am also responsible for the security of visiting heads of foreign states.

WPR

5. The purpose of this affidavit is to address certain facts pertinent to the motion in terms of section 89 of the Constitution of the Republic of South Africa that the President is called upon to answer.

6. I confirm that annexure IP 19 to the Independent Panel's bundle is indeed the affidavit that I submitted to the Public Protector of South Africa, in response to her investigation into allegations made by Mr Zungula, MP against the President. I have no idea how this document came to be in the possession of anyone other than my legal representatives and the office of the Public Protector.

7. I feel it necessary to repeat that I have attempted to convince the President, since my appointment as head of the PPS on 1 June 2018, to have PPS personnel and equipment installed at his farm. I deemed this part of my mandate as the head of his security. He has persistently refused. He insists that, because he is not always residing or staying on the farm, state resources ought not to be spent at this location. As a result, at the time of the house breaking and theft, the farm was not on the list of the President's official residences.

8. I have been shown photographs attached to the Independent Panel's bundle as IP26. I can confirm that these relate to the events I attest to in paragraph 23 of my affidavit, at page 1325 of the bundle.
 - 8.1. The first photograph is of Ms Joseph.

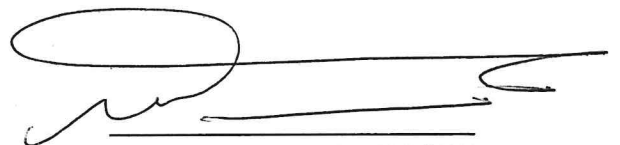
8.2. The second photograph pictures in a red T-shirt a person called Thomas. He was brought to the farm on 4 March 2020, while I was interviewing Ms Joseph's brother, by a man who introduced himself as 'Nick'. When Thomas arrived at the farm, his hands were tied behind his back with cable ties. I instructed Nick to remove the cable ties from Thomas.

8.3. In the third photograph Thomas can be seen without cable ties. It was taken after my instruction had been fulfilled.

9. I was not involved in any investigation following the theft, other than the preliminary inquiry I speak to in my affidavit (IP19). It is not my job to open criminal cases. I followed proper procedures according to my reporting and accountability lines. As indicated in my previous affidavit, the Deputy National Commissioner, Lt Gen Mfazi, instructed me to conduct a preliminary inquiry and determine if any threat existed to the President. Depending on its results, he would institute the full-scale investigation. He determined this procedure in the light of the fact that we were dealing with the office of the President. The purpose of the preliminary inquiry was to determine whether there was any immediate threat to the President's safety, which is within my remit. It was beyond the remit of my duties to conduct a criminal investigation or open a docket.

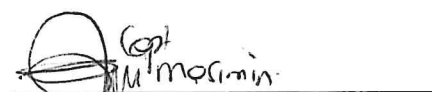
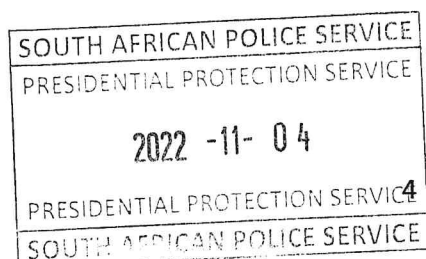
10. Any work that I did after the housebreaking and theft was in relation to the breach of security and to fulfil my responsibility to assess any threat to the President's safety or that of his family.

11. As far as I am aware, there was no other operation authorized in connection with this incident. On or about 10 or 11 March 2020, I was in Cape Town. While I was there, I received a call from a member of the PPS, Sgt Rekhoto, informing me that he had found out from certain sources that the perpetrators of the theft had bought new cars. He said the car had been bought from a dealership named Barons in Culemborg, Cape Town. I viewed this information worth assessing as my role was to determine whether the perpetrators or their actions represented a threat to safety and security of the President and his family.
12. Shortly after receiving this phone call, the sergeant picked me up at my office in Garmor house, opposite the Houses of Parliament. We drove to Barons and spoke to the manager, who confirmed that on 14 February 2020, a Mr Mukekeni had purchased a 2019 Ford Ranger, and he supplied further details in relation to the purchase of the vehicle. Sgt Rekhoto compiled a report of the information he gathered. He gave it to me and I in turn gave it to the deputy national commissioner, Lt Gen. Mfazi.



WALTHER PETER RHOODE

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA on this 04 day of November 2022, and that it is, to the best of the deponent's knowledge, both true and correct and that he has no objection to taking the prescribed oath, and that the Regulations in Government Notice R.1258 of 21 July 1972 having been complied with.



COMMISSIONER OF OATHS

WPR

Full names: TERBOGO MASIMINI
Address: NO 3 TROYE STREET, SUNNYSIDE
Capacity: CAPTAIN

SOUTH AFRICAN POLICE SERVICE
PRESIDENTIAL PROTECTION SERVICE
2022 -11- 04
PRESIDENTIAL PROTECTION SERVICE
SOUTH AFRICAN POLICE SERVICE

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

Before:

The Honourable Mr Justice L G Nuku
The Honourable Mr Justice M Francis
The Honourable Mr Justice J D Lekhuleni

CASE NO: 8500/2022

In the matter between:

THE PUBLIC PROTECTOR OF SOUTH AFRICA

Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

**THE CHAIRPERSON OF THE SECTION 194
COMMITTEE**

Second Respondent

**THE PRESIDENT OF THE REPUBLIC OF
SOUTH AFRICA**

Third Respondent

**ALL POLITICAL PARTIES REPRESENTED
IN THE NATIONAL ASSEMBLY**

Fourth to Seventeenth Respondents

Date of hearing : *Friday 16 September 2022*

Date of Judgment : *Tuesday 11 October 2022*

JUDGMENT

THE COURT:

INTRODUCTION

- [1] The applicant has brought an application on an extremely urgent basis in terms of section 18(1) and section 18(3) of the Superior Courts Act 10 of 2013 ("the Superior Courts Act") to render the judgment of this Court delivered on 9 September 2022 ("the judgment") to be operational and executable, pending any application for leave to appeal or appeal delivered in respect thereof.

- [2] The detailed background to the facts of this dispute between the parties is set out in the judgment and we, therefore, do not intend reciting these facts herein in any great detail. Also, for the sake of convenience, we use the nomenclature for the parties as used in the judgment.

- [3] The parties cited in the application were the same as those cited in the Part B proceedings. The identities of the protagonists who actively participated changed somewhat. The first and second respondents did not participate in this application and filed notices to abide the decision of this court. The sixteenth respondent, the Pan Africanist Congress of Azania ("the PAC"), joined the tenth and eleventh respondents in their support of the Public Protector; all three respondents will be referred to hereinafter in this judgment as "the supporting respondents". The DA and the President opposed the application.

- [4] The judgment was delivered as a sequel to Part B of a two-part application. In Part A of the application, the applicant sought amongst other things an interim interdict and/or mandamus prohibiting the President from taking any steps to suspend her and the withdrawal of the letter in which the President sought representations regarding her possible suspension.
- [5] A full court, on 10 June 2022, dismissed all of the relief sought by the applicant in the Part A proceedings.
- [6] The President suspended the applicant a day earlier, on 9 June 2022.
- [7] In the Part B proceedings before this court, the applicant was granted leave to file an amended notice of motion which was a necessary consequence of the decision of the court in the Part A proceedings. Because the applicant was suspended, she now sought an order in terms of section 172(1) of the Constitution declaring the decision of the President to suspend her on 9 June 2022, to be irrational, unconstitutional, and invalid.
- [8] The parties filed a Joint Practice Note in which they listed the issues to be determined by this court.

[9] After having considered the papers and having heard the arguments proffered by the legal representatives in relation to the issues to be determined, this Court granted an order which is reproduced verbatim below:

***Order**

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

187.1 It is directed that the matter be heard as one of urgency and the normal rules are dispensed with in terms of Rule 6(12)(a);

187.2 The application to amend the notice of motion is granted;

187.3 The application for leave to challenge the authority of Seanego Attorneys Inc to represent the applicant is refused;

187.4 The relief sought in paragraphs 3.1, 3.4, 3.5, 3.6 and 5 of the amended notice of motion is dismissed;

187.5 The decision of the President to suspend the applicant is declared invalid,

187.6 The suspension of the applicant is set aside effectively from the date of this order;

187.7 Each party is to pay its costs."

- [10] After the judgment was delivered, the parties held widely differing views about the effect of the judgment.
- [11] The applicant was of the view that the judgment uplifted her suspension and reinstated her immediately so that she could resume her duties as Public Protector. The DA, on the other hand, was of the view that the judgment was of no force and effect until confirmed by the Constitutional Court. The attorneys for the DA conveyed this view to the applicant's attorneys less than 30 minutes after the judgment was delivered. Just over an hour later, the applicant's attorneys responded to the DA's attorneys in which it was disputed that it was necessary to refer this judgment to the Constitutional Court for confirmation. The DA's stance was said to be legally flawed and an attempt by it to frustrate the applicant's resumption of her duties as Public Protector. The applicant thereafter made public pronouncements about her reinstatement and her intention to return to work on Saturday, 10 September 2022, notwithstanding her ongoing section 194 impeachment inquiry.
- [12] Later in the evening of 9 September 2022, the DA delivered a "Notice of Appeal alternatively Notice of Application for Leave to Appeal" ("the appeal notice") directly to the Constitutional Court. An e-mail was then sent to the applicant's attorneys confirming that the aforesaid notice had been sent. It was also stated in the e-mail that the delivery of the appeal notice had the effect of ensuring that the applicant's suspension remained effective regardless of the applicant's view that the judgment

was not subject to confirmation by the Constitutional Court. As a consequence, the applicant launched this application.

[13] The applicant brought this application as a matter of extreme urgency and on exceptionally truncated timeframes. The application was delivered by e-mail at approximately 17h00 on Saturday, 10 September 2022 in which the applicant sought an urgent hearing on Tuesday, 13 September 2022. The respondents were required to deliver any notice of intention to oppose on or before 10h00, on Sunday, 11 September 2022, and answering affidavits on or before 10h00 on Monday, 12 September 2022.

[14] The President noted his intention to oppose the application on Sunday, 11 September 2022. He indicated, however, that he was not in a position to comply with the timeframe for delivering the answering affidavit. As it turned out, the full court could not be convened on Tuesday, 13 September 2022 and, instead, the date of 16 September 2022 was proposed, which date was acceptable to all the parties concerned.

[15] Thereafter, the parties' legal representatives met virtually to agree to a revised timetable for the filing of papers. Provision was made for the applicant to file a supplementary affidavit, the filing of answering affidavits by the respondents, and the filing of a composite reply by the applicant.

[16] The President filed a notice of appeal to the Constitutional Court which was intended to be considered together with that court's confirmation of the judgment. He also filed a conditional application for leave to appeal directly to the Constitutional Court in the event that the Constitutional Court found that the judgment was not subject to confirmation.

[17] The Deputy Public Protector, Ms Nompilo Kholeka Gcaleka, who was appointed as the Acting Public Protector when the applicant was suspended, sought the leave of this court to intervene in this application and to join the main application as the eighteenth respondent. This application was opposed by the applicant.

ISSUES FOR DETERMINATION

[18] The parties filed a Joint Practice Note which listed the following issues to be determined by this court:

[18.1] Whether the matter justified the urgency with which it was brought;

[18.2] Whether in terms of sections 167(5) and 172(2)(a) of the Constitution, the Order has no force until it is confirmed by the Constitutional Court;

[18.3] If not, whether the applicant is nonetheless entitled to seek relief in terms of section 18(1) read with section 18(3) of the Act.

[18.4] If the applicant is entitled to seek relief in terms of section 18(1) read with section 18(3) of the Act, whether the applicant has made out a case for the order to be implemented pending the appeals that have been lodged.

[18.5] Regarding the question of costs:

[18.5.1] Whether the President and/or the DA should be ordered to pay costs on a punitive scale; and

[18.5.2] Whether the applicant should be ordered to pay the costs of the DA in her personal capacity and on a punitive scale.

[19] This judgment is structured as follows:

[19.1] Firstly, we deal with the preliminary issues of urgency and the application to intervene;

[19.2] Secondly, we summarise the parties' submissions on whether or not section 172 of the Constitution and/or section 18 of the Act applies to the matter at hand; and

[19.3] Finally, we discuss the parties' submissions in the context of the judgment and the applicable law.

PRELIMINARY ISSUES

URGENCY

[20] The application was brought as one of extreme urgency with very truncated timelines.

[21] According to the applicant, the application was brought on such an urgent basis due to the actions of the DA. The applicant was of the view that the judgment reinstated her immediately and that the DA's action of filing the appeal notice was designed to prevent her return to work. As she had been away from work for some three months, she considered it imperative that she resume her duties as soon as possible. The applicant stated that she had no option but to bring this application to restore the effect of the judgment.

[22] Furthermore, the applicant submitted that her dignity, privacy, and reputation rights were implicated which necessitated this application being dealt with swiftly. The DA had launched an application for leave to appeal within hours of the judgment being handed down and could not, therefore, legitimately claim that the matter should not be dealt with on an urgent basis. In addition, this matter has been dealt with on an urgent basis in both the Part A and Part B proceedings. Finally, the applicant contended that the nature of the matter is such that it cannot be heard in due course and the public interest and the interests of justice dictate that the matter be heard as a matter of extreme urgency.

[23] While conceding that this matter ought to be heard on an urgent basis, both the DA and the President opined that the matter did not have to be heard on an extremely urgent basis.

[24] We do not deem it necessary to engage with those submissions in opposition to this application being heard on an urgent basis. It cannot be denied that this is a matter that is of great importance to all the parties concerned and the public. It involves the head of a chapter 9 institution and the President who is the head of state and of the national executive of the government of the country. We are of the view that there is a clear public interest element that demands the finalisation of this matter without delay. Crucially, in recognition of the parties before it and the nature of the dispute, all the courts that have hitherto been seized with this dispute have dealt with it on an urgent basis and, in our view, this application should be treated no differently. The status and position of the applicant is a live dispute that requires urgent resolution by an appropriate appellate court. The issues raised in the judgment are weighty and a speedy resolution is in the interests of all concerned and, above all, in the interests of justice. It does not assist anyone to have the matter delayed unnecessarily or to be heard in the ordinary course which may be some months down the line. The parties involved are familiar with the issues, filed comprehensive papers with extensive heads of argument, and none appeared to have been unduly fettered in the presentation of their case despite the inconvenience of the truncated timelines they had agreed

upon. Accordingly, we are satisfied that the relief sought ought to be considered on an extremely urgent basis and not in the ordinary course.

- [25] In the circumstances, the court does not find any substance in the point *in limine* relating to urgency.

APPLICATION TO INTERVENE

- [26] According to the Deputy Public Protector, no issue is taken with any of the parties over the lawfulness or otherwise of the applicant's suspension. Intervention is sought, however, for the purpose of "putting the true facts accurately" before this court about the performance of the office of the Public Protector currently and during the time that the applicant has been on suspension. This is necessitated by the fact that, in her affidavit in support of this application, the applicant made certain factual allegations with regard to the impact that her suspension has had on the performance of the office of the Public Protector in relation to amongst other things the Phala Phala investigation and the general work of the office.

- [27] The Deputy Public Protector's application for leave to intervene was only opposed by the applicant. No opposing affidavit was delivered and legal argument was presented during the hearing on why the intervention application should be dismissed. In essence, it was argued that the Deputy Public Protector failed to establish a sufficient legal interest in this application or the main application. It was

also contended that the Deputy Public Protector was conflicted in that the only interest that she had in the matter was to stay in the post of the applicant as a Public Protector. The longer she stays in the post the longer she holds the office of Acting Public Protector.

[28] The requirements that an applicant has to meet in order to apply to intervene in legal proceedings are well known. Such an applicant must demonstrate a direct and substantial interest in the subject matter of the proceedings and must make such allegations that will show that he or she at least has a *prima facie* case that would entitle him or her to relief¹.

[29] The SCA has set out the test to intervene as follows:

*"[T]he issue in our matter, as it is in any non-joinder dispute, is whether the party sought to be joined has a direct and substantial interest in the matter. The test is whether a party that is alleged to be a necessary party has a legal interest in the subject-matter, which may be affected prejudicially by the judgment of the court in the proceedings concerned."*²

[30] The SCA went on to state that:

"This has found to mean that if the order or judgment sought cannot be

¹ *SA Riding for the Disabled Association v Regional Land Claims Commissioner* 2017 (5) SA 1 (CC) at para [9].

² *Gordon v Department of Health, Kwazulu-Natal* 2008 (6) SA 522 (SCA) at para 9. See also, *Judicial Service Commission v Cape Bar Council* 2013 (1) SA 170 (SCA) at para 12.

*sustained and carried into effect without necessarily prejudicing the interests' of a party or parties not joined in the proceedings, then that party or parties have a legal interest in the matter and must be joined."*³

[31] The Deputy Public Protector will have to demonstrate that she has a legal interest in the subject matter of this application and the main application that may be prejudicially affected by the judgment of the court. This also means that she must show that she has a right adversely affected or likely to be adversely affected by the order sought⁴. The Part B application, in so far as it is relevant to the Deputy Public Protector, dealt with the applicant's suspension and the events preceding that application. In this application, the applicant seeks the immediate enforcement of the judgment which amongst other things declared her suspension to have been unlawful. By her own admission, the Deputy Public Protector does not take issue with the lawfulness or otherwise of the applicant's suspension. While, at a general level, she may well have an interest in protecting the organisation, being functionally in charge of the office of the Public Protector in the absence of the applicant, this does not rise to the level of a legal interest in the subject matter of the litigation before the court in the Part B proceedings or the issues in dispute in this application. As it will become clearer later in this judgment, neither the Deputy Public Protector in her personal capacity or the office of the Public Protector are affected prejudicially by the judgment in this matter.

³ *Gordon ibid* at para 9.

⁴ *SA Riding for the Disabled Association v Regional Land Claims Commissioner op. cit* at 4G-5A.

[32] It follows, therefore, that the application to intervene must thus fail. The applicant did not seek a costs order in the event that the application to intervene was dismissed. In any event, the application appears to be motivated by a genuine concern on the part of the Deputy Public Protector and cannot be said to have been instituted frivolously or vexatiously. Accordingly, the application to intervene is dismissed with no order as to costs.

PARTIES' SUBMISSIONS

[33] Before we briefly describe the submissions of the parties, it is expedient to set out the wording of the relevant statutory enactments in full:

[33.1] **Section 167(5) of the Constitution**

"The Constitutional Court makes the final decision whether an Act of Parliament, a provincial Act or conduct of the President is constitutional, and must confirm any order of invalidity made by the Supreme Court of Appeal, the High Court of South Africa, or a court of similar status, before that order has any force".

[33.2] **Section 172 of the Constitution - Powers of courts in constitutional matters**

"(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.

(2)(a) The Supreme Court of Appeal, the High Court of South Africa or a court of similar status may make an order concerning the constitutional validity of an Act of Parliament, a provincial Act or any conduct of the President, but an order of constitutional invalidity, has no force unless it is confirmed by the Constitutional Court.

(b) A court which makes an order of constitutional invalidity may grant a temporary interdict or other temporary relief to a party, or may adjourn the proceedings, pending a decision of the Constitutional Court on the validity of that Act or conduct.

(c) National legislation must provide for the referral of an order of constitutional invalidity to the Constitutional Court.

- (d) *Any person or organ of state with a sufficient interest may appeal, or apply, directly to the Constitutional Court to confirm or vary an order of constitutional invalidity by a court in terms of this subsection."*

[33.3] Section 18 of the Superior Courts Act – Suspension of decision pending appeal

- "(1) Subject to subsections (2) and (3), and unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision which is the subject of an application for leave to appeal or of an appeal, is suspended pending the decision of the application or appeal.*
- (2) Subject to subsection (3), unless the court under exceptional circumstances orders otherwise, the operation and execution of a decision that is an interlocutory order not having the effect of a final judgment, which is the subject of an application for leave to appeal or of an appeal, is not suspended pending the decision of the application or appeal.*
- (3) A court may only order otherwise as contemplated in subsection (1) or (2), if the party who applied to the court to order otherwise, in addition proves on a balance of probabilities that he or she will suffer irreparable harm if the*

court does not so order and that the other party will not suffer irreparable harm if the court so orders."

[34] In her notice of motion and founding affidavit, the applicant seeks an order declaring the judgment to be operational and executable in terms of section 18(1) and 18(3) of the Act. The legal submissions advanced by the applicant were expanded in her supplementary founding affidavit and a more detailed exposition of her case was provided in her composite reply. The submissions advanced in her reply was a response to the submissions of the DA and the President in their answering affidavits. The applicant also "adopted" some of the legal submissions made by the supporting respondents in their answering affidavits. We will only deal with those aspects of the parties' submissions that are immediately relevant to the Court's decision in this matter.

[35] The applicant requests this Court to declare that the following parts of the Order are immediately executable in terms of section 18 of the Act:

[35.1] *"187.5 The decision of the President to suspend the applicant is declared invalid ("the 187.5 order"); and*

[35.2] *187.6 The suspension of the applicant is set aside effectively from the date of this order" ("the 187.6 order").*

[36] The applicant submitted that the 187.5 order and the 187.6 order (which are collectively referred to hereinafter as "the relevant orders") were not made in terms of section 172(2)(a) of the Constitution and are, therefore, not subject to confirmation by the Constitutional Court. As such, the relevant orders are, in general terms, executable in the interim provided a successful application is made in terms of section 18(1) and (3) of the Act.

[37] According to the applicant, the relevant orders are to be read disjunctively as they are self-standing orders and should be interpreted as separate orders.

[38] The applicant submitted that the 187.5 order refers to the President's "decision" and not his "conduct" and, in the context of this matter, this distinction is not merely a matter of semantics. In the notice of motion, the applicant specifically prayed for an order "setting aside the conduct and/or decisions" of the President in terms of section 172(1) of the Constitution. This, according to the applicant, shows that even at that stage it was always the intention of the applicant to distinguish between the President's "decision" and "conduct". In line with this logic and the structure of the prayers, this court has declared as invalid the "decision" of the President to suspend the applicant.

[39] The applicant contended that the 187.6 order is akin to a review decision. It is either an ordinary common law order or a just and equitable order as contemplated in section 172(1)(b) of the Constitution. The impugned decision of the President,

so it was argued, was specifically pleaded on the basis of the common law ground of bias and/or of a reasonably apprehended bias, and separately upon a constitutional ground of a conflict of interest in terms of section 96(2)(b) of the Constitution. Both challenges are, in effect, premised on the failure of the decision-maker to bring an independent mind to bear in respect of the decision made.

[40] According to the applicant, whatever the position is in relation to the declaration of invalidity, the 187.6 order has nothing to do with section 172(2). It constitutes a just and equitable remedy in terms of section 172(1)(b) and/or the findings based on the common law. It is a self-standing order which is not dependent on the declarator contained in the 187.5 order.

[41] It was further argued that the order in paragraph 187.6 incorporates two distinct constituent parts or sub-orders, namely the order setting aside the suspension, and the effective date of the implementation of the order, being 9 September 2022. It was submitted that the order setting aside the suspension is an "ordinary" order which is based on findings of actual and/or reasonably apprehended bias in terms of the common law and a conflict of interest. The order imposing an effective date is clear and unambiguous and was just and equitable relief that was of immediate effect until the DA served its appeal notice.

[42] The applicant submits that even if section 172(2)(a) applies, it does not follow that section 18 of the Act does not apply. This is so because section 18 of the Superior

Courts Act applies to a decision which is the subject of an application for leave to appeal or of an appeal. In this matter, both the DA and the President have lodged an appeal in terms of section 172(2)(d) of the Constitution. Secondly, the word "appeal" in section 18 is not qualified or restricted to exclude a section 172(2)(d) appeal and is, therefore, applicable to the present matter. Thirdly, this court is any event entitled in terms of section 172(2)(b) to grant "other temporary relief" to a party, pending a decision of the Constitutional Court on the invalidity of the President's conduct, and the other temporary relief necessarily includes the relief envisaged in section 18. Fourthly, if the relevant orders still have to be confirmed by the Constitutional Court, they are interim in nature and are not final in effect and, therefore, these orders fall to be dealt with as interlocutory orders under section 18(2). As such, the relevant orders are not suspended by the application for leave to appeal or an appeal and take effect immediately unless an aggrieved party applies in terms of section 18(3) to suspend the orders.

[43] The applicant submitted that section 18 of the Superior Court's Act applies and that she has discharged the heavy onus imposed by section 18 before leave to execute may be granted. These statutory requirements are exceptional circumstances, irreparable harm on the part of the victorious party, and no irreparable harm on the part of the losing party⁵. The applicant submits that she also satisfied the additional requirement of prospects of success⁶.

⁵ *Knoop NO v Gupta (Execution)* 2021 (3) SA 135 (SCA).

⁶ See, *Minister of Social Development Cape v Justice Alliance of South Africa* [2016] ZAWCHC 34 (1 April 2016).

[44] The supporting respondents aligned themselves with the applicant's submission that the applicable orders must be viewed as self-standing orders and must be interpreted disjunctively. They submitted that this Court declared the President's decision to suspend the applicant invalid as required in section 172(1)(a) of the Constitution. This part of the declaration of invalidity is subject to confirmation by the Constitutional Court. However, this court then limited the order of invalidity to operate prospectively and the 187.6 order was granted as a just and equitable order in terms of section 172(1)(b). They contended that the 187.6 order is not an order of constitutional invalidity but it is a just and equitable interlocutory order granted in terms of section 172(1)(b) and is not suspended by an application for leave to appeal in terms of section 18 of the Act. Such an order, so it was argued, is not subject to confirmation because it is granted to mitigate the effects of an order of constitutional invalidity granted under section 172(1)(a) pending confirmation of that order by the Constitutional Court. If the 187.6 order is to be suspended pending confirmation by the Constitutional Court, this would defeat the purpose of the just and equitable order and entrenches the very unjust and iniquitous conduct that the order seeks to remedy.

[45] In the alternative, the supporting respondents argued that the 187.6 order constitutes "other temporary relief" envisaged in section 172(2)(b) of the Constitution which the court making the order of constitutional invalidity has a discretion to grant, even of its own accord, in order to mitigate the effects of the unconstitutional suspension of the applicant.

[46] In tandem with the applicant, the supporting respondents also submitted that because an order granted under section 172(2)(b) is a temporary order, it is not susceptible to section 18(1) of the Act. This order, by its nature, provides temporary relief to mitigate the effects of an order of invalidity pending the decision of the Constitutional Court and confirmation proceedings. An application for leave to appeal, therefore, does not suspend an order granted under section 172(1)(b), alternatively section 172(2)(b) of the Constitution, on the basis that such orders are interlocutory and, therefore, fall within the ambit of section 18(2) of the Act.

[47] The supporting respondents further contended that even if the court was not in agreement with the aforesaid submissions, it did not follow that section 18 of the Act did not apply. This section applies to a decision which is the subject of an application for leave to appeal or of an appeal. In this matter, both the DA and the President lodged appeals in terms of section 172(2)(d) of the Constitution. According to the applicant, the word "appeal" in section 18 is not qualified or restricted to exclude a section 172(2)(d) appeal. Section 18 is, therefore, applicable to the present situation.

[48] According to the DA, this Court declared the President's decision to be invalid because it was contrary to the constitutional principle of legality and section 96(2)(b) of the Constitution. The DA submits that section 18 of the Act cannot be employed to enforce and execute the judgment of this Court. Because the order of invalidity concerns the conduct of the President, the judgment must be confirmed

by the Constitutional Court in terms of section 172(2(a) read with section 167(5) of the Constitution. Until such time as the Constitutional Court has pronounced on this issue, the Order has no force or effect and, accordingly, the court has no jurisdiction to grant the relief sought by the applicant.

[49] The DA submitted that, in any event, even if the enforcement mechanism expressed in section 18 of the Supreme Courts Act was theoretically available to the applicant, she has failed to meet the jurisdictional requirements that are necessary for the immediate enforcement and execution of the judgment. There are no exceptional circumstances that warrant the departure from the default position in relation to the ordinary effect of the appeal processes that the full court's order is suspended. On the contrary, so it was argued, there are several courts which have previously, in circumstances similar to that of the applicant, held that there are exceptional circumstances to in fact justify the enforcement of suspension pending the appeal⁷. Furthermore, the applicant will suffer no irreparable harm if the judgment is not enforced. On the other hand, the DA and the public interest will suffer irreparable harm if this court's judgment is enforced.

[50] The President's submissions were aligned with the arguments advanced by the DA. To the extent that there were variations in their submissions, it was more a matter of emphasis rather than any difference of substance.

⁷ See, for example, *Democratic Alliance v South African Broadcasting Corporation SOC Ltd & Others* 1All SA 530 (WCC), and *Ntlembeza v Helen Suzman Foundation and Another* 2017 (5) SA 402 (SCA).

DISCUSSION

[51] The framework for the hierarchy and jurisdiction of courts in South Africa is prescribed in Chapter 8 of the Constitution. In terms of the applicable legislative scheme, the Constitutional Court occupies a special place in this framework. It is the highest court of the Republic and the ultimate guardian of the Constitution and its values⁸.

[52] In *Pharmaceutical Manufacturers Association of South Africa*⁹, the Constitutional Court commented on section 172(2)(a) of the Constitution and noted that: *"The section is concerned with the law-making acts of the legislatures at the two highest levels, and the conduct of the President who, as head of State and the head of the Executive, is the highest functionary within the State. The use of the words "any conduct" of the President shows that the section is to be given a wide meaning as far as the conduct of the President is concerned. The apparent purpose of the section is to ensure that this Court, as the highest Court in constitutional matters, should control declarations of constitutional invalidity made against the highest organs of State. That purpose would be defeated if an issue concerning the legality of conduct of the President, which raises a constitutional issue of considerable importance, could be characterised as not falling within*

⁸ Section 167(3)(a) of the Constitution. See also, *President of the Republic of South Africa and Others v South African Rugby Football Union and Others – Judgment on recusal application 1999 (4) SA 147 (CC)* at para 72.

⁹ *Pharmaceutical Manufacturers Association of South Africa: In re Ex Parte President of the Republic of South Africa 2000 (2) SA 674 (CC)* at para 56.

s172(2)(a), and thereby removed from the controlling power of this Court under that section¹⁰.

[53] The Constitutional Court has repeatedly confirmed that its special role is necessary to preserve the comity between the judicial branch and the executive and legislative branches of government¹⁰.

[54] The Constitutional Court in *Von Abo*¹¹ noted that sections 167(5) and 172(2)(a) of the Constitution serve separate but complimentary purposes. Section 172(2)(a) confers constitutional jurisdiction on the Supreme Court of Appeal (“SCA”) and the High Court subject to the express oversight of the Constitutional Court in relation to orders on the constitutional validity of national and provincial legislation and the conduct of the President. On the other hand, section 165(5) delineates the power of the Constitutional Court in relation to the same class of orders of constitutional invalidity made by the SCA and the High Court. Both provisions serve the vital purpose of ensuring that orders of invalidity directed at the appropriate class of the President’s conduct have no force unless confirmed by the Constitutional Court.

[55] It follows that the Constitutional Court makes the final decision whether the conduct of the President is unconstitutional. No order to this effect by any other court has any force until the Constitutional Court has pronounced on the issue. In other

¹⁰ See, for example, *Economic Freedom Fighters v Speaker of the National Assembly; Democratic Alliance v Speaker of the National Assembly* 2016 (3) SA 586 (CC), and *President of the Republic of South Africa and Others v South African Rugby Football Union and Others – Judgment on recusal application op cit.*

¹¹ *Von Abo v President of Republic of South Africa* 2009 (5) SA 345 (CC) at para 31.

words, a High Court order declaring the conduct of the President to be inconsistent with the Constitution has to be confirmed before it can be of any force or effect. As the Constitutional Court stated in *Sibiya*, such an order is inchoate – it is a valid order but has no effect¹².

[56] Section 172(2)(c) of the Constitution further requires national legislation to provide for the referral of an order of constitutional invalidity to the Constitutional Court. The Superior Courts Act and the Constitutional Court's Rules provide the procedure and mechanism for doing so.

[56.1] Section 15(1)(a) of the Superior Courts Act provides that whenever the High Court "*declares ... conduct of the President invalid as contemplated in section 172(2)(a) of the Constitution, that court must, in accordance with the rules, refer the order of constitutional invalidity to the Constitutional Court for confirmation*".

[56.2] That must be read with Rule 16(1) of the Constitutional Court's Rules which provides: "*The Registrar of a court which has made an order of constitutional invalidity as contemplated in section 172 of the Constitution shall, within 15 days of such order, lodge with the Registrar of the Court a copy of such order.*"

¹² *Sibiya and Others v Director of Public Prosecutions: Johannesburg High Court and Others* 2005 (5) SA 315 (CC) at para [43].

[56.3] The Registrar of the Court, therefore, has an obligation to refer the matter for confirmation, independent of any action that any of the parties may take. Obviously, the Court will have to direct the Registrar to refer the matter.

[57] The fate of this application hinges on the interpretation of the judgment. The basic principles applicable to construing documents also apply to the construction of a Court's judgment or order.¹³ As to the proper approach in this regard, the Constitutional Court in *Parsons*¹⁴ stated that "*the starting point is to determine the manifest purpose of the order. In interpreting a judgment or order, the court's intention is to be ascertained primarily from the language of the judgment or the order in accordance with the usual well-known rules relating to the interpretation of documents. As in the case of a document, the judgment or order and the court's reasons for giving it must be read as a whole in order to ascertain its intention*".

[58] In *Capitec Bank Holdings Ltd and Another*¹⁵, the SCA quoted with approval its earlier judgment in *Natal Joint Municipal Pension Fund*¹⁶ and reiterated that when interpreting a contract, the language used, the context in which it is used, and the purpose of the provision should be taken into consideration. In *casu*, Unterhalter AJA further stated: "*Most contracts, and particularly commercial*

¹³ *HLB International (South Africa) v MWRK Accountants and Consultants* (113/2021)[2022] ZASCA 52 (12 April 2022).

¹⁴ *Eke v Parsons* 2016 (3) SA 37 (CC) at para 29.

¹⁵ *Capitec Bank Holdings Ltd and Another v Coral Lagoon Investments 194 (Pty) Ltd and Others* 2022 (1) SA 100 (SCA).

¹⁶ *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para 18.

*contracts, are constructed with a design in mind, and their architects choose words and concepts to give effect to that design. For this reason, interpretation begins with a text and its structure. They have a gravitational pull that is important. The proposition that context is everything is not a license to contend for meanings unmoored in the text and its structure. Rather, context and purpose may be used to elucidate the text*¹⁷. This comment is apposite to the type of iterative process engaged in by a court when crafting its judgment and the interpretive exercise that must be engaged in when considering the judgment.

[59] If on a reading of the judgment or order as a whole, the meaning of the judgment or order is clear and unambiguous, no extrinsic fact or evidence is admissible to contradict, vary, or qualify, or supplement it¹⁸.

[60] As noted, the judgment is a consequence of the Part B proceedings instituted by the applicant. In paragraph 1 of the judgment, the court noted what the application was all about and stated in this regard:

*"[1] The applicant applies to this court in terms of the provisions of section 172(1) of the Constitution for orders declaring certain conduct and/or decisions ("**the impugned conduct or decisions**") of the first, second and third respondents to be irrational, unconstitutional and invalid, as well as for consequential relief of a just and equitable remedy."*

¹⁷ *Capitec Bank Holdings Ltd and Another* *ibid* para [51]

¹⁸ *Department of Transport v Tasima (Pty) Ltd* 2018 JDR 1122 (CC) at para [43].

[61] In so far as the impugned conduct or decision of the President is concerned, paragraph 4 of the judgment records that:

"[4] The impugned conduct and/or decisions in respect of the (the President) relate to his decision to suspend the applicant as well as the preliminary steps he took leading up to the suspension."

[62] The parties filed a Joint Practice Note prior to the hearing in which they listed the issues to be determined by this Court. In so far as the President is concerned, the issues to be determined as agreed by the parties is reflected in paragraph 35.6 of the judgment which reads:

"35.6 Whether the impugned conduct of the President ought to be declared to be irrational and/or inconsistent with the Constitution in terms of section 172(1)(a) of the Constitution because:

35.6.1 it was premature and/or ultra vires as the proceedings envisaged in section 194(3)(a) of the Constitution had not started as at 17 March 2022, 9 June 2022, or at all;

35.6.2 it was tainted by actual or reasonably apprehended conflicts of interests emanating out of six different and identified investigations;

35.6.3 of alleged breaches of section 96 of the Constitution,”

[63] Paragraph 35.7 of the judgment also records that this court was to determine “*the just and equitable remedies that ought to be granted in terms of section 172(1)(b) of the Constitution.*”

[64] The question that arises is whether the President’s decision to suspend the Public Protector can properly be characterised as “conduct of the President” under sections 172(2)(a) and 167(5) of the Constitution. The applicant has sought to draw a distinction between the decision and conduct and submits that it is only conduct and not decisions that fall to be referred to the Constitutional Court for confirmation. No authority was provided for this submission, which is not surprising.

[65] The Constitutional Court in a number of instances has characterised a “decision” of the President as constituting “conduct” of the President, the invalidity of which required confirmation by the Constitutional Court. Thus, for example, in *Democratic Alliance*¹⁹, the Constitutional Court held that the decision of the SCA that the President’s decision to appoint the National Director of Public Prosecutions was invalid, was “conduct of a President” subject to confirmation under section 172(2)(a).

¹⁹ *Democratic Alliance v President of South Africa* 2013 (1) SA 248 (CC) at para 3. See also *Corruption Watch NPC v President of the Republic of South Africa* 2018 (2) SACR 442 (CC) at para 4, *Kruger v President of the Republic of South Africa* 2009 (1) SA 417 (CC), and *Association of Regional Magistrates of Southern Africa v The President of the Republic of South Africa* *op cit*.

[66] The contention by the applicant that the declaration of the President's suspension of the applicant as being unlawful is rooted in the common law and does not fall under the rubric of "conduct of the President" in terms of section 172(2)(a) of the Constitution, misstates the law and is a gross mis-characterisation of the reasons underpinning the court's finding in this regard. The suspension of the applicant was based on the exercise of a constitutional duty to consider the suspension of the applicant once the section 194 (or impeachment) inquiry commences. In other words, the authority to suspend the applicant is granted to the President in terms of a constitutional provision (section 194(3)(a)) and when he suspended the applicant, the President was exercising a public power conferred on him by the Constitution.

[67] As the DA correctly pointed out, the court's finding is based on the principle of legality and the President's breach of a constitutional duty not to involve himself in a decision where there may be a conflict of interest. This is made abundantly clear in paragraph 161 of the judgment which bears repeating:

"[161] More importantly, the President as a servant of the Constitution, is under an obligation to obey its commands. He is enjoined to uphold, defend, and respect the Constitution. The President had a duty to exercise his public power within the parameters of the law. It is trite that the exercise of public power must comply with the Constitution and the doctrine of legality. To this end, we share the views expressed by the Full Court, where the court noted

that the principle of legality, being an incident of the rule of law, dictates that those who exercise public power, including the President, must comply with the law. The Full Court noted that the role of the rule of law as a form of constitutional control on the exercise of public power was given expression in Affordable Medicines Trust and another v Minister of Health and another, where Ncgobo CJ stated:

"[49] The exercise of public power must therefore comply with the Constitution, which is the supreme law, and the doctrine of legality, which is part of the law. The doctrine of legality, which is an incident of the rule of law, is one of the constitutional controls through which the exercise of public power is regulated by the Constitution. It entails that both the Legislature and the Executive 'are constrained by the principle that they may exercise no power and perform no function beyond that conferred upon them by law'. In this sense the Constitution entrenches the principle of legality and provides the foundations for the control of public power." (footnotes omitted)

- [68] Given the forgoing comments and analysis of the judgment, there cannot be any doubt that what this Court was dealing with in the Part B proceedings was in the nature of a constitutional matter. Having decided that the President's conduct was inconsistent with the Constitution, the court was obliged to declare such conduct invalid. This is reflected in the 187.5 order. Having made a declaration of invalidity,

the court went on further to make a just and equitable order in terms of section 172(1)(b) of the Constitution as it was quite entitled, but not obliged, to do. This is reflected in the 187.6 order: indeed, the parties had agreed that the just and equitable relief to be granted was an issue to be determined by this court.

[69] Given the remit of the issues to be determined by this court, the order of the court is a composite one and the orders granted in respect of the President must be interpreted conjunctively rather than as stand-alone orders as contended for by both the applicant and the supporting respondents. This court was requested to determine a constitutional matter involving the President's conduct. Once it made a pronouncement on this issue, it then made a just and equitable order setting aside the suspension but limited its retrospective effect. The court's reasoning in respect of the just and equitable remedy granted is reflected in paragraphs 172 to 175 of the judgment. In essence, the court decided that the suspension should apply prospectively because if it was applied retrospectively, this would have no practical positive effect but would risk disrupting the affairs of the office of the Public Protector. It is as simple as that.

[70] Even if the applicant did not request an order of just and equitable relief, once the court decided to set-aside the suspension, it may well have been obliged to indicate whether the order of suspension should apply retrospectively or

prospectively. As the Constitutional Court noted in *National Coalition for Gay and Lesbian Equality*²⁰:

"[87] ...All courts competent to make declarations of constitutional validity have the power to make an appropriate order under s 172(1)(b)(i) if such order, in the circumstances of a particular case, is 'just or equitable'. This was in fact so held in S v Ntsele. The real issue is whether, in the circumstances of this case, an order limiting the retrospectivity of the declaration of invalidity would indeed be just and equitable, on a proper construction of that concept in the context of the section and the Constitution as a whole.

[88] To the extent that a Court of first instance has this power, such Court must grapple with its exercise. This is necessary because in a given case it might be necessary to receive evidence in order to decide whether, and in what manner, such power should be exercised. It is essential that the Court of first instance receive and if necessary adjudicate on such evidence, and not a Court of appeal or this Court on confirmation. The importance of following such a procedure has been stressed by the Court in similar contexts on a number of occasions." (footnotes omitted)

²⁰ *National Coalition for Gay and Lesbian Equality v Minister of Justice* 1999 (1) SA 6 (CC) at para 87-88.

[71] Thus, when the court stated in paragraph 187.6 of the judgment that the order was to apply from the date of “this judgment”, all it meant was that the judgment would not apply retrospectively. The court’s reasoning in this regard would then be before the Constitutional Court when the latter court considers the confirmation of this judgment.

[72] The just and equitable order (the 187.6 order) was not intended to provide “temporary relief” in terms of section 172(2)(b) as contended by both the applicant and the supporting respondents. Nowhere in the judgment does the issue of temporary relief arise; this is not surprising as no such relief was requested and no argument was presented to that effect.

[73] As noted, the relevant orders are not self-standing and do not exist separately and independent of each other. The section 187.6 order is ancillary to, and a consequence of, the section 187.5 order. In any event, even if the orders were stand-alone orders and the order granting just and equitable relief was not a consequential or an ancillary order, both orders still have to be referred for confirmation. This was made clear by the Constitutional Court in *Dawood*²¹ when it stated that:

“It is not only the direct order of unconstitutionality itself that must be

²¹ *Dawood and Another v Minister of Home Affairs and Others; Shalabi and Another v Minister of Home Affairs and Others; Thomas and Another v Minister of Home Affairs and Others* 2000 (3) SA 936 (CC) at para [18] (“*Dawood*”).

confirmed but all the orders made by the High Court that flowed from that finding about unconstitutionality. If this court were to find that the High Court's conclusion that a section 25(9)(b) (of the Aliens Control Act 96 of 1999) is inconsistent with the Constitution is incorrect, none of the orders made consequent upon that finding would stand."

[74] Since the Constitutional Court makes the final decision whether or not the conduct of the President is constitutional, it follows that this Court's order declaring the President's decision to be inconsistent with the Constitution has to be confirmed before it can be of any force or effect. The judgment, while valid, is inchoate and has no effect. Of course, the judgment had not yet been referred to the Constitutional Court when this application was brought. We refer further to this issue later in this judgment.

[75] The judgment cannot be suspended. Nor can it be operationalised or executed simply because there is nothing that can operate or upon which execution can be levied²². The relevant orders have not been confirmed and, irrespective of the wording used, there is nothing that can be suspended. The judgment has no independent existence but is conditional upon confirmation by the Constitutional Court. This being the case, on a purely textual basis, section 18 of the Superior Courts Act does not apply.

²² See the comments of Harms JA in a similar context in *MV Snow Delta: Serva Ship LTD v Discount Tonnage Ltd* 2000 (4) SA 746 (SCA) at para 752 A-B.

[76] Section 18(1) of the Superior Courts Act suspends the operation and *execution* of a decision that is the subject of an appeal. The term "execution" has been held to mean the "carrying out" or the "giving effect" to the judgment in a manner provided by law such as by a specific performance sequestration, and the ejection from premises²³. "Execution" is the process for enforcing the judgment and it is only available when the claim or *l/s* has been judicially resolved²⁴. Section 18, therefore, contemplates a binding decision²⁵. The default position is that the execution of a binding judgment is suspended pending the decision of the application for leave to appeal or appeal.

[77] That section 18(1) of the Superior Courts Act cannot apply to a judgment that is of no force or effect is a logical consequence of a textual interpretation of the aforesaid section. The wording of section 18(1) of the Act signifies that in the absence of an application for leave to appeal or an appeal, the judgment in question is not suspended and is in fact deemed final. The noting of an appeal suspends the execution of a judgment appealed against which logically means that in the absence of such an appeal, the judgment is not suspended and is in fact deemed executable and, thus, final. This means that if section 18(1) applied to an order in terms of section 172(2)(a) of the Constitution that required confirmation by the Constitutional Court, and if no appeal is noted or lodged, such an order will have immediate effect. This conclusion flies in the face of the wealth of

²³ *Reid and Another Godart and Another* 1938 AD 511.

²⁴ Herbstein and Van Winsen *The Civil Practice of the High Courts of South Africa*, 5th edition, V2 by Cilliers, Loots and Nel.

²⁵ See, the comments of Navsa JA in *Ntlemenza v Helen Suzman Foundation and Another op. cit*, para [25].

Constitutional Court authorities to the effect that a judgment that has to be referred to the Constitutional Court for confirmation has no force or effect until confirmed. The applicability of section 18(1) will also be destructive of, and undermine, the supervisory role of the Constitutional Court in matters dealing with Presidential conduct.

[78] Both the applicant and the supporting respondents invoked section 18 of the Superior Courts Act and, in this regard, made much of the fact that the DA and the President lodged appeals and conditional applications for leave to appeal. It was submitted that this triggered section 18 of the said Act. Perhaps, not surprisingly, neither the applicant nor the supporting respondents could offer any relevant legal authority to support this submission. Indeed, their submissions in this regard were long on sophistry but short on legal authority.

[79] During oral argument, Counsel for the applicant sought to rely on the judgment of Masuku AJ in the matter of *Uitzig*²⁶ in support of the submission that section 18 of the Act applies to all appeals of decisions and orders regardless of the nature of the matter, the court from which the judgment emanates, or the court in which the appeal is lodged. However, *Uitzig* does not deal with the appeal of a judgment requiring confirmation by the Constitutional Court. *Uitzig* dealt with the issue of whether section 18(1) of the Superior Courts Act applied to all decisions and orders

²⁶ *Uitzig Secondary School Governing Body v MEC for Education, Western Cape 2020 (4) SA 618 (WCC)*.

including those that had been unsuccessful in the court *a quo* and not only those that were granted.

[80] Section 172(2)(d) of the Constitution regulates the situation where an appeal relating to an order of constitutional invalidity is lodged. This section confers on any person with a sufficient interest an automatic right to appeal directly to the Constitutional Court in respect of an order of constitutional invalidity granted by a Court. Leave to appeal is not required as is the case with ordinary appeals lodged in terms of the Superior Courts Act²⁷. Indeed, section 16 of the Act, which applies to appeals generally, expressly states that this section is "(s)ubject to section 15(1), the Constitution or any other law" (own emphasis).

[81] Accordingly, the fact that the DA and President lodged appeals is of no consequence to the referral by this court of the judgment to the Constitutional Court for confirmation. The referral is quite independent of any appeals that may be lodged. In *Dawood*²⁸, the Constitutional Court confirmed that notwithstanding the withdrawal of appeals, it was nevertheless, in terms of the constitutional scheme, bound to determine the order of invalidity. Once the matter is referred to the Constitutional Court, that court is obliged to determine the constitutionality of any order referred to it. In substance, the noting of an appeal in terms of s 172(2)(d) of the Constitution is merely an indication of the DA and the President of their intention to oppose the confirmation of the order of constitutional invalidity. Such

²⁷ See section 16 of the Superior Court's Act.

²⁸ *Op. cit.*, para [18]

an appeal cannot have the effect of rendering final and binding a decision that is by operation of law not final and binding.

[82] This court has rejected the argument that the part of the order relating to just and equitable relief is a temporary order that fell to be dealt with in terms of section 172(2)(b) of the Constitution. A further related submission was made principally by the supporting respondents that the order relating to just and equitable relief is not suspended by noting an appeal or the filing of an application for leave to appeal because it is an order contemplated in section 18(2) of the Superior Courts Act as it is in the nature of an interlocutory order. This being so, it was argued, the default position in terms of section 18(2) applies. Such an order takes effect immediately and is not capable of being suspended pending the decision on the application for leave to appeal or an appeal, unless an application is made in terms of section 18(3) that such an order be stayed pending the application for leave to appeal or an appeal. This submission is without substance.

[83] Quite simply, section 18(2) of the Superior Courts Act cannot apply since the order relating to just and equitable relief (that is, the 187.6 order) was not intended to be a temporary or interlocutory order. As to what constitutes an interlocutory order, Corbett JA in *South Cape Corp (Pty) Ltd*²⁹ stated the following:

"In a wide and general sense the term 'interlocutory' refers to all orders

²⁹ *South Cape Corp (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1997 (3) SA 534 (AD) at 549G.

pronounced by the court, upon matters incidental to the main dispute, preparatory to, or during the progress of, the litigation."

- [84] Having regard to what is considered to be an interlocutory order, the judgment is anything but interlocutory. It is a valid judgment on all the issues in dispute *albeit* that the judgment is of no force and effect and is conditional on confirmation by the Constitutional Court.
- [85] Given the conclusion reached, especially in connection with the non-applicability of section 18 of the Superior Courts Act to the matter at hand, it is not necessary to consider the merits of the application and determine if the applicant has discharged the onus for the grant of an order for the immediate operation and enforcement of the judgment.
- [86] In terms of rule 16 of the rules of the Constitutional Court, the Registrar of the Court which made the order of constitutional invalidity must, within 15 days of such order, lodge with the Registrar of the Constitutional Court a copy of such order. In terms of section 15(1) of the Superior Courts Act, it is the court that must, in accordance with the rules, refer the order of constitutional validity to the Constitutional Court for confirmation. The referral of a judgment to the Constitutional Court for confirmation thus appears to be an administrative task performed by the Registrar of the relevant court on the direction of the Court whose judgment is subject to confirmation.

[87] There is no injunction making it obligatory for a court to include in its order a direction to the Registrar to refer a judgment to the Constitutional Court for confirmation. One would normally expect that, having identified the issues to be determined, the parties will be aware when a dispute entails a declaration of constitutional invalidity that requires confirmation by the Constitutional Court. But, perhaps, this places too much reliance on the parties to apply their common sense. It may, therefore, be a salutary practice to include an order in all such matters directing the Registrar of the court to refer the matter to the Constitutional Court for confirmation. Such an approach may well limit the issues in dispute. In this case, however, given the fractious nature of the relationship between the parties, it is unlikely to have deterred the resultant legal skirmish – especially, if regard is had to the manner in which the applicant framed her case.

[88] The judgment of this court was delivered on Friday, 9 September 2022 at approximately 14h30. In the ordinary course, the court would have directed the Registrar of the High Court to refer this matter to the Constitutional Court after the intervening weekend. As it turned out, less than an hour after the Court had granted its judgment, there was an exchange of correspondence which initiated a flurry of activity that eventually culminated in the hearing of this application. This court, thus, had no option but to deal with the application and the ensuing litigation.

[89] In summary, the court concludes that:

- [89.1] The decision of the President to suspend the Public Protector amounts to “conduct of the President” for the purposes of section 172(2) of the Constitution;
- [89.2] The declaration of constitutional invalidity by this court in relation to the President’s conduct had to be referred to the Constitutional Court for confirmation, and the referral is independent of any steps taken by any of the parties;
- [89.3] Paragraphs 187.5 and 187.6 of the judgment are composite, not self-standing, orders, and must be referred to the Constitutional Court;
- [89.4] Section 172(2)(b) of the Constitution has no application to the judgment; and
- [89.5] Section 18 of the Superior Courts Act has no application to this matter.

COSTS

- [90] The applicant sought costs on a punitive scale against the DA and the President in his personal capacity. A similar order was sought by the DA against the applicant in her personal capacity. In his answering affidavit, the President sought an order for costs including the costs of three counsel. It is unclear if the cost order sought was against the applicant in her personal capacity. In any event, in the Joint Practice Note agreed to by all the parties, no costs order is sought by the President.

[91] In this matter, the DA has been substantially successful and this Court does not see any reason why costs should not follow the course. We do not believe, however, that the applicant should be mulct with costs in her personal capacity. The applicant and her legal representatives laboured under an erroneous impression that the 187.6 order was operative from 9 September 2022. However, it does not appear that the application was pursued recklessly or frivolously or vexatiously or in bad faith. Indeed, it appears that the DA and the President, too, may well have harboured some degree of uncertainty on the proper interpretation of the judgment. Thus, the DA, despite having raised the issue that the relevant orders required confirmation by the Constitutional Court and that it had an automatic right of appeal in terms of section 172(2)(d) of the Constitution, still considered it necessary to file an application for leave to appeal directly to the Constitutional Court in the event that it was wrong that it was entitled to an automatic appeal. The President filed a similar application to appeal directly to the Constitutional Court, going even further by filing a conditional appeal to the SCA.

[92] Unfortunately, this matter was unnecessarily burdened by voluminous and irrelevant documentation submitted as part of the record. The DA conceded that a significant portion of its answering affidavit (343 pages) was filed in error. There is no reason why the DA should gain any benefit from its own burdensome conduct. In the circumstances, the DA cannot recover any costs associated with the delivery of the irrelevant and unnecessary documentation filed as part of the record.

ORDER

[93] In the result, the following order is granted:

[93.1] The application to intervene by the Deputy Public Protector is dismissed with no order as to costs.

[93.2] The applicant's application is dismissed.

[93.3] The Public Protector is directed to pay the costs of the DA and such costs are to include the costs of two counsel where so employed.

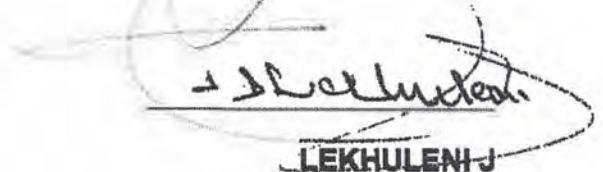
[93.4] The costs awarded to the DA in terms of paragraph [93.3] above shall exclude any and all costs associated with the delivery of the documents attached as pages 290-382, pages 425-530, and pages 565-711 to its answering affidavit.



NUKU J



FRANCIS J



LEKHULENI J

APPEARANCES

For the Applicant	Advocate D Mpofu, SC Advocate B Shabalala Advocate H Mathlape
Instructed by	Seanego Attorneys Inc (ref: TNS/PUB1/0028)
For the 1 st & 2 nd Respondents	Advocate A Breitenbach, SC Advocate U Naldoo Advocate A Toefy
Instructed by	Office of the State Attorney, Cape Town (ref: Mr L Manuel)
For the 3 rd Respondent	Advocate G Budlender SC Advocate K Pillay, SC Advocate M Adhikari Advocate N Luthuli
Instructed by	Office of the State Attorney, Cape Town (ref: Mr M Owen)
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For the 10 th & 11 th Respondents	Advocate V Ngalwana SC Advocate T Masuku, SC Advocate M Simelane
Instructed by	Ntanga Kkuhlu Inc (ref: Mr Ntanga/U0007/22)