

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT No.

Court *a quo* Case No. 52883/2017

In the matter between:

PUBLIC PROTECTOR

Applicant

and

SOUTH AFRICAN RESERVE BANK

Respondent

**APPLICATION FOR DIRECT ACCESS IN TERMS OF RULE 18 (1)
ALTERNATIVELY RULE 19(2)**

TAKE NOTICE THAT the Public Protector (*“the applicant”*) hereby applies to this Court for an order in the following terms:

1. Granting the applicant direct access to this Court as contemplated in section 167(6)(a) of the Constitution for an order:
 - 1.1. declaring that paragraph 4.3 of the order which appears at paragraph 131 of the judgment handed down by Madam Justice C Pretorius, Madam

Justice N P Mngqibisa-Thusi and Mr Justice D S Fourie in the High Court of South Africa, Gauteng Division, Pretoria (under case numbers 48123/2017, 52883/2017 and 46225/2017) on 16 February 2018 (“*the Judgment*”) impacts adversely and directly on the exercise by the Public Protector, a Chapter nine institution, of her constitutional power, obligations and functions without fear, favour or prejudice and is therefore unconstitutional;

1.2. setting aside

1.2.1. paragraph 4.3 of the order which appears at paragraph 131 of the Judgment; and

1.2.2. the portion of the Judgment on which paragraph 4.3 of the order is premised, and in particular:

1.2.2.1. that there is a reasonable apprehension that the Public Protector was biased; and

1.2.2.2. that the Public Protector does not fully understand her constitutional duty to be impartial and to perform her functions without fear, favour or prejudice.

2. Alternatively, granting the Public Protector leave to appeal to this Court as contemplated in section 167(6)(b) of the Constitution to appeal against:
 - 2.1. paragraph 4.3 of the order which appears at paragraph 131 of the Judgment; and
 - 2.2. the portion of the Judgment on which paragraph 4.3 of the order is premised, and in particular:
 - 2.2.1. that there is a reasonable apprehension that the Public Protector was biased; and
 - 2.2.2. that the Public Protector does not fully understand her constitutional duty to be impartial and to perform her functions without fear, favour or prejudice.
3. Condoning the late filing of the application contemplated in paragraph 2 above to the extent necessary.
4. Costs in the event of opposition to the application contemplated in paragraph 1.1. above alternatively costs of the application for leave to appeal be costs in the appeal.

5. Further and/or alternative relief.

TAKE NOTICE FURTHER THAT the application for direct access is brought on the grounds that it is in the interests of justice that an order for direct access be granted alternatively the application for leave to appeal is brought on the grounds that the matter raises a constitutional matter which ought to be considered by this Court.

TAKE NOTICE FURTHER THAT if the Respondent intends opposing:

- a) The order sought in paragraph 1.1. above, the Respondent must within 10 days from the date upon which this application is lodged, notify the applicant and the Registrar in writing of its intention to oppose.
- b) The order sought in paragraph 1.2 above, the Respondent must within 10 days from the date upon which this application is lodged, respond thereto in writing, indicating whether or not the application for leave to appeal is being opposed, and if so the grounds for such opposition. If the Respondent intends to lodge a cross-appeal on a constitutional matter, the Respondent is required to, within 10 days from the date upon which this application is lodged, lodge with the Registrar an application for leave to cross-appeal.

TAKE NOTICE FURTHER THAT the accompanying affidavit of **BUSISIWE MKHWEBANE** together with annexures, will be used in support of this application.

DATED at _____ on this _____ day of April 2018.

FASKEN

(Incorporated in South Africa as Bell Dewar Inc.)

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TO :

THE REGISTRAR
THE CONSTITUTIONAL COURT
BRAAMFONTEIN

AND TO:

The Respondent

WERKSMANS ATTORNEYS

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