

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA  
(HELD AT BRAAMFONTEIN)

CCT CASE NO: 206/25

In the matter between:

**JACOB GEDLEYIHLEKISA ZUMA** 1<sup>st</sup> Applicant

**UMKHONTO WESIZWE PARTY** 2<sup>nd</sup> Applicant

and

**PRESIDENT CYRIL MATAMELA RAMAPHOSA** 1<sup>st</sup> Respondent

**MINISTER SENZO MCHUNU** 2<sup>nd</sup> Respondent

**MINISTER GWEDE MANTASHE** 3<sup>rd</sup> Respondent

**ACTING MINISTER (DESIGNATE) FIROZ CACHALIA** 4<sup>th</sup> Respondent

**JUSTICE MBUYISELI MADLANGA ADCJ** 5<sup>th</sup> Respondent

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**FILING SHEET**

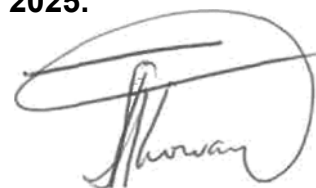
[First and Second Applicants' Composite Replying Affidavit]

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**HEREWITH PRESENTED FOR SERVICE AND FILING:-**

1. First and Second Applicants' Composite Replying Affidavit to the Answering Affidavits of the First and Second Respondents.

**DATED AT JOHANNESBURG ON THIS 24<sup>TH</sup> DAY OF JULY 2025.**



**KMNS INC.**

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**ACTING MINISTER (DESIGNATE) FIROZ CACHALIA** 4<sup>th</sup> Respondent

**JUSTICE MBUYISELI MADLANGA ADCJ** 5<sup>th</sup> Respondent

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**FIRST AND SECOND APPLICANTS' COMPOSITE REPLYING AFFIDAVIT TO THE  
ANSWERING AFFIDAVITS OF THE FIRST AND SECOND RESPONDENTS**

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I, the undersigned,

**JACOB GEDLEYIHLEKISA ZUMA**

do hereby make oath and say that

1. I am an adult male South African citizen, voter and taxpayer. I am a member and the President of the Umkhonto Wesizwe Party ("the MKP" or "MK") which

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is the second applicant in this matter and the third largest political party represent

2. I am also the immediate past President of the Republic of South Africa and before that was the Deputy President of the Republic for a combined period of 19 years (from 1999 till 2018). I am therefore uniquely familiar with the extent and limits of the powers of the President of South Africa as set out in Chapter 5 of the Constitution and elsewhere in it. I have also had personal dealings with the relevant issues of appointing and dismissing Ministers as well as setting up Commissions of Inquiry.
3. Similarly I am the past President of the African National Congress having been a member thereof for some 65 years. I am therefore also acquainted with the inner workings of that organisation and its factional alliances, better than the average person or the court.

**A: INTRODUCTION**

4. It is in these capacities that I personally bring this application. At the time of the institution of this application I was unfortunately out of the country. I confirm that I then authorised Dr John Mandlakayise Hlophe, the Deputy President of MK and Leader of the Opposition in South Africa, to deposed to the founding affidavit on my behalf and on behalf of the second applicant. I am now back in the country.
5. For various reasons and as I am entitled to I have since decided henceforth to be separately represented in the assertion of my own personal rights which are separate and distinct from the MK Party. In doing I fully associate myself

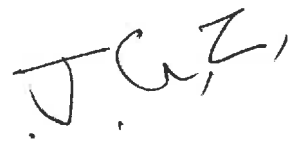
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with the case pleaded in the founding papers. I am merely exercising my right to be separately represented as an applicant in my own right. I do so, *inter alia* because my own rights as a citizen, taxpayer and a member of a political party represented in Parliament are at stake. I also wish to accentuate my unique role as one of only three people alive who have previously held the position of President. By way of contrast the MK Party brings its application in its own interest, in the interests of all its members and voters and in the public interest. There are therefore nuanced differences and areas of emphasis between the two applicants. These will be explained and exposed further during legal argument.

6. Although the applicants are separately represented, having filed the necessary notices of withdrawal and/or substitution, due to the urgency of the application, practical considerations and so as to avoid a proliferation of pleadings I depose to this affidavit on behalf of both applicants and by arrangement between our respective attorneys.
  
7. I have read the answering affidavit of MATAMELA CYRIL RAMAPHOSA and I wish to respond thereto as more fully set out below. However and given the style adopted in the said affidavit and the contents thereof which are mostly way off the mark, I deem it appropriate to restate what this application is about and most certainly not about, because President Ramaphosa, either deliberately or inadvertently, totally misconceives the gravamen of the application and accordingly responds to a different case to the one pleaded in the founding papers. There are just too many examples of this. I will therefore

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give a detailed refutation of his approach below under the heading of "GENERAL".

8. I have also read the separate affidavit of EDWARD SENZO MCHUNU (the second respondent) in response to the founding affidavit. For the sake of convenience and to further avoid a proliferation of documents I deal with both the first and second respondents' affidavit, compositely in this combined replying affidavit. Where necessary, I will clearly indicate which affidavit I am specifically referring to. I start with the answering affidavit of the first respondent.
9. Purely due to the urgency of the matter, the tight timelines stipulated and the logistics of commissioning the affidavits, I do not deal ad seriatim with the allegations contained in the two affidavits but do so thematically. To the extent that any specific allegations are not specifically dealt with they must be regarded as having been denied in so far as they differ with the overall version pleaded by the applicants in the founding affidavit and in this replying affidavit.
10. Should it prove to be necessary, the provisions of section 173 of the Constitution will be relied on in relation to the procedures outlined above.

#### **AD THE ANSWERING AFFIDAVIT OF PRESIDENT RAMAPHOSA**

##### **B: GENERAL**

11. Despite the lateness of the answering affidavit and the second applicant's attitude thereto, with which I completely associate myself, there is no serious condonation application which has been presented to this Court in order for it

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to grant the indulgence of condoning the admitted non-compliance with the directions of the Chief Justice. None of the well-known requirements for a condonation application, apart from an explanation of the delay, have been addressed. The application is defective and it must be dismissed. Condonation is not there merely for the asking or taking.

12. The further grounds of opposing the condonation application are more clearly set out in the response letter sent out by the second applicant to the State Attorney dated 23 July 2025, a copy of which is annexed hereto and marked "JZ1".
13. The urgency of the application is, correctly, not disputed. Nor can it be disputed.
14. The purported contestation of this Court's exclusive jurisdiction alternatively grounds for direct access is/are plainly unsustainable for the reasons dealt with below. The disputation of exclusive jurisdiction is, frankly, unintelligible. The matter self-evidently involves allegations of multiple breaches and/or failures to fulfil the President's obligations. Whether he is indeed guilty thereof is irrelevant in determining jurisdiction. It is trite that jurisdiction is determined purely by having reference to the pleadings and not the merits. In any event direct access would be warranted in the alternative. The relevant authorities vindicate this position. It is not reasonably anticipated that these objections will be seriously pursued. The facts truly speak for themselves in this regard.
15. Regarding the merits, I deal with the three headings or topics and in view of what has been stated above, it will be appropriate to deal with the three topics

or alleged grounds of unconstitutional conduct separately and in the sequence in which they are raised in the Notice of Application and the founding affidavit, namely:-

- 15.1. The decision to place Minister Mchunu on leave of absence.
  - 15.2. The decision to appoint Prof Cachalia as Acting Minister of Police.
  - 15.3. The decision to establish a judicial commission of inquiry.
16. Notably the preliminary defence of "*prematurity*" is only raised in respect of the second and third grounds but not the first. That is simply because it would be patently inapplicable thereto. Therefore, even if it applied to the last two grounds, which is deemed, it would not be sufficient to defeat the application itself. In any event the "*defence*" is meritless. It has since been revealed that the defence was advanced "*without the benefit of counsel*", which comes as no surprises at all.
17. Even in the unlikely event that the objective had any merit, it has since been overtaken by events as all the relevant decisions have since been consummated. For example, the Terms of Reference for the Commission were released on 23 July 2025. A copy thereof is annexed hereto marked "**JZ2**".

**C: PROCEDURAL LEGAL ISSUES**

18. I start with the legal issues or urgency, exclusive jurisdiction and/or direct access.

**B1: Urgency**

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19. The first respondent correctly does not challenge the self-evident urgency of the application, serve to repeat the complaint of “*prematurity*” which is no answer to urgency.

**B2: Jurisdiction**

20. In this regard I stand by what is stated in the founding affidavit which has not been seriously disturbed.
21. Like the well-known *EFF1* or “*Nkandla*” case, this matter deals with allegations of the failure to fulfil President specific constitutional obligations including the Presidential Oath of Office. It also implicates delicate political issues best left to this Honourable Court.

**B3: Direct Access**

22. Given the public importance of the issues and the imminence of the 1 August date for the assumption of office by Professor Cachalia, the matter cries out for direct access.
23. It has now also been revealed that the Commission is scheduled to start shortly.
24. In the premises the matter deserves to be dealt with by way of direct access. No serious dispute has been offered against the pleaded grounds for direct access.
25. Having disposed of the preliminary legal issues, I now turn to the merits.

**D: THE DECISION TO PLACE MINISTER MCHUNU ON LEAVE OF ABSENCE**

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26. This is clearly the triggering decision in that it was directly linked to the third decision to set up a Commission and causal of the second decision to appoint Prof Cachalia as acting Minister. That second decision was clearly a contrivance necessitated by the ulterior motive to protect Minister Mchunu.

27. There are essentially five defences raised, both of which are unsustainable in law, namely:-

27.1. Section 91 must be read with section 96 of the Constitution; and

27.2. The power to dismiss a Minister implies the power to suspend or place him or her on "*special leave*";

27.3. The impugned conduct is not unprecedented;

27.4. The Whitfield comparator is inapplicable because Whitfield admitted his transgression or essentially pleaded guilty;

27.5. The allegations of close political alliance between Minister Mchunu and the President are "*pure speculation and conjecture*".

28. Not of these defences hold any water and I deal with them in turn.

**D1: Section 91 and section 96**

29. Section 96 is irrelevant to the present application. It merely sets out the minimum constitutional standards which binds all members of the Executive. It is not an exhaustive list of possible Executive transgressions or misconduct. It is not even a code of ethics.

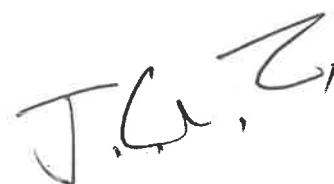
30. Section 96, which is irrelevant to the issues, was never relied on by the President or mentioned in his announcement. It is merely a case of impermissible *ex post facto* rationalisation and/or clutching at straws.

**D2: Implied or incidental powers**

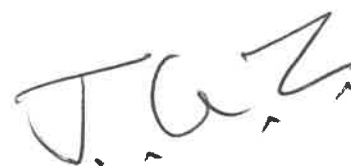
31. It seems to be common cause that there is no express power to place on special leave. Accordingly the President purports to rely on implied ancillary powers. There is no legal basis from which such powers may be read to flow from the primary powers identified in the section.

32. To the full knowledge of the President, the sui generis power to dismiss a Minister is purely political and derives from the Presidential prerogative and is not susceptible to the requirements of for example fair dismissals in terms of the Labour Relations Act, Public Service Act or such legal instruments. The President is empowered, not compelled, to dismiss a member of the Executive for no reason which has to do with his or her conduct and even so there is simply no entitlement to due process, investigation or disciplinary procedure. It can indeed be done on the basis of allegations, even if they are disputed. This was so in the prior case of Whitfield and even the subsequent case of the dismissal of Former Minister Nkabane on 21 July 2025, both of which are applicable. The letter was officially announced per the official Presidential communique annexed hereto and marked "JZ3".

33. This Court has held that implied constitutional powers are the exception not the rule.

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34. Where the Constitution provides for the power to suspend to coincide with the power to appoint and dismiss, it does so expressly. A good example of this section 194(3) of the Constitution.
35. For illustrative purposes, this Court may take judicial notice of the recent dismissal of Minister Nkabane following allegations of lying to Parliament, which she disputed till the end. On the same day the President also suspended the Gauteng Provincial Director of Public Prosecutions, Advocate Chauke pending an enquiry into allegations of misconduct. Reference will also be made to these examples to demonstrate the irrationality of the impugned decision to place Minister Mchunu on leave of absence.
36. However one does not have to go much further than the statements made on behalf of the President by his official spokesperson, Mr Vincent Magwenya in the written statement dealing with Mr Whitfield (Annexure AA5 to the President's Answering Affidavit) as well as the transcript of the interview he gave to Newzroom Afrika two days ago regarding to the dismissal of Dr Nkabane from the Cabinet. A copy of the self-generated transcript is annexed hereto, for convenience, as "JZ4". I beg leave to have the contents of both documents read as if specifically incorporated herein.
37. As to seriousness, in all the three cases, the allegations were serious, highly disputed and "untested". There is simply no room to split hairs. The resultant inconsistency is irrational and only attribute to the required inference of bias, favouritism and/or ulterior or improper motives ascribed to the President. It is in fact he who is in breach of section 96 of the Constitution.



38. There is nothing said in the President's affidavit which justified placing Minister Mchunu on "*special leave*" and thereby cause him to retain his Ministerial title, salary and other perks or privileges at the expense of the long-suffering taxpayer.
39. There is simply no potential that he will ever return to the portfolio of Minister of Police irrespective of the outcome of the commission of inquiry. That unlikely eventuality may also be subject to the ongoing criminal investigations against him as well as the outcomes of the Parliamentary Ad Hoc Committee. The ends do not justify the means. All we are left with are *ex post facto* and illegal rationalisations.

**D3: "Not unprecedented" (Zweli Mkhize defence)**

40. The simple answer to this absurd defence is that the placing of Minister Mkhize on special leave must have been unconstitutional. The fact that something was done before is no proof of its legality, then or now. Umkhonto Wesizwe did not exist then and even if it did that would not legalise an illegality.


**D4: "Whitfield admitted guilt" defence**

41. For a Police Minister or any Minister to collude with criminals is objectively more serious than travelling abroad without permission. The attempt to deny this is no credit to the President of a country.
42. It is also plainly false to state that Mr Whitfield ever admitted the allegations against him. The President has produced no evidence of this. To the contrary

the relevant statements of Mr Magwenya provide evidence of disputations and alleged “distortions” by, *inter alios*, Mr Whitfield himself and Minister Steenhuisen who is also the DA Leader, hence the ultimatums and threats referred to.

43. In this regard the President correctly stated that “*It is the prerogative of the President to determine the timing and manner of the appointment and removal of Members of the Executive*”. I agree. This is a correct summation of the provisions of section 91(2) of the Constitution.
44. In any event, the mere suggestion by President Ramaphosa that where a person has candidly admitted the allegations of wrongdoing, which is denied, and even extend the courtesy of an apology to his political principal, that person must be treated more harshly and stripped of his title and salary whereas if he or she had demonstrably lied about the allegations, issued illegal instructions to disband a police unit and is facing a serious police and parliamentary investigation then the person must be treated leniently and retained on the public payroll, merely needs to be stated to be rejected. It represents quintessential irrationality in any sense of the word.
45. The allegations against Mr Whitfield and/or Dr Nkabane are as equally “*untested*” as those against Minister Mchunu. It is six of the one and half a dozen of the other. The more recent dismissal of Minister Nkabane only serves to reiterate the Whitfield issue.
46. I myself was once dismissed from the Cabinet based on untested allegations of criminal conduct. The theory by the President that his hands are tied

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because he could not dismiss Minister Mchunu on untested allegations is a self-serving and false excuse.

47. It is notable that the President has only offered a bare denial to the pointed allegation that at all material times he knew about the illegal disbandment of the Political Killings Task Team by Minister Mchunu. This is not surprising because the allegation is self-evidently true. Conclusive proof thereof is contained in the letter written by Mchunu to the National Commissioner dated 31 December 2024, a copy of which is annexed to his separate answering affidavit as Annexure AA1. Based on my experience as the President of South Africa, this letter must have come to the attention of the President. If denied, the President must be made to take the stand and deny this under oath.

**D5: The political ties**

48. The statement that the President will or can only "*consider whether Minister Mchunu should be retained in Cabinet*" once there is an outcome of the commission of inquiry, including any possible litigation and appeals, is shocking to say the least. Judging by the duration of the narrower focussed Zondo Commission, such outcomes are unlikely to be realised before the expiry of the remaining 3½ years or so of Minister Mchunu's term of office.
49. Incidentally the decision to place him on special leave is already a decision to retain him in Cabinet. It is plain evidence of irrationality and a failure to fulfil the Presidential obligations contained in section 83 of the Constitution and/or the Oath of Office, not to mention sections 1 and 96 of the Constitution.

50. In the totality there is no valid justification or legal authorisation for the impugned decision.

**E: THE DECISION TO APPOINT PROF CACHALIA AS ACTING MINISTER**

51. There is no need to spend much time on this ground because no intelligible or sustainable defence which can be sustained in law has been offered or advanced by the first respondent as the decision maker. The defences raised, properly construed, actually amount to a concession of the alleged irrationality.

52. The *ex post facto* invocation of section 98, which was not mentioned in the announcement, is a clear smoking gun for irrationality.

53. There is also clear admission that the present situation is governed by section 98 because it plainly does.

54. The President openly dodges the clear distinction between the power to appoint a “*Minister*” and the different power to appoint an “*Acting Minister*”. The two are plainly not the same. One resides in section 91(3)(c) and the other in section 98. The desperate attempt to conflate the two things, under oath, is unfortunate and regrettable. It ought to attract a punitive order of costs if nothing else.

55. The President is duty bound and sworn to act in accordance with the Constitution and to uphold it, not to appoint “*a person from outside*” when the Constitution enjoins him to appoint only a person from inside the Cabinet as an Acting Minister, simply because, according to him, he deems it appropriate to do so and to flout the Constitution without justification.

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56. The obfuscatory reference to the credentials of Prof Cachalia is nothing but deflection. For the record no issue is taken against the Professor's credentials. For the purposes of this application they are taken to be impeccable. That, however, is not the issue. The issue is whether he was constitutionally qualified to be appointed by the President. The answer is that he was not. The appointment of Minister Mantashe is evidence that the President was fully aware of the constitutional limits to his powers and recklessly or deliberately violated them.
57. There is no room in our Constitution for the newly proposed staggered process of appointment of a Minister without assigning him or her any powers while knowing which powers he will be assigned and then assigning those very powers later, presumably in terms of section 98, while designating that person as an Acting Minister "*upon his appointment as Minister*". This is clearly a contrivance, expressed in indecipherable gobbledygook and at best an ill-fated attempt at ex post facto rationalisation of an inexplicable mess.
58. The first respondent served as my Deputy President for a number of years during which I personally consulted him whenever there was a need to appoint or dismiss several Cabinet Ministers. I can therefore testify that he knows that what he did was unconstitutional. He must have hoped not to be caught out.
59. The subliminal admission that not a single one of the other Ministers in the already bloated Cabinet is suitable to act as Minister of Police due to lack of integrity, is shocking and unsustainable. It is also belied by the appointment of Minister Mantashe who was fingered in the Zondo Commission. If he was the best choice for Acting Minister of Police in the interregnum then it is impossible

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to imagine that the President could do worse with the rest of the 32 Ministers in the so-called "*Government of National Unity*".

60. The taking of illegal and/or unauthorised decisions is prohibited by the law. The determination of that question lies in the heartland of the judicial functions. There is no room to contrive a separation of powers issue here. Conversely that is an additional ground for exclusive jurisdiction.
61. The relevant conduct of the President must be declared unconstitutional, in breach of his exclusive obligations and duly set aside.

**F: THE DECISION TO ESTABLISH A JUDICIAL COMMISSION OF INQUIRY**

62. Again the President, deliberately or inadvertently misses the boat in this respect. There are significant overlaps between this decision and the first two.
63. It is not the applicants' case that Justice Madlanga is personally unsuitable for the job or that his credentials are not impeccable. They are.
64. Nor is it the pleaded case that a commission of inquiry is not required or appropriate. The case of the applicants is merely that to appoint a judicial commission of inquiry is not constitutionally appropriate in these particular and very rare circumstances where the judiciary is being accused of criminal entanglements by a very senior police official and Provincial Commissioner claiming to be in possession of evidence. This is not some disgruntled litigant or political leader exercising poetic licence.

65. In such circumstances it is irrational to appoint any member of the eight institutions listed or “*accused*” by Lieutenant General Mkhwanazi of being a part of the alleged criminal syndicates.
66. The implicated members are unnamed. They do not include or exclude Justice Madlanga or any member of the judiciary. He may or may not be implicated, just like any other Judge or Magistrate.
67. What the President has subjectively been “*able to ascertain*” is completely irrelevant. So is his speculative and baseless conclusions that the allegations only pertain to criminal proceedings which have not (yet) been referred to the Constitutional Court for adjudication. It is not even clear what the basis or source of these conclusions might be.
68. It is well-known that such subjective considerations bear no relevance to the objective test for conflict of interests which is properly captured in the adage: “*Justice must not only be done but it must also be seen to be done*”.
69. It was for this reason that the courts prohibited me, as President, from exclusively appointing a judge to head a Commission of Inquiry into allegations implicating me in so-called state capture. The same should apply to allegations of judicial capture. Judges are also human and fallible.
70. It is also not the pleaded case that Justice Madlanga would literally be investigating “*himself*”. The mere possibility of that being the case is sufficient for the invocation of the *nemo sua* rule of natural justice to be applicable. So is the possibility of investigating serious allegations of criminality involving his own colleagues.

71. Regarding the role of the JSC and Magistrates Commission there seems to be indirect acceptance of some overlap in their potential investigations. But that is not the issue. The issue is the usurpation of their functions to whatever extent.
72. Finally the President also misses the point about the references to the Zondo Commission. The only relevant issues are that:-
- 72.1. The Zondo Commission arguably covered a narrower focus than the potential scope of the present Commission. Logically the costs and duration will at worst be the same.
- 72.2. The revised version that the Commission will last for 6 months is to be welcomed but it runs contrary to what was stated in the impugned announcement. A decision may not be validly adjusted in the answering affidavit. In any event there can be no telling of how much a Commission will actually last. Nor can subsequent litigation relating thereto, which may go on for years, be predicted or limited. Extensions are sought from the President or the court and they are seldom, if ever, refused. The wording of the Terms of Reference ominously states that a final report shall be submitted "*within 6 months of its establishment, or such extended periods as the President may determine*".
- 72.3. Whether the Zondo Commission produced valuable outcomes to the public cannot only be measured in money. Nor is there any possibility of the present commission recovering money. The subject matter seems to relate to drug cartels and the like or the murder of political activists.

72.4. The value which was derived from the Zondo Commission must be measured against the issues relevant to this matter, namely Presidential and/or Ministerial accountability. The record of this President in that regard is sadly and undisputably dismal. Several Ministers and Deputies who were implicated in possible criminality by the Zondo Commission, including Messrs Mantashe, Zizi Kodwa, David Mahlobo and others were subsequently appointed into the Executive. The President himself was found to have been *prima facie* criminally guilty of corruption by an Independent Panel chaired by a Former Chief Justice. That report still stands today as valid since it has never been challenged or set aside by a court of law.

72.5. To assist the Court in this regard, I annex hereto a copy of the relevant extracts from the Zondo Commission Report implicating some of the current members of the Executive in serious wrongdoing and/or potential criminality. A copy thereof is marked "JZ5".

72.6. It is therefore fanciful in the extreme to expect such a President to take any action against Minister Mchunu even if the proposed Madlanga Commission may make findings and/or recommendations of *prima facie* criminality. There is no better proof of this than the President's current disdainful appointment of Minister Mantashe as Acting Police Minister knowing full well that he was implicated in criminality by a Commission of Inquiry.

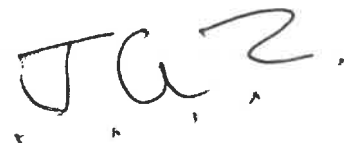
72.7. There is therefore no legal nexus between the outcome of the Commission investigation and the decision to place Minister Mchunu on

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special leave. This aspect is also relevant to the first triggering decisions.

- 72.8. In addition and objectively speaking the Terms of Reference do not necessarily speak to the specific misconduct allegedly committed by Minister Mchunu. This is not the type of enquiry which will be set up in respect of, for example, the Provincial Director of Public Prosecutions referred to above.
73. In the circumstances all the Zondo Commission related annexures are irrelevant and fall to be excluded as inadmissible upon various ground such as hearsay, opinion evidence or similar fact evidence.
74. The real issues raised, of reasonable apprehension of bias and *nemo iudex*, have not been pertinently addressed or refuted.
75. To be sure, a commission of inquiry may well be appropriate. That has no relevance herein. It is the proposed judicial commission of inquiry, which is impugned, in these particular circumstances.
76. Finally the issue of section 47(1) of the Superior Courts Act does not feature because the Judge will be performing administrative and/or executive functions. In any event this matter is not raised in the form of an objection in limine but merely as an enquiry and upon the incorrect assumption that section 47(1) applies, which is disputed. Legal argument will be advanced in this regard.



77. Regarding remedy, there is a strong case for substitutionary relief in relation to the special leave decision which is tainted by bias and/or remittal in respect of the other two decisions. This is a matter which will be left to the wide discretion of the Court, in terms of section 172(1)(b) of the Constitution.

**AD THE ANSWERING AFFIDAVIT OF MINISTER MCHUNU**

78. With the greatest respect the answering affidavit of the second respondent does not add any value to the relevant issues which need to be adjudicated in this matter. The affidavit is seemingly motivated by the ulterior motive of seeking to put out an exculpatory version in anticipation of the Commission of Inquiry and not to address the issues arising here.

79. Notably, the second respondent did not file a separate Notice to Oppose and all indications were that he was represented by the State Attorney together with the other respondents. The separate answering affidavit is therefore incompetent and not properly before the court. I deal with it only in the unlikely event of it being admitted to evidence.

80. In a nutshell the only new assertions made by the second respondent amount to the following:-

80.1. Lieutenant-General Mkhwanazi only made serious allegations against the second respondent (and others) which are not yet supported by conclusive proof.

80.2. Lieutenant-General Mkhwanazi did not afford the second respondent a right to comment or respond.

- 80.3. Before making the impugned announcement, the President met with the second respondent, presumably to communicate his decision. The second respondent denies the allegations. He also met with Lieutenant-General Mkhwanazi.
- 80.4. He issued a media statement refuting the allegations as well as written and sworn statements in response to complaints laid by political parties with the Parliamentary Ethics Committee.
- 80.5. The allegations made by Lieutenant-General Mkhwanazi are untested and/or unsubstantiated.
- 80.6. He will only deal with the topic relating to his placement on special leave. In respect of the other two topics as well as the preliminary points of urgency, exclusive jurisdiction and/or direct access he will abide the decision of the court.
81. All of the above issues do not add any value to the present debate.

**F1: The issue of leave of absence**

82. Regarding the disputed topic and like the President, Minister Mchunu readily concedes that the President is nowhere expressly given the power to place on special leave. He is therefore constrained to rely on an implied power to do so.
83. Having made the obvious and undisputed point that the power to dismiss necessarily implies the power to dismiss, or the *Masetlha* principle, the second respondent then goes further to imply from the power to dismiss a further power to impose special leave. I am advised that it will be argued that

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the *Masetlha* principle does not apply to the disputed power to impose special leave.

84. This is disputed firstly because special leave, by definition is voluntarily taken by an employee and not imposed by the employer. All leave is voluntary. The power to impose leave is therefore an illogical contradiction and non-existent.
85. To the extent that the second respondent equates the President's impugned conduct to precautionary suspension, which may be imposed, he clearly falls into the trap of equating employees with Cabinet Ministers. These are two different situations both in terms of the appointment process and the dismissal process. The President has no duties to advertise, short list and conduct interviews before appointing Cabinet members. Similarly he has no duties to grant a hearing upon dismissal or termination.
86. Legal argument will be advanced to demonstrate that a precautionary suspension is a different species and serves different purposes. There is no basis to imply a power to impose a precautionary suspension from the word "*dismiss*" as it is used in section 91(2) of the Constitution.
87. I am in agreement that the position of Minister Mchunu is exactly what is envisaged in section 98 of the Constitution, with due regard to the word "*absence*".
88. Regarding the issues of bias, irrationality and inconsistency, Minister Mchunu does not deny being a close ally of Mr Ramaphosa's. He falsely claim that the step aside rule only deals with people who have been charged. This is not true but it is neither here nor there. The rule is supposed to be about integrity and


so-called “renewal” of the ANC. The decision lies with the Integrity Committee of the ANC not the Secretary General.

89. The second respondent then goes on to say that his precautionary suspension was one of the options open to the President. The entire case of the applicants is that he had no such options because he is not so empowered. Even if he was, which is denied, he did so irrationally. In short, the due process was not due.
90. Regarding the Whitfield comparator the second respondent misses the point. The case of the applicant is not so much that Mr Whitfield's alleged transgression was trivial but that it was relatively minor or less serious than the alleged transgressions of which the second respondent is accused. Common sense dictates this to be so. The case is also not that Whitfield did not deserve to be dismissed. It is rather that Minister Mchunu also deserved to be dismissed. The previous examples are therefore irrelevant and only serve to reinforce the inconsistently lenient treatment of Minister Mchunu.
91. Similarly it is unhelpful to point out that Whitfield in fact travelled to the United States without the permission of the President or that he “admitted” to doing so

while pleading innocence. Mchunu has also now admitted to issuing a patently unlawful instruction for the disbandment of the Political Killings Task Team.

92. There is also no point in being drawn to the Mogotsi associate or comrade issue. It is abundantly clear that he misrepresented the truth when he said "*I am no associate of that person*" only later to admit that "*that person*" was his comrade. Incidentally that person was the provincial head of the "CR17" campaign in 2017.
93. I admit that the MK Party may not second guess the decision of the President to dismiss a Minister but it can test its rationality in a court of law.
94. The idea that witnesses would be afraid to co-operate if Minister Mchunu retained his office but not when he is on leave of absence and has still retained his position, is preposterous. There is simply no rational link between the leave of absence and the functioning of the Commission. This is the only reason given for the impugned decision.
95. I admit that Justice Madlanga will not be performing a judicial function (hence the non-applicability of section 47 of the Superior Courts Act) but the issue is that he comes from a category of persons who have been accused of criminality by Lieutenant-General Mkhwanazi.
96. There is no question of a Minister having to be found "*guilty*". The Commission is also incapable of finding him guilty. It can only make recommendations or determine prima facie culpability. The presumption of innocence is totally irrelevant.

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97. In totality there is nothing said in the second respondent's affidavit which detracts from the pleaded grounds of irrationality not on the part of the Minister but the President, who has spoken for himself and presented no credible defence. The Minister can only speculate about the President's motives.

**F2: Condonation**

98. Finally I mention that no issue is taken with the condonation application save to state that a punitive order of costs is warranted because the affidavit was unnecessary and merely constitutes a cheap public relations exercise and abuse of court process. It is acknowledged that, unlike the President, the first respondent did not have the same early warnings about the application. He might not have anticipated that he would be cited and he was therefore justified to only seek legal assistance once the application had been delivered. However the evidence he brings here is irrelevant. It belongs to the commission of inquiry, the police or the Parliamentary Investigation, not these proceedings.

**WHEREFORE** I pray that it may please this Honourable Court to grant the relief sought in the Notice of Application.



**DEPONENT**

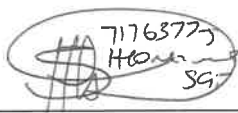
Sworn to and signed before me in NKANOLA on this the 24<sup>TH</sup> day of **JULY 2025**, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations

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contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.

**SOUTH AFRICAN POLICE SERVICE**  
**PRESIDENTIAL PROTECTION SERVICE**  
2025 -07- 24  
KWAZULU-NATAL  
**SOUTH AFRICAN POLICE SERVICE**

  
**COMMISSIONER OF OATHS**



T M P U M L W A N A  
& A S S O C I A T E S

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Your Ref: 2686/2025/Z42

Our Ref: MKP/CR1/0725/TM

OFFICE OF THE STATE ATTORNEY  
SALU BUILDING  
316 THABO SEHUME STREET  
PRETORIA  
ATTENTION: MR. L GUMEDE

DATE: 23 JULY 2025

"PER E-MAIL: LuGumede@justice.gov.za; ThuliDladla@justice.gov.za"

Dear Sirs,

**RE: JACOB GEDLEYIHLEKISA ZUMA & ANOTHER // PRESIDENT CYRIL MATOMELA  
RAMAPHOSA & 4 OTHERS – CCT 206/2025**

Your letter dated 22 July after the deadline set by the Chief Justice refers.

We are instructed to respond by indicating that our client rejects your clients' apology in total and mainly for the following reasons:

1. The apology arrived too late to ameliorate the inconvenience caused by our assembling of our legal team and clients in anticipation of the receipt of the answering affidavit/s in line with the directions of the Chief Justice. This turned out to be all in vain. The costs and expenses involved could have been avoided if we had been afforded the courtesy of an early indication as soon as it became clear that the deadline was not going to be met.

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2. As you know our clients took the trouble to write an unusually detailed letter of demand as long ago as 15 July (less than 48 hours after the impugned announcement was made by the President). The purpose was to outline the legal issues even before issuing the court papers
3. Indeed and as a result, the President was able to furnish defenses, albeit incorrect in law, by 17 July 2025 presumably on the advice of counsel.
4. When the application papers were delivered, the proposed timelines were set out and they were essentially the same as those issued by the Chief Justice two days later.
5. Given the nature and public importance of the issues in this matter, any undue delays will inconvenience not only our clients but also the Court and the public at large

In the circumstances, our instructions are not only to reject the apology but to oppose any condonation application. The late affidavits must be discarded and read as if pro non scripting.

Finally we are instructed to demand, as we hereby do, that your clients should give an undertaking that any should any consequential delays be caused in the form of a delayed hearing or judgment, the President will not implement any of the impugned decisions until after the outcome of the urgent application. Such undertaking must reach our offices before 10h00 tomorrow i.e. on 24 July 2025, failing which all our clients' rights are reserved.

We look forward to hearing from you on all of the issues raised above as a matter of extreme urgency.

Yours faithfully,



---

**T MPUMLWANA & ASSOCIATES**



SS

**CC: KMNS INCORPORATED**

"EMAIL: [thabo@kmnsinc.co.za](mailto:thabo@kmnsinc.co.za); [lavelesani@kmnsinc.co.za](mailto:lavelesani@kmnsinc.co.za)"

**CC: SITSULA ATTORNEYS**

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**CC: REGISTRAR (CONSTITUTIONAL COURT)**

"EMAIL: [generaloffice@concourt.org.za](mailto:generaloffice@concourt.org.za)"

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# Government Gazette Staatskoerant

REPUBLIC OF SOUTH AFRICA  
REPUBLIEK VAN SUID AFRIKA

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**PROCLAMATIONS • PROKLAMASIES****PROCLAMATION NOTICE 269 OF 2025**

by the  
**PRESIDENT of the REPUBLIC of SOUTH AFRICA**

**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM ARISING FROM THE SPECIFIC ALLEGATIONS MADE PUBLIC BY LIEUTENANT GENERAL NHLANHLA MKHWANAZI ON 6 JULY 2025**

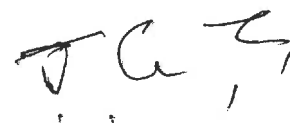
In terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996, I hereby appoint a Judicial Commission of Inquiry into criminality, political interference and corruption in the Criminal Justice System arising from the specific allegations made public by Lieutenant General Nhlanhla Mkhwanazi on 6 July 2025, with the terms of reference in the Schedule attached hereto, and appoint the Honourable Acting Deputy Chief Justice, Justice Mbuyiseli Madlanga as its Chairperson and Advocate Sesi Baloyi, SC and Advocate Sandile Khumalo, SC, as members of the Commission.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this 21<sup>st</sup> day of July Two thousand and twenty-five.

**MC RAMAPHOSA**  
President

By Order of the President-in-Cabinet:

**MT KUBAYI**  
Minister of the Cabinet



SS

**SCHEDULE**  
**TERMS OF REFERENCE**  
**OF THE**  
**JUDICIAL COMMISSION OF INQUIRY INTO CRIMINALITY, POLITICAL**  
**INTERFERENCE AND CORRUPTION IN THE CRIMINAL JUSTICE SYSTEM**  
**ARISING FROM THE SPECIFIC ALLEGATIONS MADE PUBLIC BY LIEUTENANT**  
**GENERAL NHLANHLA MKHWANAZI ON 6 JULY 2025**

A Judicial Commission of Inquiry ("the Commission") is hereby appointed in terms of section 84(2)(f) of the Constitution of the Republic of South Africa, 1996. On 6 July 2025, the Provincial Commissioner of Police for KwaZulu-Natal, Lt. Gen. Mkhwanazi held a media briefing to make public serious concerns regarding the existence and operation of a sophisticated criminal syndicate that has allegedly infiltrated law enforcement and intelligence structures in South Africa, undermining the South African Criminal Justice System. The allegations made in this media briefing raise serious constitutional, security and rule-of-law concerns, necessitating an urgent and comprehensive investigation.

The Commission is appointed to investigate and report on the veracity, scope, and extent of the allegations with regard to the infiltration of law enforcement, intelligence and associated institutions within the criminal justice system by criminal syndicates and make findings and recommendations for criminal prosecutions, disciplinary actions and institutional reform.


The Commission shall inquire into, report on and make findings and recommendations concerning:

1. Whether criminal syndicates, including but not limited to drug cartels, have infiltrated or exert undue influence over:
  - 1.1 The South African Police Service ("SAPS"), including the Political Killings Task Team and Crime Intelligence;
  - 1.2 The Johannesburg Metropolitan Police Department ("JMPD");
  - 1.3 The Ekurhuleni Metropolitan Police Department ("EMPD");
  - 1.4 The Tshwane Metropolitan Police Department ("TMPD");
  - 1.5 The National Prosecuting Authority ("NPA");
  - 1.6 The State Security Agency ("SSA");
  - 1.7 Any member of the Judiciary, including the magistracy and of courts administration;
  - 1.8 The Department of Correctional Services; and
  - 1.9 Any other institutions and/or organs of state within the criminal justice system.

2. The nature, extent, and consequences of such infiltration or influence, including:
  - 2.1 The facilitation of organised crime;
  - 2.2 Suppression or manipulation of investigations;
  - 2.3 Inducement into criminal, or other unlawful actions, including corruption, of law enforcement leadership;
  - 2.4 Commission of any other criminal offences; and
  - 2.5 Intimidation, victimisation or targeted removal of witnesses, potential witnesses or persons making protected disclosures or officials resisting criminal influence.
  
3. The role of senior officials of SAPS, JMPD, EMPD, TMPD, NPA, and SSA, and of members of the Judiciary, including the magistracy, current or former, who may have:
  - 3.1 Aided or abetted the alleged criminal activity;
  - 3.2 Failed to act on credible intelligence or internal warnings; and/or
  - 3.3 Benefitted financially or politically from the syndicate's operations.
  
4. The role of any member of the national executive responsible for the criminal justice system, whether they were complicit, aided and abetted, or participated in the acts listed in paragraphs 1 to 3 above, or did so by omission.
  
5. The effectiveness or failure of oversight mechanisms.
  
6. The adequacy of current legislation, policies, and institutional arrangements in preventing such infiltration.
  
7. Once established, the Commission shall also consider prima facie evidence relating to the involvement of individuals currently employed within law enforcement or intelligence agencies and, where appropriate, the Commission must make recommendations regarding the employment status of such officials including whether they should be suspended pending the outcome of further investigations.
  
8. These Terms of Reference may be added to, varied or amended by proclamation from time to time.
  
9. The Commissions Act, 1947, (Act No. 8 of 1947) ("the Act") shall apply to the Commission, subject to such amendments, including amendments in relation to the Terms of Reference of the Commission, and exemptions as may be specified by proclamation from time to time.

10. The Commission shall have all the powers necessary to achieve its mandate, including:
  - 10.1 The power to summon witnesses and compel the production of documents;
  - 10.2 The power to conduct search and seizure operations, subject to applicable law;
  - 10.3 The power to deviate from the Act insofar as it provides for public hearings, and to order that the Commission shall sit in camera where necessary to protect the safety of witnesses, the integrity of ongoing investigations where appropriate and where intelligence and the work of intelligence services are concerned; and
  - 10.4 The power to refer matters for immediate criminal investigation and urgent decisions on prosecution, taking into account the nature of the allegations and evidence the Commission will uncover.
11. Regulations may be made, after consultation with the Chairperson of the Commission, in terms of the Commissions Act, 1947, and shall apply to the Commission in order to enable the Commission to conduct its work meaningfully and effectively and to facilitate the gathering of evidence by conferring on the Commission powers as necessary, including the power to enter and search premises, secure the attendance of witnesses and compel the production of documents.
12. The Commission shall, where appropriate, refer any matter for prosecution, further investigation or the convening of a separate enquiry to the appropriate law enforcement agency, government department or regulator.
13. The Commission shall submit:
  - 13.1 an interim report within 3 months of its establishment; and
  - 13.2 a final report within 6 months of its establishment, or such extended period as the President may determine.
14. Each report must be submitted to the President and shall include recommendations that can be immediately actioned based on the Commission's work as at that date.
15. The Commission shall ensure the protection of potential witnesses and witnesses. All proceedings may be held in public or in private, as the Chairperson deems necessary.
16. The Commission's final report will be sent to the Speaker of the National Assembly and the Chief Justice.

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**PROKLAMASIE KENNISGEWING 269 VAN 2025**  
**van die**  
**PRESIDENT van die REPUBLIEK van SUID-AFRIKA**

**REGTERLIKE KOMMISSIE VAN ONDERSOEK MET BETREKKING TOT  
KRIMINELE GEDRAG, POLITIESE INMENGING EN KORRUPSIE IN DIE  
STRAFREGSTELSEL VOORTSPRUITEND UIT BEPAALDE AANTUIGINGS  
OPENBAAR GEMAAK DEUR LUITENANT-GENERAAL NHLANHLA MKHWANAZI  
OP 6 JULIE 2025**

Kragtens artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996, stel ek hierby 'n Regterlike Kommissie van Onderzoek in met betrekking tot kriminele gedrag, politiese inmenging en korrupsie in die Strafreghstelsel voortspruitend uit bepaalde aantuigings openbaar gemaak deur Luitenant-Generaal Nhlanhla Mkhwanazi op 6 Julie 2025, met die opdrag in die Bylae hiertoe aangeheg, en stel die Agbare Waarnemende Adjunk-Hoofregter Mbuyiseli Madlanga as Voorsitter en Advokaat Sesi Baloyi, SC en Advokaat Sandile Khumalo, SC, as lede van die Kommissie, aan.

Gegee onder my Hand en die Seël van die Republiek van Suid-Afrika te Pretoria op hede die 21<sup>ste</sup> dag van Julie Twee duisend vyf-en-twintig.

**MC RAMAPHOSA**  
**President**

Op las van die President-in-Kabinet:

**BYLAE**

**OPDRAG**

**VAN DIE**

**REGTERLIKE KOMMISSIE VAN ONDERSOEK MET BETREKKING TOT  
KRIMINELE GEDRAG, POLITIESE INMENGING EN KORRUPSIE IN DIE  
STRAFREGSTELSEL VOORTSPRUITEND UIT BEPAALDE AANTUIGINGS  
OPENBAAR GEMAAK DEUR LUITENANT-GENERAAL NHLANHLA  
MKHWANAZI OP 6 JULIE 2025**

'n Regterlike Kommissie van Onderzoek ("die Kommissie") word hierby ingevolge artikel 84(2)(f) van die Grondwet van die Republiek van Suid-Afrika, 1996, aargestel. Op 6 Julie 2025, het die Provinsiale Kommissaris van Polisie van KwaZulu-Natal, Lt. Gen. Mkhwanazi 'n media sessie gehou om ernstige bekommernisse openbaar te maak met betrekking tot die bestaan en operasie van 'n gesofistikeerde kriminele organisasie wat na bewering wetstoepassings en intelligensie strukture in Suid-Afrika geïnfiltreer het tot ondermeining van die Suid-Afrikaanse Strafbestelsel. Die aantuigings wat in die media sessie gemaak is bring ernstige grondwetlike, sekuriteit en regseldige bekommernisse na vore, wat 'n dringende en omvangryke ondersoek noodsaak.

Die Kommissie word aangestel om ondersoek in te stel en verslag te doen op die geloofwaardigheid, trefwydte en omvang van die beweringe met betrekking tot die infiltrasie van wetstoepassings, intelligensie en betrokke instellings binne die strafbestelsel deur kriminele sindikate en bevindinge en aanbevelings vir strafregtelike vervolgings, dissiplinêre stappe en instellings hervorming te maak.

Die Kommissie moet ondersoek doen na, verslag lewer en bevindinge en aanbevelings maak met betrekking tot:

1. Of kriminele sindikate, met inbegrip van, maar nie beperk tot dwelm sindikate nie, geïnfiltreer het of onbehoorlike beïnvloeding uitgeoefen het oor:
  - 1.1 Die Suid-Afrikaanse Polisidiens ("SAPD"), met inbegrip van die Politieke Moorde Taakspan en Kriminele Intelligensie;
  - 1.2 Die Johannesburgse Metropolitaanse Polisie Departement ("JMPD");
  - 1.3 Die Ekurhuleni Metropolitaanse Polisie Departement ("EMPD");
  - 1.4 Die Tshwane Metropolitaanse Polisie Departement ("TMPD");
  - 1.5 Die Nasionale Vervolgingsgesag ("NPA");
  - 1.6 Die Staats Sekuriteit Agenskap ("SSA");
  - 1.7 Enige lid van die Regbank, met inbegrip van landdroste en hof administrasie;

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- 1.8 Die Departement van Korrektiewe Dienste; en
  - 1.9 Enige ander instellings en/of staatsorgane binne die strafregstelsel.
2. Die aard, omvang en gevolge van sodanige infiltrasie of beïnvloeding, met inbegrip van:
- 2.1 Die fasilitering van georganiseerde misdaad;
  - 2.2 Onderdrukking of manipulasie van ondersoeke;
  - 2.3 Oorhaling tot kriminele, of ander onwettige aktiwiteite, met inbegrip van korrupsie, van wetstoepassings leierskap;
  - 2.4 Pleeg van enige ander kriminele misdrywe; en
  - 2.5 Intimidasie, viktimisasie of geteikende verwydering van getuies, potensieële getuies of persone wat beskermende bekendmakings maak of beamptes wat kriminele beïnvloeding weerstaan.
3. Die rol van senior beamptes van die SAPD, JMPD, EMPD, TMPD, NPA, en SSA, en van lede van die Regbank, met inbegrip van landdroste, huidig of voormalig, wat kon:
- 3.1 Hulp verlening of aanhitsing van die beweerde kriminele gedrag;
  - 3.2 Versuim het om op te tree met betrekking tot geloofwaardige intelligensie of interne waarskuwings; en/of
  - 3.3 Finansieël of polities voordeel getrek het uit die sindikaat se bedrywighede.
4. Die rol van enige ander lid van die nasionale uitvoerende gesag wat vir die strafregstelsel verantwoordelik is, hetsy hulle mededadig, hulp verleen het aangehits, of in die dade in paragrawe 1 tot 3 hierbo, deelgeneem het of dusdanig gedoen het by nalate.
5. Die effektiwiteit of nalate van oorsig meganismes.
6. Die voldoendeheid van huidige wetgewing, beleid, en instellings maatreëls in die voorkoming van sodanige infiltrasie.
7. Sodra ingestel, moet die Kommissie ook die prima facie getuienis met betrekking tot die betrokkenheid van individue tans in diens binne die wetstoepassings of intelligensie liggame ondersoek en, waar van toepassing, moet die Kommissie aanbevelings maak met betrekking tot die werkstatus van sodanige beamptes met inbegrip daarvan of hulle geskors moet word hangende die uitslag van verdere ondersoeke.
8. Hierdie Opdrag mag bygevoeg word tot, verander of gewysig word van tyd tot tyd by proklamasie.

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9. Die Kommissiewet, 1947, (Wet No. 8 van 1947) ("die Wet"), is van toepassing op die Kommissie, onderhewig aan sodanige wysigings met betrekking tot die Opdrag van die Kommissie, en vrystellings wat by proklamasie van tyd tot tyd vermeld word.
10. Die Kommissie het alle bevoegdhede wat nodig is om sy mandaat uit te voer, met inbegrip van:
- 10.1 Die bevoegdheid om getuies te dagvaar en om die oorlêgging van dokumente te vereis;
  - 10.2 Die bevoegdheid om deursoeking en beslaglegging operasies, onderhewig aan die betrokke wetgewing, uit te voer;
  - 10.3 Die bevoegdheid om van die Wet af te wyk vir soverre dit vir openbare verhoorvoorsiening maak, en om opdrag te gee dat die Kommissie in camera sal sit waar dit nodig is om die veiligheid van getuies te beskerm, die integriteit van voortgaande ondersoeke waar van toepassing en waar intelligensie en die werk van die intelligensie dienste van toepassing is; en
  - 10.4 Die bevoegdheid om aangeleenthede vir onmiddellike kriminele ondersoek en dringende vervolging te verwys, met inagneming van die aard van die aantuigings en bewysmateriaal wat die Kommissie mag ontdek.
11. Regulasies kan gemaak word, na oorlegpleging met die Voorsitter van die Kommissie, ingevolge die Kommissiewet, 1947, en is van toepassing op die Kommissie ten einde die Kommissie in staat te stel om sy werk menigvol en effektief te verrig en om die insamel van getuienis te hulp te wees, met inbegrip van die bevoegdheid om persele te betree en te deursoek, die bywoning van getuies te verseker en om die oorlêgging van dokumente te vereis.
12. Die Kommissie sal, waar toepaslik, enige aangeleentheid verwys vir vervolging, verdere ondersoek of die byeenroeping van 'n aparte ondersoek na die gepaste wetstoepassing agentskap, regerings departement of reguleerder.
13. Die Kommissie moet sy:
- 13.1 tussentydse verslag binne 3 maande vanaf sy instelling; en
  - 13.2 finale verslag binne 6 maande vanaf sy instelling, of sodanige uitgestelde tydperk as wat die President mag bepaal, indien.
14. Elke verslag moet aan die President oorhandig word en moet aanbevelings bevat wat onmiddellik op grond van die werk van die Kommissie op daardie stadium ingestel kan word.

15. Die Kommissie moet die veiligheid van potensiële getuies en getuies verseker. Alle verrigtinge mag in die openbaar of privaat gehou word soos wat die Voorsitter noodsaaklik ag.
16. Die Kommissie se finale verslag moet aan die Speaker van die Nasionale Vergadering en die Hoofregter oorhandig word.

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T. A. Z.

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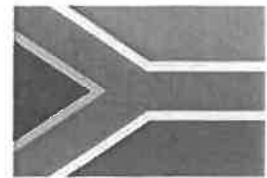
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THE PRESIDENCY

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PRESIDENT RAMAPHOSA REMOVES DR NKABANE AND APPOINTS NEW MINISTER AND  
DEPUTY MINISTER OF HIGHER EDUCATION AND TRAINING

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**PRESIDENT RAMAPHOSA REMOVES DR  
NKABANE AND APPOINTS NEW MINISTER  
AND DEPUTY MINISTER OF HIGHER  
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**Monday, 21 July 2025**

President Cyril Ramaphosa has removed Dr Nobuhle Nkabane from the role of Minister and Higher Education and Training and has, in terms of Section 91 (2) of the Constitution of the Republic of South Africa, appointed Mr. Buti Kgwaridi Manamela as Minister of Higher Education and Training. Mr. Manamela was, until this appointment, serving as Deputy Minister of Higher Education and Training - a role he held from the 6th Administration.

Consequently, President Ramaphosa has, in terms of Section 93 (b) of the Constitution, appointed Dr Nomusa Dube-Ncube as Deputy Minister of Higher Education and Training. Dr Dube's long Government leadership experience includes serving as MEC for Co-operative Governance and Traditional Affairs (COGTA) and Premier of KwaZulu-Natal Province, amongst other roles. Section 93 (b) empowers the President to appoint no more than two Deputy Ministers from outside the Assembly.

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**TRANSCRIBED RECORD OF THE TELEVISION INTERVIEW OF MR VINCENT MAGWENYA ON  
NEWZROOM AFRIKA, CHANNEL 405  
23 JULY 2023**

**INTERVIEWER/ ANCHOR:** (MS NALEDI MOLEO) We are joined now by presidency's spoke person Mr Vincent Magwenya, Mr Magwenya Good evening to you, thank you so much um for joining us on news feed PM. So obviously the big question for many South Africans is, what was the President's thinking that led up to this point, we know that one of the answers you are going to talk about is the President's prerogative of-course to move things around in the Executive, understandably but um the motivation behind this particular move to fire um Dr. Nkabane.

**MR MAGWENYA:** Good evening and good evening to your viewers, um I think the issues are well known and the issues have been ventilated in public for quite some time now, um so we don't need to rehash, um suffice to say the President saw it fit, um to remove Minister Nkabane in the interest of stability in the sector, in the interest of stability in the department and the work of the department in fulfilling its mandate and so the president duly exercised his prerogative in that regard.

**INTERVIEWER:**

Yeah, I think the big question is what is, what do you call it? the straw that broke the camel's back, right? was it on Friday the minister failing to account before the portfolio committee, um, well a lot of the criticism that we've heard this evening is that the president could have acted against her a lot earlier!

**MR MAGWENYA:**

Well people can opine on when the president can exercise his prerogative and when can the president exercise his decisions but I think a couple of factors need to be considered here, that when you have such incidents happen, they add on to a very, on to an already heavily loaded in-tray of the president, in terms of the volume of work, um it does not hold value as to, then abandon everything else and focus on one thing, that's the first thing. The second thing, even in the exercise of his prerogative, the president always seeks to act with a degree of fairness, he always seeks to act um in line with the constitution and in this case he gave the minister an opportunity to present a report to him and address the issues of concern that arose from one of the sessions the minister attended, the former minister in this case, um held with the portfolio committee in parliament and

so, so those issues those issues have been there for some time and the president requested a report and he has been concerned by the relationship between the minister and parliament and finally um having satisfied himself, um you know, going through the report from the minister, um having you know, kind of gone through all the issues that were at place, so to speak, um he finally then removed the Minister.

**INTERVIEWER:**

And what about the entry of the now deputy Minister Nomusa Dube-Ncube, I ask that because, in the removal of, I suppose the battle of Nkabane that we have seen in the past few months, there has been an issue of the list of those appointed to be sit at boards and the former KZN premier's name coming up, seemingly on those lists, um so talk to me about the confidence that the president then has in putting her as deputy Minister.

**MR MAGWENYA:**

Well um Dr. Nomusa Dube-Ncube could not be held responsible for being proposed and approach and suggested to be appointed in the city board. Um the fact that she is a member of the ANC does not necessarily disqualify her in terms of her leadership

experience and the prerequisite uh qualifications that are required. She has a long government leadership experience, having served in various uh provincial executive portfolios, uh having been the premier of KwaZulu Natal and so the president does have a great deal of confidence in her ability to discharge uh her duties in support of the minister and in support of the department's work in fulfilling its mandate.

**INTERVIEWER:**

You know there was the expectation last week Sunday that if there was going to be an announcement made about Dr. Nkabane that it could have happened uh when the president addressed the country um about the issue of the allegations made by Lieutenant General and Nhlanhla Mkhwanazi but that day the focus being on then outgoing police minister in fact still police minister Senzo Mchunu who is now on special leave. The comparison is made though Mr. Magwenya that the allegations faced by uh Minister Mchunu however speak of syndicates involved in the upper echelons of the uh SAPs um you know allegations of syndicates in um you know in parliament in in the judiciary. I mean long massive massive problems that have been cited

by left tenant general Mkhwanazi and yet the police minister put on special leave while a more decisive approach is taken within Nkabane to say no you're simply removed. So how do we weigh um while you sit in the president's office? How you see him weigh um what deserves what kind of action with his ministers?

**MR MANGWENYA:**

Well, in in in your question, you've correctly prefaced your question by saying allegations. And so what do we have? We have allegations against Minister Senzo Mchunu. Those allegations in terms of our constitution have to be tested and they have to be tested through a competent authority that will look at the balance of all the evidence that will be presented to it. More importantly, Minister Mchunu will then have an opportunity to respond to those allegations and he will be asked questions with respect to the manner in which he discharges role and he will be asked questions on those allegations. That's what our constitution provides for. It does not provide for uh action based on just merely accusations. Notwithstanding the fact that those allegations came from a very senior member of the South African Police

Service in the form of Lieutenant General Mkhwanazi. They are nonetheless still have to be tested. General Mkhwanazi himself needs to be provided an opportunity to expand on those allegations and provide more evidence. Um the president could not simply rely on what was delivered or presented to the media um as the only gospel truth for him to act. And so the commission is going to provide all parties uh that are party to these issues that are implicated that are accused an opportunity to respond uh to allegations about them as well as an opportunity to General Mkhwanazi to expand on those allegations and provide uh evidence or proof so to speak. And so this is what our constitution provides for. I think there's an error here that um we are committing with respect to the conflation of these issues. These issues are not similar and so the comparisons are a little bit misplaced with all due respect in our view. Uh the issue concerning former minister Nkabane is completely different. It's an issue that relates to her relationship with parliament. It's an issue of what has been witnessed with respect to her engagement with parliament which has not been constructive which has not been in line with the expected decorum with

the expected manner in which members of the national executive must interact with uh parliament. Um and so so let's not compare issues that are fundamentally quite different both in substance as well as in form.

**INTERVIEWER:**

Okay. So let me let me get back on track then and then go back to this issue of the department of higher education. Um bhuti Manamela is now in as the deputy as the minister apologies as the minister of higher education. Um and we've got Dr Nomusa Dube-Ncube's is higher minister higher deputy minister um uh Mimi Gondwe still is still still in place?

**MR MAGWENYA:**

Yes. Yes. Yes. Yes. So there's no change in that regard. The only change impacts obviously the former minister in the form of Dr. Nkabane and and and and Dr. Nomusa Dube-Ncube then replaces um Minister Manamela since Minister Manamela has now been appointed into that ministerial role.

**INTERVIEWER:**

Um there was the opportunity here though to cut down on what is considered a bloated cabinet. There was the opportunity to move Manamela up to the position of minister and and and leave Gondwe there

to be the only deputy minister and cut down on how much was spending.

**MR MANGWENYA:**

No. Uh there was no such opportunity. uh as you know the formulation of cabinet reflects the partnership in the form of the government of national unity and so that opportunity did not exist. I appreciate you trying to squeeze it in, but uh there was never such an opportunity because uh the manner or rather the constitution of the national uh executive or the constituting rather of the national executive is reflective of a government of of national unity uh with 10 or so parties that decided after the election actions to come together and work together in in driving the country forward and um from a practical point of view in leading the government.

**INTERVIEWER:**

Yeah, I'm going to jump at the opportunity that you've given me then to talk about agreements in the government of national unity. Is there a time when there's um a moment where the president is seemingly giving into pressure or ultimatums by GNU members like the government of like the the democratic alliance and I asked that because one

of the things that we heard from Karabo Gagau this evening is that they're not necessarily happy that in Nkabane hour to this is not going to be Whitfield or Nkabane. They still want to see Thembi Simelane no longer uh in that cabinet. Um if the pressure is put on the president, could we see Simelane out as well?

**MR MAGWENYA**

No. Um we've said this before and we've said it quite respectfully that the president does not respond to ultimatums. Uh and so unfortunately those ultimatums uh and deadlines are are misplaced. Um and we've also said um you know these issues are very different. Um you cannot from a position of principle uh say just because uh former deputy minister Whitfield directly defied the president and there was consequence as a result of that action and then therefore start nitpicking members of cabinet that you feel uh must be fired. We've also clarified numerous times that the matter concerning Minister Simelane is a matter that predates her appointment into the national executive number one. Number two, it's a matter that was investigated by the authority that she was under at the time and that authority sanctioned her and she duly complied with that sanction. Minister Nkabane

(sic) has since being appointed the minister has not violated her oath of office or has not done anything as far as the president knows that will qualify and necessitate her dismissal or her removal from cabinet. This is an old issue uh one that if there was wrongdoing that's being investigated will have to be left to law enforcement to deal with it. and up until such time law enforcement um surfaces with new evidence then the president will have to look at that and act accordingly but as things stand the DA is arguing over an old matter that predates Minister Nkabane's (sic) appointment into the national executive.

**INTERVIEWER:**

Yeah Mr. Vincent Magwenya we're going to leave it there and uh thank you so much for your time we certainly do appreciate it of course he is spokesperson there for the presidency Mr. Vincent Magwenya.

**EXTRACT FROM STATE CAPTURE COMMISSION REPORT****PART III VOL 4 BOSASA REPORT [GWEDE MANTASHE]**

1801. In the circumstances, there is a reasonable prospect that further investigation will uncover a prima facie case against Mr Mantashe in respect of the offence of corruption in terms of section 3 of PRECCA, and the matter is referred for investigation accordingly. [P 747]

**Vol 6 – Recommendations [ZIZI KODWA]**

240. The law enforcement agencies investigate the attempts of Mr Jehan Mackay described above to induce Mr Kodwa to interfere with procurement processes in the interests of EOH with a view to the prosecution of Mr Jehan Mackay and any other suspects identified in the investigation on charges under the Prevention and Combatting of Corrupt Activities Act 12 of 2004 if the investigation reveals that such prosecution is warranted;

241. The President considers the position of Mr Kodwa as Deputy Minister of State Security having regard to the fact that Mr Kodwa appears to find himself in a position where he is beholden to Mr Jehan Mackay. [P 81]

**Executive/Ministers involvement in operational issues and its probable consequences Findings [DAVID MAHLOBO]**

53. The creation of the Ministry of State Security and the consequent appointment of "Minister of State Security through the 11 September 2009 proclamation, made the SSA to report to a Minister, at the time Dr Siyabonga Cwele, who was later followed by Mr David Mahlobo; that paved the way for a Minister's involvement in the operations of the SSA, and that was exactly what happened. The evidence is overwhelming that both Ministers in particular did just that

54. One of the ways in which that happened was when Minister Cwele, on the weight of the evidence before the Commission by the country's then top intelligence chiefs, interfered in the investigation against the Guptas; he said investigating them would amount to investigating former President Zuma He was also against the Hawks investigating Mr Arthur Fraser. This issue is dealt with separately later. 55 Minister David Mahlobo, on the evidence, not only involved himself in the operations, but also directed them He was actively involved in for example projects under Project Mayibuye such as Project Wave (about the media), Project Justice about alleged

attempts to bribe some judges. Above all, there was a letter entitled "Projects approved by the Minister" which involved the spending of some R130m In fact, one of his responses was that the law did not prohibit him from being involved If what he says is correct, the situation would certainly require a very close look. However, even more worrying, was his involvement in the withdrawals, handling and distribution of large sums of money, an aspect that is dealt with separately herein Former Minister Bongo also involved himself to some extent in the operations.

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56. Some of the dangers attendant upon a Minister's involvement in operational matters were clearly articulated by witnesses, in particular, the top three A few examples were given The Minister of State Security would have knowledge of the identities of operatives, which knowledge the Minister would take along with upon leaving office; secondly, that he/she might acquire information about other fellow Ministers, which would make him/her better placed than them Nothing further really needs to be said to make the point that a Minister should not be involved in operations, except to add political bias in favour of his or her own party or own faction in intra-party politics; all of which, on the evidence before the Commission, did happen

### Recommendations

57. Whether the two former Ministers deny involvement in operations or not, does not detract from the importance of the principle against Ministerial involvement The recommendation, therefore, holds good under any weather; accordingly, the Commission recommends that a Minister should not be involved in the operations of the intelligence services. [PP102-103]

67 Minister Mahlobo, too, as shown above, then as Minister of State Security, handled large sums of cash. For example, on the evidence, there was a time when he received R2.5m a month, later increased to R4.5 m a month, which he allegedly said was for former President Zuma Details were given by two witnesses that in the presence of both of them on at least two occasions, millions in cash were delivered to Mr Mahlobo, and counted, apart from an earlier occasion when that was done by only one of them. The Commission noted the denials by Mr Mahlobo, now Deputy Minister Mahlobo However, as said, there were at least two eyewitnesses; secondly, the details were too much to be a figment of their imagination. Probabilities are overwhelming against Mr David Mahlobo After his appointment, the budget of the SSA increased hugely This conclusion was based on the scrutiny of the budget as documentary evidence relating to the budget.

### Recommendations

69 To state the obvious, financial controls and accountability need to be tightened

70 As already said, the handling and use of cash is inevitable, especially in covert operations. However, consideration should be given to minimizing the amounts involved.

71 There should be consequence management, including the recovery of the monies lost

72. There was a report, the PAN report, that had been compiled by an internal investigation team which revealed, amongst others, at least prima facie criminal activities, which recommended criminal investigations that could have involved Mr Fraser After the report had been handed over to the Directorate of Special Crime Intelligence Unit (the Hawks), Minister Cwele ordered that the matter be taken from the Hawks. The resumption of the investigations should be reconsidered by the Hawks; it might be that whoever were involved, including Mr Fraser, get absolved; but the investigations should be allowed to take their normal course. The Commission has noted Ambassador Cwele's denial that he ordered the discontinuance of the

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investigations, but it would remain a puzzle why they stopped. In any event, the denial is irrelevant to the Commission's recommendations.

73. The role played by Ambassador Thulani Dlomo, Mr Mahlobo, Mr Arthur Fraser and other people involved in the withdrawal, handling and distribution of SSA's money, should be looked into by the law enforcement agencies.

158 Minister Mahlobo: He followed Ambassador Cwele as the Minister of State Security. There are two main issues about Ambassador Mahlobo: his involvement in operational issues, and his receipt and handling of large sums of cash. There is also the matter of his attitude towards the Intelligence White Paper [P143]

165 Witness Stevens: His affidavit, attested to on 18 November 2020, was filed of record. Certain paragraphs, under the heading "Further information regarding the payment of Judges by Minister Mahlobo from SSA covert funds" were put to Mr Mahlobo for his response. Stevens said that records showed that one Dr Langa (then Director of the Domestic Branch of the SSA) authorised the withdrawal of R12m cash from the Special Operations budget; Dr Langa himself also told him so. Dr Langa said the money, packed into paper bags, was received by SSA Special Operations Frank for delivery to Minister Mahlobo for payments to Judges to influence the Judiciary. Frank was the Project Manager of Project Justice with the CDSO under Mr Dlomo. In turn, Frank informed Stevens that he delivered the R12m to Minister Mahlobo who, in Frank's presence, removed R4m cash saying was payment to judges who were his operatives. The rest of the money was for other Special Operations ran by Mr Mahlobo. 72 Mr Mahlobo's response to this evidence was that the allegations were false, and put the Judiciary into disrepute; he said the person who came up with those allegations was the same person who made false allegations against a certain politician and the head of a Chapter 9 institution and was continuing to do so before the Commission; Mr Mahlobo denied that there was any money delivered to him; he disputed all the above evidence > Stevens also said that he was aware of the pressure that Minister Mahlobo had successfully put on Ambassador Kudjoe and the Chief Financial officer, Matthew (pseudonym) for money routinely, without regard to SSA financial prescripts. Stevens said that Minister Mahlobo used to receive large sums of money for the special operations he ran.

166 It is clear from the above evidence that Minister Mahlobo received large sums of cash on some occasions. These monies cry out to be accounted for, and if they were legitimately expended, let it be so established. [PP 147-148]

### **Members of the National Executive [THABANG MAKWETLA]**

#### **Thabang Makwetfa**

184. Mr le Roux testified that Bosasa provided former Deputy Minister for Correctional Services Mr Thabang Makwetla, with a security installation and maintenance services to the value of more than R308, 754.25.16 The installation was on the instruction of Mr Watson. Mr Agrizzi was not aware of the installation.

185. A rule 3.3 notice was issued to Deputy Minister Makwetla on 18 March 2019. Mr Makwetla testified before the Commission on 19 March and 5 July 2021.

186. In respect of the benefits conferred upon him by Bosasa he was in breach of his constitutional, legislative and ethical duties, as contemplated in TOR 1.4.

187. Mr Makwetla was also under a duty not to solicit or accept a gift or benefit in return for any benefit given in an official capacity and a duty to seek permission to receive and to disclose a gift worth more than R1 ,000.17 Mr Makwet1a failed to do so.

188. With reference to TOR 7, despite the fact that Mr Makwetla's conduct in discussing the rates in terms of the Bosasa contract with the accounting office of the Department was not explored further in the course of Mr Makwetla's evidence, the evidence establishes a prima facie case of corruption in terms of sections 3 and 4 of PRECCA against him. The matter is accordingly referred to the relevant authorities for investigation and prosecution. [PP 62-63]