

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT:333/23

In the matter between:

CORRUPTION WATCH (RF) NPC

Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

COMMISSION FOR GENDER EQUALITY

Third Respondent

INFORMATION REGULATOR

Fourth Respondent

NTHABISENG SEPANYA-MOGALE

Fifth Respondent

THANDO GUMEDE

Sixth Respondent

BONGANI NGOMANE

Seventh Respondent

LEELAMBAL SUBRAYAN – NAIDOO

Eighth Respondent

LEONASHIA LEIGH-ANN VAN DER MERWE

Ninth Respondent

EIGHTH RESPONDENT'S AFFIDAVIT

I, the undersigned,

LEELAMBAL SUBRAYAN-NAIDOO

do hereby state under oath as follows:

M.R. 

- 1 I am an attorney and a full-time Commissioner of the Commission for Gender Equality ("**the Commission**").
- 2 I am commonly known as Prabashni.
- 3 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
- 4 Where I make legal submissions, I do so on the advice of my legal representatives which advice I accept as correct.

THE PURPOSE OF THIS AFFIDAVIT

- 5 Corruption Watch (RF) NPC ("**Corruption Watch**") seeks orders - (i) declaring that the National Assembly's Portfolio Committee on Women, Youth and Persons with Disabilities, failed to facilitate reasonable public involvement before recommending the appointment of the Commissioners; (ii) declaring the appointment of the Chairperson and Commissioners appointed on 1 March 2023 invalid; and (iii) suspending the order in (ii) for a period of 18 months for Parliament to reconduct the appointment process.
- 6 I depose to this affidavit in response to prayer 3 of the Notice of Motion. In particular, I depose to this affidavit to place before the Court my personal circumstances and the impact on me, should my appointment as a Commissioner be terminated before the expiry of my appointed period, through no fault of my making.

M.R. 


- 7 It is important that I state that I do not oppose the declaratory relief that Corruption Watch seeks. I therefore depose to this affidavit specifically to highlight the impact of the relief that Corruption Watch seeks on my personal circumstances. I also bring to bear for the benefit and consideration by this Honourable Court, my immediate experience as a current Commissioner of the Commission.
- 8 On 15 August 2024, I filed a notice to abide the decision of the Court with reservation of the right to file and affidavit and to present oral argument. I am mindful that in so far as the facts I seek to place before the Court are intended to persuade the Court to grant an order that does not prematurely end my term as a Commissioner, the affidavit effectively seeks that the Court should grant an order that retains me in my position beyond the 18 months period in prayer 3 of the Notice of Motion.
- 9 I do not intend to address all the allegations made in the founding and answering affidavits of the parties in this application. This is so mainly because I do not own the Parliamentary process that is being impugned and, as a result I cannot defend it. However, my failure to address specific allegations in the founding and answering affidavits should not be construed as an admission of their correctness.
- 10 My affidavit is structured as follows:
- 10.1 I address my background prior to being a Commissioner; and

M.R. 

10.2 thereafter I address the adverse impact of an order setting aside my appointment and request this Honourable Court to exercise its powers under section 172 of the Constitution to grant me the just and equitable remedy of condoning any constitutional invalidity by retaining me as the Commissioner for the Commission for Gender Equality.

MY EXPERIENCE AND COMMITMENT TO GENDER ISSUES

- 11 I was admitted as an attorney on the 16th of March 2007. Since my admission, I have worked in both the public and private sector and gained extensive experience. I attach hereto my profile, demonstrating my experience, as annexure "N1".
- 12 In November 2014, I began practising for my own account as a sole practitioner under my legal practice named Subrayan Naidoo Attorneys and based at Roodepoort.
- 13 Following a selection process by Parliament, I was recommended for appointment by the President as a Commissioner in October 2023. Because I was anxious to arrange my affairs, especially relating to my practice, when there were delays in finalising the appointment process, I enquired with the secretary of the portfolio committee women, youth and persons with disabilities telephonically and was assured that the appointment was imminent, though it was not certain who the President would appoint and if I was a successful candidate. I choose to remain positive and that I should arrange my affairs on that basis that I was

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successfully appointed. I accordingly appointed an office assistant, namely, Rajeev Harilall to assist me in the practice. I was subsequently appointed as a part-time commissioner for a period of 5 years commencing on the 1st of March 2023 up to and including the 28th of February 2024. I do not want to burden the court by presenting a voluminous and prolix affidavit and have not included Mr Harilal letter of appointment but same will be presented to court upon request. My appointment was converted from part-time Commissioner to full-time Commissioner on 1 March 2024.

14 My commitment to the work of the Commission was thus such that I could no longer be fully present in my legal practice. Consequently, and as a direct result of my appointment as a full time Commissioner, I appointed Nosizo Nkala as a legal advisor/practise manager to manage my practise in my absence and to brief counsel in all matters ripe for litigation. The arrangement was deliberately determined by me to coincide with the duration of my appointment as a fulltime Commissioner and will accordingly come to an end on the 28th of February 2028. I do not want to burden the court by presenting a voluminous and prolix affidavit and have not included Ms Nkala's letter of appointment but same will be presented to court upon request.

15 I have thus altered my financial life in accordance with my position as a Commissioner.

16 The relief sought by Corruption Watch to have the process for the appointment of Commissioners reconducted poses dire financial effects

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for me, in the event that I am not appointed. In March this year, I completed my first year of appointment and 18 months from now places me roughly just after the mid-term mark of my 5-year appointment period.

- 17 I am not responsible for the impugned process and my decision was taken as direct effect of my appointment.
- 18 In the recent months following my appointment on 1 March 2023, the institute has demonstrated success and has functioned effectively. Corruption Watch highlights that the Commission has been plagued by bad media coverage, harmful to its reputation.
- 19 The remedy sought by Corruption Watch would in my view disturb this internal stability after years of difficulties around issues of in-fighting, low staff morale and in-fighting. Corruption Watch is aware of this chequered past. The need for this remedy is even less compelling when Corruption Watch is not challenging the competency of the Commissioners appointed out of the process they impugn.
- 20 I am advised that Section 172 of the Constitution provides that when dealing with a constitutional matter, the court has the power to declare any law or conduct invalid when it is inconsistent with the Constitution and to make any order that is just and equitable. This means that the Court may depart from the default legal position when it deals with a matter to which section 172 applies and if it is just and equitable to do so, on the circumstances of each case.

M.R. 


21 I am of the view that the facts of this case justify a departure from the default position of granting the remedy prayed for Corruption Watch and that for this Court to exercise its powers of granting any other relief that is just and equitable, other than the one sought by Corruption Watch.

CONDONATION FOR THE LATE FILING OF THIS AFFIDAVIT

22 This Honourable Court issued Directives that I should indicate my position in respect of this application on the 15th of August 2024 date and file any answering affidavit by the 2nd of September 2024.

23 My affidavit will be delivered on the 9th of September 2024, only five days after the due date set by this Honourable Court. Upon receipt of the Directives, the Commission engaged our legal representatives, including Counsel.

24 I decided after the consultations with the legal representatives, that there are no grounds to oppose the application by Corruption Watch. Upon further consultations it became evident that I had material and relevant evidence that I wanted to bring before this Honourable Court and to respectfully place my position on record that I do not support Prayer 3 of Corruption Watch's Notice of Motion. This required me to set out the factual material that is now before this Court, together with my other fellow Commissioners who also felt that it was prudent to apprise this Court of the developments within the Commission as well as the impact of the suspension Order to our personal lives. This material was not before the

M.R. 

Court, notwithstanding its relevance and that it has a bearing on the outcome of this case.

25 Accordingly, and as soon as reasonably possible, my legal representatives, who are also representatives of the other four Commissioners began assisting with the drafting of our affidavits.


26 I am of the view that in light of the truncated times with which we were confronted to ponder and deliberate on this matter that attaches to our personal circumstances and that of the Commission itself, the delay is not unreasonable. This is particularly so because it is only a five-day delay. I did not act recklessly or intentionally in relation to the delay.

27 Our legal representatives brought the slight delay to the attention of Corruption Watch who took no issue with the delay. I submit that there is therefore no prejudice to Corruption Watch by the slight delay in the delivery of this affidavit,

28 The issues raised in this application are critical for deliberative democracy and significant to our jurisprudence. This Honourable Court will benefit from the full version of events being placed before it.

29 It is therefore, in the interest of justice, I respectfully submit, that condonation be granted for the late filing of my answering affidavit.

WHEREFORE I pray that if it may please the above Honourable Court to grant me the relief of retaining my appointment, notwithstanding a finding that my

M.R. 

appointment as a Commissioner is constitutionally invalid, if the Court so finds, under the just and equitable remedy provision in section 172 of the Constitution.

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DEPONENT

SIGNED and **SWORN** to before me at BRAAMFONTEIN on this 07th day of September 2024, the Deponent having acknowledged that she knows and understands the contents of this Affidavit; that she has no objection to taking the prescribed oath and that she considers the oath as binding on her conscience.



COMMISSIONER OF OATHS

NAME: MOHALE RODNEY LEBEA

TITLE: ADVOCATE

ADDRESS: 11 KGALADI STREET
PROTEA, SOWETO
1818

(12)



Education

- Postgraduate Certificate in Practice Management – LEAD
- Postgraduate Certificate in Family Law – LEAD
- Postgraduate Certificate in Commercial Drafting – LEAD
- Postgraduate Certificate in Domestic Violence Orders
- Attorneys Admission Exams (2005)
- Post-Graduate Certificate in Practical Legal Training
- LLB – UNISA
- Certificate in Crisis Debriefing and Trauma Counseling
- Certificate in Student Development

Professional Memberships

- Member of the Law Society of the Northern Provinces
- Member of the Johannesburg Attorneys Association.

Overview of Experience

I worked as Legal Researcher for Transnet for a period of 6 months from June 2003 – December 2003. I successfully passed the Attorney's admission exams in the first sitting in February 2005. I served my articles of clerkship with the Legal Aid board of South Africa from February 2006 – January 2007. I was admitted as an Attorney on the 16th of March 2007. I was appointed as a Legal Advisor of Scorpion Legal protection in May of 2007 I was responsible for rendering advice and assistance to clients in various fields of law. I was promoted to senior legal advisor and second in charge to the branch manager in 2008. I was responsible for the day-to-day management of the legal department. I joined

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