

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

NINTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

LEONASHIA LEIGH-ANN VAN DER MERWE

do hereby state under oath as follows:

M.R

L.V.

- 1 I am a part-time Commissioner of the Commission for Gender Equality (**“the Commission”**).
- 2 The facts contained in this affidavit are within my personal knowledge, unless the context indicates otherwise, and are true and correct.
- 3 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

- 4 I am concerned that Paragraph 3 of Corruption Watch’s Notice of Motion has the effect of setting aside my appointment as a part-time Commissioner and that through no fault of my own, I am now embroiled in this controversy and litigation. I do not oppose the application by Corruption Watch but however do not support Paragraph 3 of the order sought.
- 5 In this affidavit, I wish to outline the impact of setting aside my appointment as a part-time Commissioner.
- 6 In these proceedings, Corruption Watch (RF) NPC (**“Corruption Watch”**) seeks a declarator that the public participation process embarked upon by Parliament, prior to recommending persons to be appointed as members of the Commission, was unreasonable and unconstitutional. It further seeks a declarator that the appointments of the Commissioners by the

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President of the Republic of South Africa (“the President”) on 1 March 2023, are invalid.

- 7 The order sought by Corruption Watch is that the constitutional invalidity of the impugned Parliamentary process, as well as that of the appointment of the Commissioners by the President be suspended for a period of 18 months, to enable Parliament to conduct the process for the appointment of the Commissioners afresh.
- 8 I do not oppose the declaratory relief that Corruption Watch seeks. I only do not support the relief sought in Prayer 3 of the Notice of Motion. 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 and why I believe the Commission will be negatively affected by Prayer 3 of Corruption Watch.
- 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:

M.R

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10.1 I address my background prior to being a part-time Commissioner; and

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 represent a gender minority group - transgender women. Transgender women face disproportionate levels of violence, discrimination, isolation, and exclusion from different spheres of our society. In addition, transgender women also have a very high likelihood of becoming HIV positive, as I have demonstrated in my research work over the years. It is through my gender activism that I came to be a part-time commissioner in the Commission, having focused on women who are typically excluded and marginalised in South Africa, the continent, and the world!

12 Being appointed as a Commissioner allows me to amplify my activism and strengthen my advocacy for better social, health, and economic outcomes for my community.

M.R

L.V

- 13 It has been a huge achievement for gender minority communities to see one of their own being honoured with this achievement. The setting aside of my appointment is not only a negative blow for me but would also have a negative bearing on the lives of sexual and gender minorities more broadly.
- 14 I have done gender activism from a very young age. I lost my sister to a violent man in 1999; this gave impetus to my activism, and I have championed my sister's legacy for many years. I know that my sister's case is one of many in South Africa. Setting aside my appointment, would be such a disappointment to my sister, my parents, and women at large.
- 15 I recently led the development of a report on the state of maternal and child health in six hospitals in the Eastern Cape Province. This report is going to be critical to changing the status quo for women's sexual and reproductive health in our province. Please also bear in mind that for lasting change to be implemented in this province characterized by high levels of poverty, there must be constant advocacy and social mobilization. Reducing maternal mortality is a commitment to women, as set out in Goal 3.1 of the Sustainable Development Goals. Setting aside my appointment would feel like a setback to the accountability needed to improve women's lives in my province. Setting aside my appointment essentially means that we are losing traction on this very important and much needed work!
- 16 Goal 4 of the strategic objectives of the Commission is to strengthen the organisation. Since the inception of our cohort of commissioners, there has

been a great improvement in the negative media coverage previously published on the Commission. This has taken a concerted effort through deliberate and intentional efforts, along with strategic leadership, to reduce the negative publicity, and improve the reputation of the Commission.

- 17 Our cohort stepped into a turbulent time in the organisation, but we managed to shift course to fulfil our mission of developing and strengthening systems at the Commission in order to discharge our mandate. The setting aside of my appointment means undoing this dedicated work toward achieving gender equality.

- 18 Finally, personally and at home, I am a mother who has financial responsibilities. This would deeply impact me financially as I have a daughter at university, and my hours covered at the Commission mean that I can provide an education to my daughter. This would also have a psychological effect on me, given all the hard work dedicated to achieving gender equality in this misogynistic country of ours. I would feel very sad at the undoing of all the hard work that had gone into the current state of affairs at the Commission, including all the decisions made, research and policy efforts, the legal and complaints mechanism of the organisation. I also take care of siblings who are currently not in good health. Both of whom reside with me.

- 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.

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- 20 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.
- 21 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.
- 22 I am of the view that the facts I have outlined in this affidavit both my personal circumstances and that of the stability and sustainability of the Commission as explained through my own lens, justify a departure from the default position of granting the remedy prayed for by Corruption Watch and for this Court to exercise its powers of granting any other relief that is just and equitable, other than setting than setting aside my appointment..

CONDONATION FOR THE LATE FILING OF THIS AFFIDAVIT

- 23 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.

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- 24 My affidavit will be delivered on the 9th of September 2024, only five Court days after the due date set by this Honourable Court. Upon receipt of the Directives, the Commission engaged our legal representatives, including Counsel.
- 25 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 Court, notwithstanding its relevance and that it has a bearing on the outcome of this case.
- 26 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.
- 27 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

M.R. L.V.

unreasonable. This is particularly so because it is only a two-day delay. I did not act recklessly or intentionally in relation to the delay.

28 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,

29 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.

30 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 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.

A handwritten signature in black ink, consisting of a large, stylized 'G' or 'C' shape with a horizontal line through it, positioned above a solid horizontal line.

DEPONENT

SIGNED and **SWORN** to before me at BRAAMFONTEIN on this 09th 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

L.V.