

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CASE NO.: 171 / 15

In the matter between:

THE ECONOMIC FREEDOM FIGHTERS Applicant

and

THE SPEAKER OF THE NATIONAL ASSEMBLY First Respondent

PRESIDENT JACOB GEDLEYIHLEKISA ZUMA Second Respondent

THE MINISTER OF POLICE Third Respondent

THE PUBLIC PROTECTOR Fourth Respondent

FOURTH RESPONDENT'S PRACTICE NOTE

1 COUNSEL APPEARING FOR THE THIRD RESPONDENT

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2 THE NATURE OF THE PROCEEDINGS

The applicant (“**the DA**”) applies for conditional direct access to this Court, pursuant to section 167(4)(e) of the Constitution. The DA’s application for direct access is conditional upon this Court granting the Economic Freedom Fighters, the applicant in CCT case number 143 / 15, itself being granted direct access to this Court.

3 THE ISSUES THAT WILL BE ARGUED

3.1 The present application turns upon the legal status that this Court ascribes to a report of the Fourth Respondent (“**the Public Protector**”) entitled “**Secure in Comfort**” (“**the Report**”), which the Public Protector published on 19 March 2014, and the findings made and remedial action taken therein. The Report concerned “**allegations of impropriety and unethical conduct relating to the installation and implementation of security measures by the Department of Public Works at and in respect of the private residence of President Jacob Zuma at Nkandla in the Kwazulu-Natal province**”, and it resulted in findings being made and in remedial action under section 182(1)(c) of the Constitution being taken against the Second Respondent (“**the President**”). To date, however, the President has yet to comply.

- 3.2 The application raises the following issues:
- 3.2.1 Whether the DA's case falls for exclusive determination by this Court in terms of section 167(4)(e) of the Constitution;
 - 3.2.2 Whether the President is bound to comply with, and give effect to, remedial action that is contained in the Report;
 - 3.2.3 Whether the President's failed to implement the findings and remedial action in the Report;
 - 3.2.4 Whether the President's failure to implement the findings and remedial action in the Report constitutes a failure to fulfil his constitutional obligations in his capacity as Head of the National Executive; and
 - 3.2.5 Whether, in not ensuring that the President does so comply, the National Assembly has failed to fulfil its obligation under sections 55(2) and 181 of the Constitution to ensure that all executive organs of state in the national sphere of government are accountable.
- 3.3 The DA seeks no relief against the Public Protector, and the Public Protector neither supports nor opposes the relief sought by the DA. The Public Protector will confine her submissions to one issue: whether the

President is indeed bound to comply with the remedial action contained in her Report (viz. paragraph 3.2.2 above).

4 **ESTIMATED DURATION OF ORAL ARGUMENT**

1 day

5 **SUMMARY OF THE ARGUMENT FOR THE FOURTH RESPONDENT**

5.1 The DA's conditional application is premised upon the enforceability of the remedial action that is set out in the Public Protector's Report.

5.2 The Public Protector submits that the remedial action in the Report, and indeed any remedial action taken pursuant to section 182(1)(c) of the Constitution, is binding and enforceable, and it must be complied with unless and until it is set aside by a court. However, beyond this, she takes no position on the merits of the application.

5.3 The central thrust of the Public Protector's submissions in this application shall be that the remedial action taken in the Report in terms of section 182(1)(c) read with section 181(2) and other relevant provisions of the Constitution cannot simply be ignored or otherwise diluted by the findings of another organ of state.

**6 MAIN AUTHORITIES ON WHICH THE PUBLIC PROTECTOR WILL
RELY**

Cool Ideas 1186 CC v Hubbard and Another 2014 (4) SA 474 (CC)

**Democratic Alliance v South African Broadcasting Corporation Limited
and Others 2015 (1) SA 551 (WCC)**

**Ex Parte Chairperson of the Constitutional Assembly: In Re Certification
of the Constitution of the Republic of South Africa, 1996 1996 (4) SA 744
(CC)**

**Ex parte Chairperson of the Constitutional Assembly: In re Certification of
the Amended Text of the Constitution of the Republic of South Africa, 1996
1997 (2) SA 97 (CC)**

**MEC for Health, Eastern Cape and Another v Kirland Investments (Pty)
Ltd 2014 (3) SA 481 (CC)**

SABC v DA [2015] ZASCA 156

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1 December 2015**