

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA**

**CCT No.**

**Court a quo Case No. 55578/19**

In the matter between:

**THE PUBLIC PROTECTOR**

Applicant

and

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

First Respondent

**THE SPEAKER OF THE NATIONAL ASSEMBLY**

Second Respondent

**THE NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

Third Respondent

**THE NATIONAL COMMISSIONER OF POLICE**

Fourth Respondent

**THE ECONOMIC FREEDOM FIGHTERS**

Fifth Respondent

**THE FINANCIAL INTELLIGENCE CENTRE**

Sixth Respondent

**AMABHUNGANE CENTRE FOR INVESTIGATIVE  
JOURNALISM NPC**

Seventh Respondent

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**FOUNDING AFFIDAVIT IN SUPPORT OF THE APPLICATION FOR  
LEAVE TO APPEAL IN TERMS OF RULE 19(2)**

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I, the undersigned,

**BUSISIWE MKHWEBANE**

do hereby make oath and state that:

**A. INTRODUCTION**

1. I am the Public Protector, appointed as such in terms of section 1A of the Public Protector Act, 23 of 1994 (**"the Public Protector Act"**).
2. The facts to which I depose herein are within my own personal knowledge and are, except where the context indicates otherwise or I expressly say so, to the best of my knowledge and belief both true and correct.
3. Where I make legal submissions, I do so on the advice of my legal representatives and I believe them to be correct.
4. This is an application for leave to appeal directly to the above Honourable Court against the judgment and order of the full bench of the High Court of South Africa, Gauteng Division, Pretoria, under case number 55578/19 delivered on 10 March 2020 (**"the Judgment"**).

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5. A copy of the judgment of the court *a quo* is annexed hereto as “PP1”.

In the judgment, the court *a quo* ordered as follows:



- “1. **The Public Protector’s decision to investigate and report on the CR 17 election campaign for the African National Congress leadership elected in December 2017, is reviewed, declared invalid and set aside.**
2. **The Public Protector’s Report number 37 of 2019/20 of 19 July 2019, including the findings and remedial orders in paragraphs 7.1; 7.2; 7.3; 8.1.1; 8.1.3; 8.2.1; 9.1; 9.2 and 9.4 (“the Report”), is reviewed, declared invalid and set aside.**
3. **The Public Protector is ordered to pay the costs of the first applicant on the punitive scale as between attorney and client, including the costs of two counsel.**
4. **The Public Protector is ordered to pay the costs of the second applicant and the third respondent on the party and party scale, including the costs of two counsel.**
5. **No order as to costs is made in respect of the fourth and sixth respondents, and the *amicus curiae*.”**

6. This order is made in the face of uncontested evidence that was before me regarding millions of Rands that were donated into the CR17 campaign and uncontested emails contradicting the President of the Republic of South Africa, His Excellency, Mr Cyril Matamela Ramaphosa’s (“**the President**”) statements on oath that he was kept ignorant of the identities of those who donated millions to his campaign. This order is made in the face of the clear provisions of section 96 of the Constitution, the relevant provisions of the Executive Members Ethics Act,

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82 of 1998 ("**the Executive Ethics Act**") and the Executive Ethics Code. It is also made while the Supreme Court of Appeal and this Honourable Court have stated the approach to be taken in assessing the scope and powers of the Public Protector when dealing with investigations. In my respectful view, these trite principles and findings, however, were not applied in assessing this matter.

7. Most significantly, and in respect of the powers of the Public Protector and the scope of remedial action, this order is in conflict with a previous finding made by the very High Court in this regard. I submit that this matter requires consistent application of the principles set out by our Courts and should be binding in respect of matters in which similar disputes are involved. I submit that only this Honourable Court can bring these weighty constitutional matters to finality.
8. I have not applied for leave or special leave to appeal to any other court. The issues raised in this case are of a constitutional nature and there is an urgent need for a decision from this Court on the issues that arise in this case. It is for this reason that I approach the above Honourable Court directly.
9. I am aware that the Economic Freedom Fighter's, the fifth respondent herein ("**the EFF**"), has filed an application for leave to appeal in the court *a quo*. I have noted the EFF's grounds for leave to appeal. I submit

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with respect that the grounds for leave to appeal raise constitutional matters which should be decided by this Court. A copy of the EFF's application for leave to appeal is annexed hereto as "PP2".

10. In summary, this application is about the constitutional obligations and statutory powers of the Public Protector. Most importantly, it is about the accountability of all holders of public power within the state.

11. For the reasons that I set out in greater detail below, I submit that I have good prospects of success and ask the above Honourable Court to grant me leave to appeal. I respectfully submit that the order was erroneous in many respects and stands in contradiction of previous findings of the Supreme Court of Appeal in respect of the constitutional mandate of the Public Protector. Until the highest court in the land finally determines the issues raised in this matter, uncertainty will prevail in respect of the real scope of the constitutional mandate of the Public Protector as well as the constitutional obligations of members of Cabinet in terms of section 96 of the Constitution.

## **B. ESSENTIAL FACTUAL BACKGROUND**

12. For purposes of this application for leave to appeal and to avoid prolixity and burdening this court with the record at this stage, I set out briefly those facts that I consider necessary to enable the Court to decide this



application. I do not attach supporting annexures which form part of the record. These will be made available should the Court so request.

13. Apart from different interpretations different parties (including the court *a quo*) attach to the relevant facts, they remain largely common cause. I respectfully submit that the court *a quo* failed to assess these facts against the relevant provisions of the Constitution and the relevant statutes like the Executive Ethics Act and the Public Protector Act.

14. During November 2018 and then again in January 2019, I received complaints about the President.

15. The first complaint was from Mr Mmusi Maimane, then Leader of the Democratic Alliance ("**Mr Maimane**"). The complaint was headed "*Relationship of the President with African Global Operations, formerly known as Bosasa*". The following appeared from this complaint:

15.1. On 18 October 2017, an amount of R 500 000 was paid into the account "EFG2".

15.2. The money was paid from the personal account of Mr Gavin Watson (who recently passed away), who was the CEO of African Global Operations (formerly known as Bosasa) into the account of Miotto Trading, a company closely associated with

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Bosasa. From there the money was paid into the account "EFG2" said to be a "trust or foundation" of the son of the President, Mr Andile Ramaphosa.

- 15.3. On 6 November 2018, during a question session in the National Assembly, Mr Maimane presented the President with documentary proof of the payment and the sworn statement alleging that the money was intended for the President's son, Mr Andile Ramaphosa.
- 15.4. The President confirmed that he was aware of the payment but had been satisfied that it was a lawful payment for services rendered by a consultancy firm owned or operated by his son, Mr Andile Ramaphosa. It shall become clearer below that this "fact" confirmed by the President is actually untrue.
- 15.5. On 16 November 2018, the President sent a letter to the Speaker of the National Assembly purporting to "correct" the answer he had given in the National Assembly ten days earlier. In this letter, the President reveals that the payment was actually a donation towards his campaign to be elected ANC President in December 2017.
- 15.6. In his complaint, Mr Maimane stated that he was concerned that the set of facts reveals that there was possibly an improper relationship existing between the President and his family on the

one side, and the company African Global Operations, on the other side.

15.7. The nature of the payment, passing through several intermediaries, so he contended, did not accord with a straightforward donation and raised suspicion of money laundering.

15.8. He further noted in his complaint that the alleged donor was widely reported to have received billions of Rands in state tenders. Furthermore, Mr Maimane stated that he is concerned that the President may have misled the National Assembly in his reply to the question on 6 November 2018.

15.9. That the true facts of the matter needed to be established.

16. The second complaint was from Mr Floyd Shivambu, Deputy President of the Economic Freedom Fighters ("**Mr Shivambu**"). The following appeared from his complaint:

16.1. The complaint was lodged with my Office in terms of section 4(1) of the Executive Ethics Act in respect of an alleged breach of the Executive Ethics Code by the President.

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- 16.2. That during the President's appearance in the National Assembly on 6 November 2019, when responding to the question from Mr Maimane about a payment of R 500 000 from Mr Gavin Watson, the President misled the National Assembly.
- 16.3. The President said his son's company had a contract with African Global Operations (formerly known as Bosasa) for the provision of consultancy services.
- 16.4. That the President went on to explicitly state that he saw the contract that his son signed with Bosasa and the contract also "deals with issues of integrity, anti-corruption and there was nothing untoward".
- 16.5. That section 3(1) and 4(1)(a) of the Executive Ethics Act provides that the Public Protector must investigate any alleged violation of the Executive Ethics Code by a Cabinet member on receipt of a complaint by a Member of the National Assembly.
- 16.6. The EFF lodges a formal complaint for the Public Protector to investigate:
- 16.6.1. "whether the statement made by President Ramaphosa in the NA on the 6<sup>th</sup> November 2018 that he saw a contract between his son's company and African Global Operations is true, and that a contract indeed does exist"; and**
- 16.6.2. "whether President Ramaphosa deliberately misled Parliament in violation of the Executive Ethics Code".**

17. Since both of these complaints fell within my constitutional and statutory purview, I duly investigated the matter and identified the following issues that formed the focus of my investigation:

17.1. Whether on 6 November 2018, during question session in Parliament, the President deliberately misled the National Assembly and thereby acted in violation of the provisions of the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members;

17.2. Whether the President improperly and in violation of the provisions of the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations; and

17.3. Whether there was an improper relationship between the President and his family on the one side, and the company African Global Operations on the other side due to the nature



of the R 500 000,00 payment passing through several intermediaries, instead of a straightforward donation to the CR17 campaign thus raising the suspicion of money laundering.

18. Upon investigation, the following facts were revealed:

18.1. On 6 November 2018, Mr Maimane posed the following question in Parliament to the President:

**“Mr President, here I hold a proof of payment that was transferred to say that R500 000 had to be transferred to a trust account called EFG2 on 18 October 2017. This was allegedly put for your son, Andile Ramaphosa. [Interjections.] Following on that, I have a sworn affidavit from Peet Venter, stating that he was asked by the chief executive officer of Bosasa to make this transfer for Andile Ramaphosa. Mr President, we can’t have family members benefiting. [Interjections.] I would want to ask you, right here today, that you bring our nation into confidence and please set the record straight on this matter.”**

18.2. The President’s response was:

**“Speaker and the hon Maimane, this matter was brought to my attention. It was brought to my attention some time ago. I proceeded to ask my son what this was all about. He runs a financial consultancy business, and he consults for a number of companies, and one of those companies is Bosasa...[interjections]...where he provides services on entrepreneurship, particularly on the procurement process. He advises both local and international companies. Regarding this payment, I can assure you, Mr Maimane that I asked him at close range whether this money was obtained illegally, unlawfully – and he said this was a service that was provided. To this end, he actually even showed me a contract that he signed with Bosasa [interjections] The contract also deals with issues of integrity, and all that.”**



18.3. The President went on to say that:

**“On this one, I have made sure that I get as much information as I can...He is running a clear and honest business as an advisory service, as he has been trained as a consultant with his business science qualifications. I have had no idea or inkling whatsoever at what he has informed me, that this money was obtained illegally. If it turns out – Mr Maimane I can assure if it turns out that there is any illegality and corruption in the way that he has dealt with this matter, I will be the first, the absolute first, to make sure that he becomes accountable...even if it means...I can assure you, even if it means that I am the one to take him to the police station. That I will be able to do...”**

18.4. What was clear from the above was that the President was familiar with the issue raised by Mr Maimane. Not only was he familiar with what the issue was, he had actually specifically enquired about it from his son. He had even seen a contract that related to the payment referred to by Mr Maimane. In this regard, he satisfied himself that the payment to his son, Mr Andile Ramaphosa, was legitimate and related to services rendered by Mr Andile Ramaphosa's company to Bosasa.

18.5. More light was shed by Mr Bejani Chauke (**“Mr Chauke”**), the President's special adviser, in this regard. In his affidavit filed with my office, he confirmed that the President was correct that “this issue” was brought to the President's attention “some time ago”. Mr Chauke stated as follows:



- “4. In early September 2018, I heard a rumour that Mr Andile Ramaphosa, the son of President Ramaphosa, had received a donation of R500 000 (five hundred thousand rand) from Bosasa. I then informed President Ramaphosa of this rumour.**
- 5. I was further advised that a R500 000 (five hundred thousand rand) deposit had been made into an ABSA account belonging to Mr Andile Ramaphosa. I enquired from Mr Andile Ramaphosa whether he had any knowledge of funds donated into his ABSA account and he responded by saying that he does not have an ABSA bank account.”**

18.6. Clearly, when the President stated in the National Assembly that the matter had been brought to his attention “some time ago” he referred to his conversation with Mr Chauke. In September 2018 the President became aware of the issue raised by Mr Maimane. That much is apparent, and he understood what “the issue” was.

18.7. However, some 8 days later after Mr Maimane posed the question in the National Assembly, the President wrote to the National Assembly wherein he stated that:

**“I wish to draw your attention to the fact that during my appearance in the National Assembly when I was answering questions on 6 November 2018, I inadvertently provided incorrect information in reply to a supplementary question.**

**Following my response to Question 19 on VBS Mutual Bank, the Leader of the Opposition asked me about a payment that had been made on behalf of a Mr Gavin Watson to my son, Mr Andile Ramaphosa.**



**My reply to the question was based on the information that was at my disposal at the time, regarding a business relationship that my son's company has with the company African Global Operations.**

**It is true that my son's company does indeed have a contract with African Global Operations for the provision of consultancy services.**

...

**I have been subsequently informed that the payment referred to in the supplementary question by the Leader of Opposition does not relate to that contract.**

**I have been told that the payment to which the Leader of the Opposition referred was made on behalf of Mr Gavin Watson into a trust account that was used to raise funds for a campaign established to support my candidature for the Presidency of the African National Congress.**

**The donation was made without my knowledge. I was not aware of the existence of the donation at the time I answered the question in the National Assembly.**

..."

- 18.8. What was of concern was that the President was aware of the payment at least two months prior to Mr Maimane raising the issue, and that on enquiring from his son, his son informed him that in December 2017, his company Blue Crane Capital (Pty) Ltd had signed an Advisory Mandate with African Global Operations for possible business entry in some East African countries. From the question Mr Maimane posed, there were at least two issues that ought to have concerned the President. The first is that Mr Maimane was specific that monies were transferred to a trust account called "EFG2" for the benefit of the President's son. The second is that monies were transferred on 18 October 2017 prior to his son's company Blue Crane



Capital (Pty) Ltd signing the Advisory Mandate with African Global Operations.

18.9. A few days later, on 17 November 2018, the CR17 campaign management team issued a media statement titled "Former CR17 campaign management team to return some donations and audit donors list". The media statement stated that:

**"The CR17 campaign was established and managed by like-minded individuals to support the candidature of Cyril Ramaphosa as the next ANC President.**

**The team comprised various structures including a finance task team whose sole responsibility was to raise funds for the numerous activities that would be undertaken by volunteers and other members of team CR17.**

**To avoid conflicts of interests and to completely eliminate any expectation of reciprocal intent, action or preferential treatment by donors, real or perceived, the fundraising team was ring-fenced from other operations.**

**Consequently, it was also determined that President Ramaphosa should not be involved in the fundraising effort and that he shouldn't have a record of donors, although he was asked on occasion to attend dinners with potential donors.**

**Donations were received from no less than 200 individuals from across the country. The campaign funds received were used to pay for venue hires, transport, accommodation, communications and other campaign related activities.**

**At no point were any funds transferred to the Cyril Ramaphosa Foundation, his relations or to President Ramaphosa himself.**

**The fundraising team has confirmed to us (the campaign management team) that the funds referred to in a Parliamentary question on 6 November 2018 were paid into a trust account that was one of the avenues used by the CR17 campaign to temporarily house the funds raised for the campaign.**



Members of the former campaign co-ordination team have resolved to return funds referred to above and have requested the donors' list from the fundraising team for the purpose of immediately conducting an audit to ensure that fundraising processes and sources of funds were above board.

President Ramaphosa was not aware of the payment, either at the time it was made or when he was answering questions in the National Assembly. His response was an honest reflection of the information available to him at the time.

Donors were asked to support the campaign to restore integrity and cohesion of the ANC and to put South Africa back on a path of growth and transformation, with an explicit understanding that their contribution would earn them no special favours or undue advantage.

Subsequent to the ANC's Nasrec Conference, the CR17 campaign folded its operations and used all remaining funds to settle its obligations to service providers.

It was thanks to the contributions of all the donors, the tireless work of many volunteers across the country, and to the support of the membership of the ANC that the CR17 campaign was ultimately able to have President Cyril Ramaphosa elected as president of the ANC".

19. During my investigation, I received evidence that showed among other things that there were monies that were transferred to the Cyril Ramaphosa Foundation, that Mr Watson was present at the fund-raising dinner hosted by the President and that on 17 November 2017 Ms Donne Leigh Nicol, the President's legal advisor ("**Ms Nicol**") sent an email to the President regarding fundraising and events. This email stated that:

**"Hi please find questions, notes around fund raising and events:**

**I have tasked PG to raise about R15m. He has got Johnny Copelyn on board and is meeting a few other people. He is suggesting an event with 15-20 people on the 24<sup>th</sup> after the NEC. Is this possible?**

**I think we should still schedule the following:**

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**Cocktail with black business maybe 30: includes Moss, Saki, others**  
**Cocktail with the Greeks suggested by Theo. You have said yes.**  
**Just trying to prioritise and get into your diary.**

**People I need you to call, please:**

- 1. Mick Davis to co-ordinate a group from London including Martin Moshal – ask for a collective R20m 0044 7771 662693**
- 2. Eric Samson to thank him for money and ask for another R10m**

**Can I ask the following for money:**

- 1. Tony Georgiades**
- 2. Kojo Mills**
- 3. David Ngobeni**
- 4. Paul Ekon**

**Requests for meetings:**

- 1. Paul Ekon**
- 2. Steve Ratau, Paul Nkuna, Manne Dipico”**

20. There was further evidence that showed that on 12 November 2017, Ms Nicol sent an email to the President stating that:

**“Stavros says the following would fund if we had a small cocktail party. I need to discuss diary with you.  
...”**

21. The email then goes on to list the persons who would provide funding.
22. There is a further uncontested email from the President to a Mr Donald which stated that:



**"Hi Donald**

**Thank you for assisting with the Internet banking the other day. Could you kindly transfer an amount of R 20 million from the Money Market investment that was left after we shifted R 75 million from the Money Market Select to Ria Tenda Trust Standard Bank, account number 012497177, branch code 004301.**

**I shall call you to confirm all this.**

**Cyril"**

23. The records, which include emails and bank records, all of which were sealed by the High Court in order to prevent them from being made public, revealed suspicion and evidence of a matter that I considered important for further investigation by the relevant authorities. These uncontested records reveal the following:

23.1. It is not true that the President was ignorant of the donors to the CR17 campaign;

23.2. Some of the beneficiaries of the donations were senior members of the ANC and officials of the CR17 campaign, including Ms Marion Sparg, Mr Mxolisi Dukwana, Deputy Minister in the Presidency, Ms Thembi Siweya and Small Business Development Minister, Ms Khumbudzo Ntshavheni;

23.3. Several officials of the CR 17 campaign were paid several amounts themselves;



- 23.4. These monies were paid from several accounts used to mobilize funds for the campaign. These included Ria Tenda Trust, Edelstein Faber Grobbler (EFG) Incorporated and a company called Linked Environmental Services (Pty) Ltd;
- 23.5. Millions of Rands (in excess of R8 Million) were used to fund hotel accommodation for several delegates who attended the ANC National Conference in December 2017;
- 23.6. Some payments reflect that they were paid into the accounts way after the National Conference of the ANC in December 2017; and
- 23.7. Very important economic players in the South African economy paid millions of Rands into the CR 17 campaign, raising reasonable suspicion that they were buying influence.
24. Some of these payments were also reflected in the information I obtained from the Financial Intelligence Centre ("**the FIC**"), which is a state organ that assisted with some of the records of transactions between various bank accounts used by the CR17 campaign. I submit that the judgment and order failed to consider this against the relevant provisions of the Constitution in respect of the President's section 96 obligation not to "**...act in any way that is inconsistent with their office,**

**or expose themselves to any situation including the risk of a conflict between their official responsibilities and private interests...”**

25. Having conducted the requisite interviews, obtained further information from the FIC and other sources, having issued the Section 7(9) notice to the President and after considering the President's written representations, I issued my report.

26. I found that, the allegation that on 6 November 2018 during questions session in Parliament, the President deliberately misled the National Assembly was substantiated because,

26.1. The President's "heat of the moment" response was concerning because Parliamentary Questions are an important means used by Members of Parliament to ensure that Government is accountable to Parliament (and through Parliament, to the people) for its actions.

26.2. The President's provocation by the question from Mr Maimane could justify giving poorly prepared answers and creating a risk of misleading Parliament as was done in this case. That his answer was untrue is common cause. That he did not have to give an answer immediately is also common cause.



26.3. The President as the head of state and the epitome of the Constitution should have acted with restraint and not allow Mr Maimane's question to affect his demeanour as he had stated in his response, that he had felt attacked and had to defend himself and his family.

27. I found that, in respect of the issue of whether the President exposed himself to any situation involving the risk of a conflict between his official duties and his private interests or used his position to enrich himself and his son through businesses owned by African Global Operations, this was substantiated because:

27.1. Section 96 of the Constitution provides that:

**"96 Conduct of Cabinet members and Deputy Ministers**

- (1) Members of the Cabinet and Deputy Ministers must act in accordance with a code of ethics prescribed by national legislation.**
- (2) Members of the Cabinet and Deputy Ministers may not**
  - (a) undertake any other paid work;**
  - (b) act in any way that is inconsistent with their office, or expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests; or**
  - (c) use their position or any information entrusted to them, to enrich themselves or improperly benefit any other person."**

*(own emphasis)*



- 27.2. The Executive Ethics Code is the code envisaged in section 96(1) of the Constitution. The Executive Ethics Code is the code with which Members of the Cabinet, Deputy Ministers and Members of Provincial Executive Councils must comply in performing their official responsibilities.
- 27.3. Paragraph 2.3 of the Executive Ethics Code provides that Members of the Executive may not expose themselves to any situation involving the risk of a conflict between their official responsibilities and their private interests.
- 27.4. Paragraph 3.1 of the Executive Ethics Code provides that a member must declare any personal or private financial or business interest that the member may have in a matter that is before the Cabinet or an Executive Council, that is before a Cabinet Committee or Executive Council on which the member serves, or in relation to which the member is required to take a decision as a member of the Executive.
- 27.5. The Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members provides a framework of reference for Members of Parliament when discharging their duties and responsibilities. It outlines the minimum ethical standards of behaviour that South

Africans expect of public representatives, including upholding propriety, integrity and ethical values in their conduct.

27.6. Paragraph 5.1 of the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members provides that a Member must:

27.6.1. resolve any financial or business conflict of interest in which he or she is involved in his or her capacity as a public representative, in favour of the public interest;  
and

27.6.2. always declare such interest, and where appropriate, the Member should recuse himself or herself from any forum considering or deciding on the matter.

27.7. Paragraph 5.2.1 of the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members provides that a member must not accept any reward, benefit or gift from any person or body:

27.7.1. that creates a direct conflict of financial or business interest for such Member or any immediate family of that

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Member or any business partner of that Member; or the immediate family of that Member;

27.7.2. that is intended or is an attempt to corruptly influence that member in the exercise of his or her duties or responsibilities as a public representative.

27.8. Paragraph 9 of the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members provides that members must disclose particulars of their registrable interests. The following kinds of financial interests are registrable interests which must be disclosed:

27.8.1. shares and other financial interests in companies and other corporate entities;

27.8.2. remunerated employment outside Parliament;

27.8.3. directorships and partnerships;

27.8.4. consultancies;

27.8.5. sponsorships;

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- 27.8.6. gifts and hospitality in excess of R1500, from a source other than a family Member or permanent companion or gifts of a traditional nature provided that this does not create a conflict of interest for the Member;
- 27.8.7. any other benefit of a material nature;
- 27.8.8. foreign travel (other than personal visits paid by the Member, business visits unrelated to the Member's role as a public representative, and official and formal visits paid for by an organ of State or the Member's party);
- 27.8.9. ownership in land and property including land and property outside the Republic;
- 27.8.10. pensions;
- 27.8.11. public contracts awarded;
- 27.8.12. trusts;

A B

27.8.13. encumbrances.

27.9. Paragraph 9.18 provides that where any doubt exists as to whether any financial interests must be disclosed, the Member concerned must act in good faith.

27.10. At the time the payment was made, the President was the Deputy President and a member of Parliament. I accordingly found that the failure to disclose the financial interest constituted a violation of both the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests for the National Assembly and Permanent Council Members and that such conduct was inconsistent with the office which he held as contemplated in section 96 of the Constitution.

27.11. I found that the donations were benefits of a material nature to the President (the Deputy President as he then was). The evidence also revealed that some monies collected through the CR17 campaign account were transferred into the Cyril Ramaphosa Foundation account.

27.12. Accordingly, the campaign donations towards the CR17 campaign were a form of sponsorship and were benefits of a material nature to the President (the Deputy President as he

then was). He was therefore duty-bound to declare such financial benefit accruing to him. In fact, while the CR17 suggests that the campaign was for the renewal of the ANC, no evidence in this regard is found in the papers. All this points to the common cause fact that the donations were for the benefit of the President's campaign.

28. In respect of the issue of money laundering, I found that because payment of the R500 000.00 passed through several intermediaries instead of a straightforward donation towards the CR17 campaign, the suspicion of money laundering had merit. I made this finding because there were large sums of money entering and exiting this account which compounded the alleged suspicion of money laundering. It would have been remiss of me to simply ignore this. On analysis of the information I received from the FIC, I saw that:

28.1. On 17 October 2017, at the height of the CR17 campaign, a sum of R3 000 000.00 was debited from RMB Private Bank Account number 62057405055 in the name of Gavin J Watson bearing the reference "MIOTTO TRADING LOAN".

28.2. On the same day another sum of R3 000 000.00 was credited to FNB account number 62595403339 again in the name of MIOTTO TRADING AND ADVISORY HOLDINGS bearing the reference "LOAN".

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- 28.3. A sum of R500 000.00 was debited from FNB account number 6295403339 on 19 October 2017 to Edelstein Farber Grobbler Incorporated account number 4090717443 bearing the reference "ACB CREDIT SETTLEMENT BOAG". The FIC comments that, after this credit took place, there was a "mingling of funds, debits took place to two accounts from ABSA account number 4090717443 until the balance was below R500 000.00 and it could be possible that the credit of R500 000.00 was amongst these funds that were debited."
- 28.4. That these funds were debited to the ABSA account number 01249177 in the name of the RIA TENDA TRUST, as well as the NEDBANK business account number 1918297053 reportedly in the name of Edelstein Farber Grobbler Incorporated.
- 28.5. In her affidavit, Ms Nicol confirms that Edelstein Farber Grobbler Incorporated was indeed part of the CR17 Campaign. In paragraph 4 of her affidavit she stated that:

**"On 22 November 2016, a trust account was opened in the name of Edelstein, Farber and Grobbler Incorporated, a law firm in Johannesburg, at ABSA Bank, referred to as account "EFG2". This account was to be used for the purpose of fundraising for the CR 17 Campaign to advocate for the election of Cyril Ramaphosa as President of the ANC at the organisation's 54<sup>th</sup> National Conference in December 2017."**



28.6. The FIC's report revealed details of transactions through various accounts, all of which were for the benefit of CR17.

28.7. I was further concerned that the sums of money claimed to be "donations" created a situation of the risk of some sort of state capture by those donating such large sums of money. Ms Nicol, the President's advisor, confirmed that over R 200 million was collected for the CR17 campaign. This was also confirmed by Mr James Motlatsi ("**Mr Motlatsi**") one of the CR17 campaign managers.

28.8. These huge transactions concerned me. I was equally concerned with the manner in which the transactions were conducted. At the time these transactions took place, the President was the Deputy President of the Republic, and in terms of Section 96 of the Constitution, he may have opened himself to the risk of a conflict of interest.

28.9. These amounts included, amongst others, three single largest donations of:

- R 30 000 000, 00;
- R 39 620 000, 00; and
- R 51 506 000, 00.



29. In light of all of the above, I took the following remedial action:

#### **"8. REMEDIAL ACTION**

The appropriate remedial action taken as contemplated in section 182(1)(c) of the Constitution, with a view of remedying the impropriety referred to in this report is the following:

##### **8.1 The Speaker of the National Assembly to:**

**8.1.1 Within 30 working days of receipt of this Report, refer His Excellency President Ramaphosa's violation of the Code of Ethical Conduct and Disclosure of Members' Interests for Assembly and Permanent Council Members to the Joint Committee on Ethics and Members' Interests for consideration in terms of the provisions of paragraph 10 of the Code.**

**8.1.2 Within 30 working days of receipt of this Report, consider within her discretion, for deliberations by Members of Parliament in terms of the Rules of the National Assembly, issues relating to my observations under paragraph 6.1 to 6.6 of this Report for possible review and amendment thereof.**

**8.1.3 Within 30 working days of receipt of this Report, demand publication of all donations received by President Ramaphosa because as he was the then Deputy President, he is bound to declare such financial interests into the Members' registerable interests register in the spirit of accountability and transparency.**

##### **8.2 The National Director of Public Prosecutions to:**

**8.2.1 Within 30 working days of receipt of this Report, take note of the observations contained in paragraph 7.3.1. as well as the recommendations contained in paragraph 7.3.3 of this report, and in line with section 6(4)(c)(i) of the Public Protector Act, conduct further investigation into the prima facie evidence of money laundering as uncovered**



during my investigation, and deal with it accordingly.

**8.3 The National Commissioner of the South African Police Services to:**

**8.3.1 Within 30 working days of receipt of this Report, investigate criminal conduct against Mr Gavin Watson for the violation of section 11(3) of the Public Protector Act, 23 of 1994 by lying under oath."**

30. The President subsequently instituted an application to review and set aside my report. The President contended that:

30.1. He did not mislead Parliament;

30.2. I had no jurisdiction to investigate the CR17 campaign donations;

30.3. He had no obligation to disclose money donated to the CR17 campaign;

30.4. He was not afforded an opportunity to be heard, and accordingly was denied his common law right of *audi alteram partem*; and

30.5. The remedial actions constitute the usurpation of the powers of relevant authorities like the Speaker of the National Assembly, the NDPP and the SAPS.



31. The President cited the Speaker of the National Assembly and the NDPP as respondents in the matter. Shortly thereafter, the Speaker sought to be cited as a second applicant in the review proceedings and sought to review and set aside my remedial action directed at her. While the NDPP elected to remain as a respondent, she, however, took issue with my remedial action directed at her.
32. The review application was heard on 4 and 5 February 2020 and judgment was handed down on 10 March 2020.

**C. SUMMARY OF THE FINDINGS OF THE COURT A QUO**

33. I submit with respect that the court *a quo* was erroneous in its judgment in respect of all the issues I set out below. The court *a quo* misinterpreted the scope of my powers in terms of the Constitution, the nature of my remedial action, the real issue for determination in respect of the “**suspicion**” of money laundering. To suggest that the President was not afforded the opportunity to be heard is simply a disregard of the loud facts of this case.
34. I am of the respectful view that if this matter could be determined in scrupulous compliance with the law and without any regard to my person or the status and identity of the subject of the investigation, a different conclusion may indeed be reached. That is how I approach my



own investigations and accordingly submit that there are disturbing contradictions emerging from the courts in relation to my constitutional powers and functions.

### **Whether the President misled Parliament**

35. In respect of whether the President misled Parliament, the court *a quo* held that:

35.1. There was no evidence to indicate that the President knew about the account EFG2 at the time the President had answered the question in Parliament;

35.2. There was no evidence to indicate that the President knew about the R500 000.00 donation made by Mr Watson to the CR17 campaign;

35.3. That there is nothing to gainsay the President's version that the President focused on the gist of Mr Maimane's question and not on the date of the payment (which was in fact before Mr Andile Ramaphosa's agreement with African Global Operations came about) or the account details;

35.4. If the President gave Parliament incorrect facts, this was based on a misstated set of facts presented to him by Mr Maimane;

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- 35.5. The origin of the error was on the part of Mr Maimane not the President;
- 35.6. The facts do not point to the President having acted so as to wilfully mislead Parliament;
- 35.7. In my treatment of the issue, I demonstrated a fundamentally flawed approach to the principles underpinning the question of whether the President violated the Executive Ethics Code by wilfully misleading Parliament;
- 35.8. By no stretch of law, logic or even ethics, could conduct of this nature be said to amount to a wilful or deliberate misleading of Parliament such as to amount to a violation of paragraph 2.3(a) of the Executive Ethics Code. That would be inconsistent with the rights of members of the Executive to be protected from freedom of speech when they appear in the National Assembly under section 58 of the Constitution;
- 35.9. The undisputed evidence of the President is that the reason why it was decided that he should be insulated from information about donations to the CR17 campaign was precisely to avoid him being placed in a position of possible conflict of interest;
- 35.10. The President's uncontested version is that his insulation from the details of the financial transactions and donors to the CR17

campaign ensured that the President avoided the risk that donors might subsequently expect some form of pay-back from him;

35.11. There was no evidence to the contrary nor was it an implausible explanation and that on the contrary, it seems to have been a reasonable strategy to employ in order to avoid possible conflicts of interest;

35.12. I did not make the obvious finding that the President had told the truth about his son having an agreement with African Global Operations; and

35.13. I did not approach the issue with an open mind, that I committed a material misdirection in my legal approach and reached an irrational and unlawful conclusion on the issue.

### **Jurisdiction of the Public Protector**

36. In respect of whether I had jurisdiction to investigate the CR17 campaign donations, the court *a quo* held that:

36.1. The overriding feature of section 182(1) of the Constitution and section 6(4) of the Public Protector Act is that my jurisdiction is limited to matters involving state affairs, public administration, the exercise of public powers or functions, public funds, or

conduct occurring in or concerning the affairs of any of the spheres of government;

- 36.2. It is implicit in this circumscription of my powers that I cannot investigate matters falling within the private sphere;
- 36.3. I enjoy wide powers, including the power to investigate any issue on my own initiative but I only enjoy these powers within my sphere of competence;
- 36.4. I cannot initiate my own investigation on an issue that falls outside my sphere of competence nor can I investigate a complaint that falls outside it;
- 36.5. Critical to my sphere of competence is that I may only investigate improper or allegedly improper conduct in state affairs, or in the public administration in any sphere of government;
- 36.6. One cannot give the concept of state affairs as it appears in section 182(1) of the Constitution so wide a meaning that it serves no purpose;
- 36.7. My sphere of competence to investigate is limited to State or public bodies or functionaries within the meaning of "organs of state" i.e. those performing a public power or function;

- 36.8. My competence to investigate non-State or private bodies or functionaries exists only if the alleged improper conduct involves public money;
- 36.9. The jurisdictional issue is not whether I had the competence to investigate the complaint against the President, or his conduct. The issue is whether my sphere of competence extended to investigating the CR17 campaign;
- 36.10. The CR17 campaign fell squarely within the constitutional rights of participating members under section 19(1) of the Constitution. The conduct of political party members in conformity with their party structures and in furtherance of their own personal party ambitions is squarely within the private domain;
- 36.11. The conduct of those members of the ANC who came together under the banner of the CR17 campaign to raise funds for the President was not conduct in state affairs;
- 36.12. The activities of the CR17 campaign was by nature the activities of members of a private group of people and not a statutory body. There was no suggestion that these activities involved the suspected improper use of public funds;



- 36.13. The donations were private donations. It did not fall within my sphere of competence to investigate the CR17 campaign;
- 36.14. In assuming jurisdiction to investigate, I appear to have conflated the CR17 campaign with the President;
- 36.15. I then assumed jurisdiction on the basis that the President was the Deputy President at the time that the donations were received;
- 36.16. The mere fact that the President was the Deputy President at the time did not catapult the activities of the CR17 campaign into the arena of "affairs of the state" and thus subject to my jurisdiction;
- 36.17. The CR17 campaign was a campaign to further a particular ideological agenda within the ANC. The donations made were to support the party-political cause of some members of the ANC for purposes of the December 2017 internal party elections;
- 36.18. The Executive Ethics Act and the complaint under the Executive Ethics Code may give jurisdiction to investigate the President but not the CR17 campaign;
- 36.19. The outer limits of my competence remain limited to state affairs, thus excluding the activities of the CR17 campaign;

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- 36.20. Section 3 of the Executive Ethics Code is limited to the actual complaint lodged. Neither of the complaints were directed at the activities of the CR17 campaign;
- 36.21. The CR17 campaign was much broader than simply supporting the President a prospective President of the ANC;
- 36.22. The evidence established that he was not involved in the organisational structures of the campaign and generally not involved in fund raising;
- 36.23. The evidence supports the President's explanation of his limited involvement in the fundraising activities;
- 36.24. To the extent that the President was involved in the CR17 campaign it was as a member of the ANC;
- 36.25. There was no evidence that in his involvement in the CR17 campaign, the President placed himself at the risk of a conflict between his official responsibilities and his private affairs;
- 36.26. My finding that the President received direct financial sponsorship through the CR17 campaign was based on my conflation of the CR17 campaign with the President;

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- 36.27. I did not identify any evidence or facts to substantiate my conclusion that the President received direct personal sponsorship through the CR17 campaign;
- 36.28. There was no evidence that the President received personal financial benefit from any campaign contributions;
- 36.29. Neither the President nor his family were beneficiaries of the Cyril Ramaphosa Foundation neither did they receive funds from it;
- 36.30. If the President did not personally benefit or receive financial campaign contributions through the CR17 campaign how could I rationally have concluded that the President was obliged under the Executive Ethics Code to make the disclosure of the donations;
- 36.31. There was no evidence that the President received direct financial sponsorship from the donations through the CR17 campaign;
- 36.32. The nature of the benefit was not a financial benefit upon which one could place the type of 'value' required to be disclosed by paragraph 6 of the Code;
- 36.33. The President was not obliged to make disclosure of donations received by the CR17 campaign under paragraph 6.4 of the Executive Ethics Code;



36.34. My findings on the disclosure issue are unsustainable and my finding that the President breached the Executive Ethics Code by failing to disclose donations to the CR17 campaign was irrational and unlawful;

### **The money laundering issue**

37. In respect of the issue of money laundering, the court *a quo* held, *inter alia*, that:

37.1. I extended my investigation on the money laundering issue beyond the single payment of R500 000.00 by Mr Watson;

37.2. I made a finding that the President had involved himself in illegal activities sufficient to evoke a suspicion of money laundering;

37.3. In dealing with this issue I completely failed to properly analyse and understand the facts and evidence at my disposal;

37.4. Had I been diligent I would not have arrived at the conclusion that I did;

37.5. It is so that at the time that I conducted my investigations, the alleged corrupt activities of African Global Operations in state tenders had aired at the Commission into State Capture but this



is immaterial. The evidence from Mr Watson was that he made the donation to the CR17 campaign as a long-standing member of the ANC;

- 37.6. The FIC could find no indication of money laundering;
- 37.7. Even if Mr Watson's sources of funding were suspect, the suspicion of money laundering might fall on Mr Watson but he was not subject of my investigation;
- 37.8. It is unfathomable how I thought the President might have harboured the requisite knowledge that the money in question is the proceeds of crime;
- 37.9. I assumed that the monies donated to CR17 campaign constituted bribes or kickbacks, presumably for political kickbacks;
- 37.10. My reasoning implies that the President orchestrated the entire CR17 campaign and used it as a vehicle for laundering the bribes he received from donors in return for political favours. This kind of allegation, even if implied and not expressed, ought not to be made without strong supporting evidence;
- 37.11. There was no evidence to support this very serious allegation;

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37.12. I displayed anything but an open and enquiring mind on the issue of money laundering;

37.13. I made serious findings on unfounded assumptions; and

37.14. My findings were irrational and reckless.

***Audi Alteram Partem* – Contemplated remedial action**

38. In respect of *audi alteram partem*, the court *a quo* held among other things that:

38.1. I did not give the President any forewarning about my remedial action;

38.2. I did not include the remedial action in my section 7(9) notice to the President;

38.3. Section 7(9) of the Public Protector Act does not expressly require me to include my contemplated remedial action in the notice to a party under investigation but that does not mean that I may not be obliged to do so. The facts may be such that in order to constitute compliance with a person's constitutional right to just administrative action, I should afford them this opportunity;



38.4. In this case, the remedial action had potentially serious implications for the President;

38.5. The President's right to just administrative action placed an obligation on me to forewarn the President and give him an opportunity to make representations;

38.6. I failed to comply with this obligation.

### **The remedial action**

39. In respect of the remedial action, the court *a quo* held among other things that:

39.1. I had to decide whether the Joint Committee was competent to consider a complaint against former members of Parliament;

39.2. The Joint Committee does not have the competence to consider the complaint;

39.3. The Speaker does not have the competence to demand that the President, who is no longer a member of the National Assembly, disclose the CR17 campaign donations in the register of Member's interests;

39.4. My remedies are ineffective and inappropriate;

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- 39.5. My remedies constitute an unlawful interference with the Speaker's Constitutional role to determine what measures are most appropriate to deal with conduct that is alleged to breach the Rules or Codes applicable to the National Assembly;
- 39.6. My remedial action does not appear to be in the nature of mere advice or recommendations;
- 39.7. While there may be instances where I am lawfully entitled to encroach on a discretionary power and direct that it should be exercised and in what fashion, the remedial measure must be necessary and appropriate to remedy the prejudice associated with the complaint;
- 39.8. There was no need to direct the Speaker to exercise her discretion and to arrange a discussion in Parliament. This was an unwarranted encroachment on the Speaker's discretionary powers;
- 39.9. The remedial action and monitoring measures directed at the NDPP go much further than is permitted by my powers;
- 39.10. I was doing something more than simply bringing the matter to the attention of the NDPP;
- 39.11. The NDPP could not lawfully ignore the remedial action;

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- 39.12. The remedial action was not a recommendation, it required the NDPP to act and give an implementation plan;
- 39.13. I have no powers to direct the NDPP when or how to carry out her functions;
- 39.14. I have no powers to monitor the NDPP's conduct;
- 39.15. I exceeded the lawful limits of my powers in the remedial action and monitoring measures directed at the NDPP;
- 39.16. The plain import of my remedial action was that I expected the NDPP to investigate on my direction and obtain my approval for the implementation plan;
- 39.17. The Public Protector Act and the National Prosecuting Authority Act are clear that I have no power to direct the NDPP to investigate any criminal offence and how to go about doing this.
40. With regard to all of the findings above I respectfully submit that the court a quo erred. Instead, it ought to have found that my report and investigation, as well remedial action were well within my powers and conducted in accordance with the relevant statutes.

**D. THE CONSTITUTIONAL ISSUES RAISED**

41. The Constitutional issues are:



41.1. In respect of whether the President misled Parliament, was the President's conduct wilful or deliberate and if so, is such a finding inconsistent with the rights of members of the Executive to be protected from freedom of speech when they appear in the National Assembly under section 58 of the Constitution?

41.2. In respect of jurisdiction of the Public Protector, whether

41.2.1. I had jurisdiction to investigate donations to the CR17 election campaign;

41.2.2. The CR17 campaign donations involved conduct in state affairs or whether these were private donations;

41.2.3. Where a complaint is lodged in terms of section 3 of the Executive Ethics Act, the Public Protector's competence to investigate a complaint of a violation of the Executive Ethics Code is limited to the actual complaint lodged;

41.2.4. The President received direct financial sponsorship through the CR17 campaign that benefitted him personally.



- 41.3. In respect of the money laundering issue, whether I had jurisdiction to extend my investigation on the money laundering issue beyond the R500 000.00 payment of Mr Watson and whether my finding was substantiated.
- 41.4. In respect of, *audi alteram partem*, whether
- 41.4.1. Under section 7(9) of the Public Protector Act, I am obliged to include my contemplated remedial action in the notice to a party under investigation where the facts may be such that in order to constitute compliance with a person's constitutional right to just administrative action, I should afford them this opportunity;
- 41.4.2. The facts of this case required that I give the President such an opportunity. And this is what I did.
- 41.5. In respect of the ambit of my remedial action, whether my remedial action and monitoring measures went further than is permitted.
42. I submit that the determination of the issues highlighted above is of vital constitutional importance and so the High Court cannot be the final

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arbiter of these. The proper interpretation of legislation (in this case the Public Protector Act and the Constitution) constitutes a constitutional matter on which the Constitutional Court has final jurisdiction.

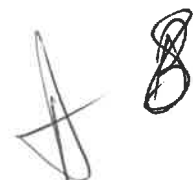
**E. GROUNDS ON WHICH THE COURT A QUO ERRED**

43. I submit with respect that the court *a quo* misinterpreted the scope of my powers in terms of the Constitution, the nature of my remedial action, the real issue for determination in respect of the “**suspicion**” of money laundering. The court *a quo* further erred in its finding that the President was not afforded the opportunity to be heard.
44. It is undeniable that the President misled the National Assembly when he responded to the parliamentary question by Mr Maimane.
45. As confident as he was when he stated his “facts” and confirming that the matter had been brought to his attention, he later realized that his falsehoods could not be sustained and reverted to Parliament with his purportedly correct version.
46. It was not in dispute that during the question and answer session in Parliament on 6 November 2018, the President responded to a question posed by Mr Maimane regarding the alleged improper payment of R500 000.00 made by African Global Operations, formerly Bosasa to the



President's son Mr Andile Ramaphosa. The cold facts, without any of the obfuscation, reveal that the President changed the answer he had given with certainty and confidence.

47. Having made these statements in the National Assembly, in such absolute and certain terms about his knowledge of the issue Mr Maimane was referring to, the President, some 8 days later, revised his certainty and communicated a different statement about this very issue about which he had been informed "**some time ago**".
48. Reliance by the court *a quo* that I found that the President was ostensibly acting in good faith to justify its reasoning that I accepted that the President acted in good faith simply misconstrues the issue.
49. The court *a quo* further erred in finding that my findings breached section 58(1) of the Constitution. Cabinet members have freedom of speech in the Assembly and its committees subject to its rules and orders. One cannot rely on this section of the Constitution to shield oneself from constitutional scrutiny.
50. As regards my jurisdiction, this matter was not about investigating donations made to a private party-political campaign. This matter was about investigating the conduct of the President (the Deputy President as he then was).

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51. I was asked to investigate, among other things, whether the President (the Deputy President as he then was) improperly and in violation of the provisions of the Executive Ethics Code and the Code of Ethical Conduct and Disclosure of Members' Interests exposed himself to any situation involving the risk of a conflict between his official duties and his private interest or used his position to enrich himself and his son through businesses owned by African Global Operations and the nature of the R500 000.00 payment passing through several intermediaries instead of a straightforward donation to the CR17 election campaign.
52. The issues are intertwined and do not relate to donations made to a private party-political campaign at all.
53. There was no evidence from the ANC confirming that such funding was indeed for the ANC as a party.
54. It was not in dispute that a payment of R500 000.00 was made into the "EFG2" trust account and that the payment passed through several intermediaries. The evidence revealed that the R500 000.00 payment was transferred from Mr Watson's personal account as part of a lump sum of R 3 million into the account of Miotto Trading and eventually into the "EFG2" trust account.

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55. Of concern to me was that the FIC in its report revealed details of transactions through various accounts for the benefit of the CR17 campaign. That these sums of money claimed to be "donations" created a situation of the risk of some sort of state capture by those donating such large sums of money.
56. Ms Nicol, the President's advisor, confirmed that over R 200 million was collected for the CR17 campaign. This was also confirmed by Mr James Motlatsi, one of the CR17 campaign managers.
57. The President argued that because the FIC's analyst stated that he could find no evidence of money laundering, my finding to the contrary was wholly irrational.
58. If one looks at the totality of evidence and the large sums of money that passed through the account, it would have been remiss in the extreme of me to turn a blind eye to this simply because the subject is the President. I referred the court *a quo* to the decision of the Supreme Court of Appeal dealing with how I should approach my investigations. It would be remiss of me to abandon such legal principles because the subject of my investigation is the President of the Republic. My responsibility, so the SCA correctly held, is to get to the truth and to conduct the investigation with an open and enquiring mind.

59. The FIC stated, among other things, that:
- 59.1. Its findings on the existence or not of a predicate offence are not conclusive as it did not investigate whether or not such predicate offence existed.
  - 59.2. Its conclusions were solely based on the fact that the amount of R500 000, 00 came from sources that appeared to be lawful.
  - 59.3. Once I had received the FIC's report together with the source documents, I was duty-bound to conduct my own investigation and analysis.
60. I duly conducted my own investigation and considered and analysed, among other things, the information I received from the banks whom I had subpoenaed and who had responded. I conducted my investigation with an open mind and could not ignore the R500 000.00 passing through several accounts and passing through millions of Rands.
61. There was therefore nothing irrational in my finding that there is merit to the allegation relating to the suspicion of money laundering and that this feature of the investigation will be dealt with in conjunction with the provisions of section 6(4)(c)(i) of the Public Protector Act. I did not



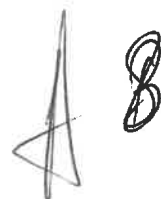
investigate whether there was in fact money laundering but referred the matter to the relevant authorities to do their work.

62. As regards *audi*, I submit with respect that what is required of me in terms of section 7(9) of the Public Protector Act is to alert implicated persons who are the subject of my investigation about possible adverse findings. I am not required to state what my remedial action will be. At the time the section 7(9) notice is issued, it would be premature for me to know what remedial action to take.

63. Section 7(9)(a) of the Public Protector Act provides that:

**“If it appears to the Public Protector during the course of an investigation that any person is being implicated in the matter being investigated and that such implication may be to the detriment of that person or that an adverse finding pertaining to that person may result, the Public Protector shall afford such person an opportunity to respond in connection therewith, in any manner that may be expedient under the circumstances.”**

64. In any event, I stated in the section 7(9)(a) notice that the remedial action could be a referral of the matter to the relevant authorities. It was also foreshadowed in the Report that the matter is best dealt with by the relevant authorities.

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65. As regards the ambit of my powers in respect of the remedial action and monitory measures, again with respect, my remedial action cannot be said to usurp the powers of the Speaker or the NDPP.
66. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It is the nature of the issue under investigation, the findings made, and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to.
67. Implicit in the words "take action" is that I am empowered to decide on and determine the appropriate remedial measure. And "action" presupposes, where appropriate, concrete or meaningful steps. Nothing in these words suggests that I necessarily have to leave the exercise of the power to take remedial action to other institutions or that it is power that is by its nature of no consequence. Taking remedial action is also not contingent upon a finding of impropriety or prejudice. This Court was very clear about this.
68. Paragraph 8.1.1 of my remedial action merely requires the Speaker to refer the matter to the Joint Committee for consideration in terms of paragraph 10 of the Code of Ethical Conduct and Disclosure. This paragraph provides for "Breaches and procedure for investigation". Paragraph 10.2 of the Code envisages that any person or body may



submit a complaint or the Joint Committee itself may, acting on its own, consider any breach or alleged breach. I did not usurp the functions of the Joint Committee who is empowered to consider any breach or alleged breach.

69. The violation of the Code of Ethical Conduct and Disclosure relates to the President's conduct when he was Deputy President. It is unfathomable how donations that were received by the President whilst he was the Deputy President and thus a member of the National Assembly, cannot be investigated by the Joint Committee because the President is no longer a member of the National Assembly. Accountability, responsiveness and openness is the founding values of our Constitution.
70. Paragraph 8.1.2 of my remedial action merely requires the Speaker to consider, within her discretion, whether there should be deliberations on the issues relating to my observations under paragraph 6.1 to 6.6 of the Report.
71. Paragraph 8.1.3 of the remedial action requires the Speaker to demand publication of all donations received by the President as he was bound to declare such financial interests at the time when he was Deputy President of the Republic as required in paragraph 9 of the Code of Ethical Conduct and Disclosure.

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72. As regards the remedial action in paragraph 8.2 in respect of the NDPP, the remedial action does not take away the autonomy of the NDPP to decide whether or not a particular criminal conduct should be prosecuted. The remedial action merely refers the matter to the NDPP to conduct further investigation.
73. Section 6(4)(c)(i) of the Public Protector specifically states that the Public Protector shall be competent to, at a time prior to, during or after an investigation if he/she is of the opinion that the facts disclose a commission of an offence bring the matter to the attention of the relevant authority charged with prosecutions.
74. There is no infringement on the doctrine of separation of powers.
75. I submit with respect that the remedial action is consistent and conforms with the findings made by this Court as well as the Constitution and the Public Protector Act. The National Assembly, the SAPS and the NDPP are at liberty to do nothing about the President's alleged conduct if they are so inclined and if they are of the view it is legally justifiable to do so or to exercise their discretion in that manner.
76. The monitoring measures do not mean that I wanted to know how the criminal investigation was going to be done, but acknowledge receipt and indicate that it has been allocated for further investigation or, in exercising their discretion, it is legally justifiable not to investigate.



77. It is also important that I state that I had no interest in finding fault with the President. All I sought to do was to conduct the investigation in the manner consistent with the trite principles set out by our courts in previous matters relating to the powers of investigation of the Public Protector. I dispute as malicious the impression created that I went out of my way to find fault in the President.

#### **F. CONDONATION**

78. I am advised that this affidavit may well be out of time, given the relevant rules of this Court. My attorney, Mr Theophilus Seanego, whose confirmatory affidavit is attached hereto as "**PP3**", advised me that this was caused by some confusion caused by the COVID- 19 Lockdown imposed in terms of the Disaster Management Act on 26 March 2020. This affidavit would have been due on Tuesday, 30 March 2020.

79. I am advised that this would have meant that the lockdown interrupted *dies*, which would have meant that this affidavit would be due as and when the lockdown ends. However, my attorneys have advised me that in view of the extension of the lockdown to the end of April 2020, it is better to file this affidavit in order to ensure that it is not too late.

80. In the event that this affidavit was due earlier I ask that its late filing be condoned for the reasons I have set out. I express my unreserved apology for the confusion and inconvenience this has caused.

A handwritten signature in black ink, consisting of a stylized 'A' followed by a circular flourish.

**G. CONCLUSION**

81. For all the above reasons, it is respectfully submitted that:

81.1. It is in the interests of justice that I be granted leave to appeal directly to this court.

81.2. There are good prospects of success on appeal.

81.3. There are compelling reasons for this matter to be heard by this Court.

WHEREFORE I pray for an order in terms of the notice of motion to which this affidavit is attached.

  
\_\_\_\_\_  
**DEPONENT**

  
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I certify that the above signature is the true signature of the deponent who has acknowledged to me that she knows and understands the contents of this affidavit, which affidavit was signed and sworn to at *Pretoria* on this the *14<sup>th</sup>* day of *April* 2020 in accordance with the provisions of Regulation R128 dated 21 July 1972, as amended by Regulation R1648 dated 19 August 1977, R1428 dated 11 July 1980 and GNR774 of 23 April 1982.



COMMISSIONER OF OATHS

**AMIGO NDLOVU**  
**COMMISSIONER OF OATHS**  
Practising Attorney Gauteng  
Gildenhuis Malatji Inc  
164 Totius Road  
Groenkloof, Pretoria 0001

