

CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT:333/23

In the matter between:

**CORRUPTION**  
Applicant

**WATCH**

**(RF)**

**NPC**

and

**SPEAKER OF THE NATIONAL ASSEMBLY**

First Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

Second Respondent

**COMMISSION FOR GENDER EQUALITY**  
Respondent

Third

**INFORMATION REGULATOR**  
Respondent

Fourth

**NTHABISENG SEPANYA-MOGALE**  
Respondent

Fifth

**THANDO GUMEDE**  
Respondent

Sixth

**BONGANI NGOMANE**  
Respondent

Seventh

**LEELAMBAL SUBRAYAN – NAIDOO**  
Respondent

Eighth

**LEONASHIA LEIGH-ANN VAN DER MERWE**  
Respondent

Ninth

---

**SEVENTH RESPONDENT'S AFFIDAVIT**

---



OIC

I, the undersigned,

**BONGANI NGOMANE**

do hereby state under oath as follows:

- 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 In these proceedings, Corruption Watch (RF) NPC ("**Corruption Watch**") seeks declaratory orders to the effect that the public participation process followed by Parliament prior to recommending persons to be appointed as members of the Commission, was unreasonable and unconstitutional. Furthermore, Corruption Watch seeks to declare invalid the appointments of the Commissioners of the Commission made by the President of the Republic of South Africa ("**the President**") on 1 March 2023. The appointments made by the President include my own appointment.
- 5 The remedy sought by Corruption Watch is that the declarator of constitutional invalidity against the impugned Parliamentary process, as



Drc

well as the invalidity of the appointments of the Commissioners by the President be suspended for a period of 18 months, to enable Parliament to conduct a fresh process for the appointment of Commissioners.

- 6 I do not oppose Corruption Watch's application; however, I do not support Paragraph 3 of the Notice of Motion, aimed at suspending the order of constitutional invalidity and commencing the Parliamentary process of appointing Commissioners anew, ("the Suspension Order").
- 7 My affidavit is aimed at highlighting the adverse personal impact of the Suspension Order against me. There are no guarantees that I will be appointed again in the new recruitment process; yet, I have readjusted my life, following my acceptance of the position as a part-time Commissioner at the Commission.
- 8 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.
- 9 My affidavit is structured as follows:
  - 9.1 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

  
O.C

condoning any constitutional invalidity by retaining me as the Commissioner for the Commission for Gender Equality.

**MY EXPERIENCE UNDER THE COMMISSION**

- 10 I currently serve as a part-time Commissioner at the Commission for Gender Equality ("the Commission").
- 11 The withdrawal of my appointment as a Commissioner if it were to occur, would affect me emotionally and psychologically.
- 12 I have integrated myself well within the organisation and the environment is enriching and empowering to me, as it helps me advance the course of humanity in general.
- 13 To try and pull me out before the end of the term will have severe emotional and psychological effects to me.
- 14 I will not be affected financially as I am not being remunerated for the work that I do at the Commission. This is a demonstration of my passion and the fact that being at the Commission satisfies by strong ideological orientation, being saving humanity. This ideological orientation is of emotional and psychological value to me.
- 15 On the reasons provided above, I submit and request that the President should not prematurely terminate my term of office.



012

- 16 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.

I am of the view based on the facts contained in this affidavit that my personal and the Commission's present circumstances 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 retaining me in my position as a full-time Commissioner.

#### CONDONATION

- 17 This Honourable Court issued Directives that I should indicate my position in respect of this application on the 15<sup>th</sup> of August 2024 date and file any answering affidavit by the 2<sup>nd</sup> of September 2024.
- 18 My affidavit will be delivered on the 10<sup>th</sup> of September 2024, only six Court days after the due date set by this Honourable Court. Upon receipt of the Directives, the Commission engaged our legal representatives, including Counsel.
- 19 I decided after the consultations with the legal representatives, that there are no grounds to oppose the application by Corruption Watch. Upon

  
D.C.

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.

- 20 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.
- 21 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 two-day delay. I did not act recklessly or intentionally in relation to the delay.
- 22 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,

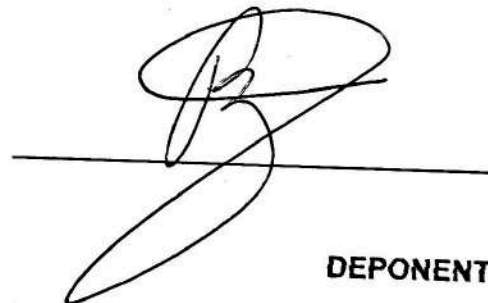
  
Drc

23 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.

24 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.

SOUTH AFRICAN POLICE SERVICE
DETECTIVES
2024 -09- 10
MONDEOR SAPS
SOUTH AFRICAN POLICE SERVICE




DEPONENT

**SIGNED** and **SWORN** to before me at mondeor saps on this 10 day of September 2024, the Deponent having acknowledged that he knows and understands the contents of this Affidavit; that he has no objection to taking the prescribed oath and that he considers the oath as binding on his conscience.



O.C.

  
2024/09/10

COMMISSIONER OF OATHS

NAME: *Cherolata Conde*

TITLE: *Constable*

ADDRESS: *233 Peral Park Drive Montebay*

