

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

SIXTH RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,



THANDO GUMEDE

do hereby state under oath as follows:

M.R. T.G.

- 1 I am an admitted advocate of the high court of South Africa (non-practising), a mediator registered with the ADR Network of South Africa and a full-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 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.

M.R T.G.

- 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 and foregone many opportunities, following my acceptance of the position as a full-time Commissioner at the Commission.

- 8 I am equally concerned about the stability and continuity of the Commission and how the recruitment of new Commissioners has the impact of undoing the traction that has been achieved since the new cohort of Commissioners were appointed on the 1st of March 2023.

- 9 My affidavit therefore further shines a light on my experiences as a current full-time Commissioner within the Commission and why I believe the Commission will be negatively affected by the relief sought by Corruption Watch.

- 10 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.

M.R T.G

11 My affidavit is structured as follows:

11.1 I address my background prior to being a Commissioner; and

11.2 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

12 I am an admitted advocate of the High Court of South Africa and a certified and registered mediator. I hold a Bachelor of Laws ("LLB") degree from the University of the Witwatersrand that I obtained in 2016. I currently serve as the youngest National Commissioner at the Commission for Gender Equality ("**the Commission**").

13 For my contribution and commitment toward the fight for gender equity, transformation and the advancement of social justice, human rights and innovation, I have been acknowledged with a number of national and international awards and honours including the 2024 Forbes Woman Africa Social Impact Award, Top women engineering innovators in Africa Fellowships 2020-2022, Mail & Guardian Top Minds in Law and Social Justice 2020 and in 2021 induction as an Honorary Lifetime Member of the

M.R T.G

"International Golden Key Honours Society", which is the world's largest Collegiate Honours Society.

- 14 After completing my LLB degree, I worked for a brief period as a legal assistant at Lawyers for Human Rights within the Statelessness Department under the supervision of a practising attorney. My work centred around unblocking South African citizen's Identity documents, and assisting foreign nationals to regain statehood; as well as to access basic human rights such as basic education, access to healthcare, gaining employment, pursuing higher and further education-related qualifications, regaining a sense of identity, dignity, humanity and a sense of belonging within society at large.

- 15 During this period, I used my legal and entrepreneurial knowledge to launch the Bashumi Street Law Show and Bashumi Business Show which were both edutainment-based radio programmes aimed at teaching women across South Africa the law of intestate succession as a way of contributing to the fight against gender-based violence and femicide. This was done through teaching legal principles, practical case law, judicial process and legal formulae that would enable women to rightfully access the land and assets which they legally inherited from their deceased loved ones. Especially, their husbands and immediate family members.

- 16 These shows further aided women's economic growth by teaching them how to start their own businesses. I used my 10 year experience (at the time) to teach how to develop business plans, develop business models,

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the business canvas model and value propositions through engaging and interactive case studies. These two podcast radio shows received great reviews and became the second highest rated show on the platform, garnering over 70 000 downloads in a space of a few weeks.

- 17 I then went on to register for my Masters in Law at the University of Cape Town. And, through UCT's Democratic Governance and Rights Unit ("DGRU"), I became an alumnus of the South African Women-International Association of Women Judges ("SAW-IAWJ") Aspiring Female Judge's Programme, wherein I was mentored by the women of the South African judiciary and magistracy. I also worked on the reports for the appointment of judges. Thereafter, through the DGRU and with the mentorship of a few women judges, I served as a legal researcher for the judges of the Supreme Court of Appeals seated in Bloemfontein. My exposure within the judiciary and magistracy included adjudication on commercial crimes, succession law, customary land rights, administrative law, contract law, immigration law and the application of constitutional law and regional and international law instruments for the protection and advancement human rights of deeply marginalised groups, including women, refugees and asylum seekers.
- 18 Prior to the Commission, I was actively involved in National Feminist and Africana Womanist politics, high impact social entrepreneurship and the advancement of human rights through law, innovation, development and transformation work.

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- 19 I served as the Provincial Chairperson/Coordinator of South Africa's first feminist political party called Women Forward, which contested the 2019 National and Provincial Elections.

- 20 In 2020, I co-hosted and contributed to South Africa's first feminist tv show called "It's a Feminist Thing", aimed at using edutainment to dismantle the pervasive patriarchal norms, ideas and stereotypes which contribute to gender-based violence and femicide in South Africa, including misogynoir.

- 21 I served as the Company Secretary/Secretariat and National Coordinator for the Women's Economic Assembly ("WECONA"), which was launched in 2021, by the Office of the Presidency, and birthed out of the mandate emerging from Pillar 5 of the Gender-Based Violence and Femicide National Strategic Plan ("GBVF – NSP"), which is wholly dedicated to women's "Economic Power". WECONA addressed women's unequal economic and social position, through access to government and private sector procurement, employment, housing, access to land, financial resources and other income generating initiatives. I coordinated and managed the WECONA project and its more than 200 private sector, governmental departments, women-owned businesses, civil society and development agency stakeholders and organisations across thirteen (13) critical economic sectors in South Africa to advanced women's economic participation in South Africa at all levels of society. Including the attainment of the minimum 40% public procurement in favour of women-owned businesses.

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22 I am one of the contributors of the implementation and localisation of the National Strategic Plan on Gender-Based Violence and Femicide. I served among the first cohort of National Ambassadors, strategists and implementors of the 100 days Challenges, which has now grown to become an ongoing national project.

23 I am also one of the collective minds who developed the NSP-GBVF Council Act/legislation which was passed into law in May 2024, by the President of South Africa. This is well recorded in the parliamentary minutes of the portfolio committee on Women, Youth And Persons with disabilities; as well as in other forums. I have contributed to the advancement of Pillars 3, 5 and 6 of the NSP-GBVF both nationally and in the province of Gauteng.

24 In 2022, I served as a committee member of the Gauteng Provincial Department of Safety and Security's Sub-Committee and "war-room" focused on Strengthening Partnerships Towards The Elimination of Gender-Based Violence and Femicide; and the Chairperson of the Gauteng Technical Committee on Crime Prevention and Law Enforcement; as well as formerly led the Gauteng Province's NSP-GBVF Pillar on Safety, Protection and Justice; and the Women's Economic Power Pillar.

25 I started my journey in gender and racial justice in ~~2019~~ ²⁰¹² as the Gender Officer for the South African Student Congress ("Congress") Branch Executive Committee at Wits University when I was 19 years old. And, I

2012  

M.R T.G

never looked back since. I have organised and taken part in some of the most nationally historical protest actions, campaigns and moments in the advancement of gender equity and intersectionality.

- 26 For me to not do this work on a full time basis would literally eat my soul. I am not sure that I would be able to live with myself. Being a Commissioner for Gender equality is literally the manifestation of my teenage dreams. I believe that I can achieve the essence of my passions for anti-gbv and other intersectional gender-related injustices such as racism, ableism, queerphobia and economic exclusion through my current work within the Commission. And, I have, in fact made significant headway in this regard.
- 27 We turned this institution around for the better. I am totally unafraid to state this in front of anyone. We inherited an un-energised, non-progressive and dormant institution and made it into an agile, responsive and impactful organisation that is well integrated, constantly innovating, committed to excellence and breaking glass-ceilings.
- 28 Our achievements across our departments has been lauded in ways that are deeply humbling. Baring in mind that, this institution is approximately 28 years old, we have managed to undo much of the internal decay. And now, much of our efforts have turned to our actual Constitutional Mandate. We have started to make ripples in the ocean of transformation. I can guarantee that by the end of 2025, those ripples will become full blown waves of democratic transformation.

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29 I truly believe that if we leave, it will totally collapse the work that we have done internally and externally. There will be a loss of institutional memory and experience. I believe that if we leave, the institution will collapse into oblivion. Before we arrived at the Commission, it was on its last leg. Now, the institution is standing firm, but it still needs our leadership, guidance and support. Removing us would ruin the aspirations, hopes and dreams of the dozens of staff members who have finally reached the stage of fully trusting us to lead them and the institution. It would devastate many and retard all progress made to date.

30 The setting aside would do far more damage to the institution, society at large and all lives involved.

31 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.

M.R. T.G

CONDONATION

- 32 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.
- 33 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.
- 34 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.
- 35 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.

M.R. T.G

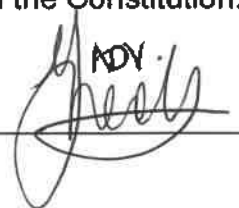
36 I am of the view that in light of the truncated times with which we were confronted to ponder and deliberate on this matter that attaches to our personal circumstances and that of the Commission itself, the delay is not unreasonable. This is particularly so because it is only a two-day delay. I did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

37 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,

38 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.

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

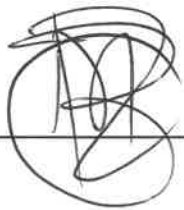
WHEREFORE I pray that if it may please the above Honourable Court to grant me the relief of retaining my appointment, notwithstanding a finding that my appointment as a Commissioner is constitutionally invalid, if the Court so finds, under the just and equitable remedy provision in section 172 of the Constitution.

A handwritten signature in black ink, appearing to be 'M.R. T.G.', written over a horizontal line.

DEPONENT

M.R. T.G.

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
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