

## COURT ONLINE COVER PAGE

IN THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN

CASE NO: 2026-119182

In the matter between:

**MATAMELA CYRIL RAMAPHOSA**

Plaintiff / Applicant / Appellant

and

**SANDILE NGCOBO NO ,THOKOZILE  
MASIPA NO ,MAHLAPE SELLO NO  
,SPEAKER OF THE NATIONAL  
ASSEMB ,VUYOLWETHU ZUNGULA**

Defendant / Respondent

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### Notice of Motion (Long Form)

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ELECTRONICALLY SIGNED  
BY:

**Registrar of The High Court,  
Western Cape Division, Cape  
Town**

**THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN**

Case:

In the matter between:

**MATAMELA CYRIL RAMAPHOSA**

Applicant

and

**SANDILE NGCOBO NO**

First Respondent

**THOKOZILE MASIPA NO**

Second Respondent

**MAHLAPE SELLO NO**

Third Respondent

**SPEAKER OF THE NATIONAL ASSEMBLY**

Fourth Respondent

**VUYOLWETHU ZUNGULA**

Fifth Respondent



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**APPLICATION FOR REVIEW**

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**PLEASE TAKE NOTICE**

1 The applicant applies to this court for the following orders:

- 1.1 The report of the Independent Panel, comprising the first, second and third respondents, rendered in terms of Rule 129G of the Rules of the National Assembly, and particularly the recommendations in paragraph 264 of the Report, are reviewed, declared unlawful and set aside.

- 1.2 Any steps taken by the National Assembly pursuant to the Report are equally reviewed, declared unlawful and set aside.
- 1.3 Any parties who oppose this application are ordered to pay the applicant's costs.
- 2 The first, second, third and fourth respondents are called upon,
- 2.1 to show cause why the Report and the steps taken pursuant to the Report should not be reviewed and set aside; and
- 2.2 to despatch to the Registrar, within 15 days after receipt of this application, the records of the proceedings sought to be reviewed and set aside together with such reasons as they may be required or desire to give and to notify the applicant that they have done so.
- 3 The applicant relies on his accompanying affidavit and its annexures.
- 4 The applicant has appointed the address of his attorneys of record mentioned below at which he will accept service of all documents in these proceedings, and will accept electronic service of same at [pharris@hnmattorneys.co.za](mailto:pharris@hnmattorneys.co.za); [mira@hnmattorneys.co.za](mailto:mira@hnmattorneys.co.za); [sibusiso@hnmattorneys.co.za](mailto:sibusiso@hnmattorneys.co.za); and [keabetswe@hnmattorneys.co.za](mailto:keabetswe@hnmattorneys.co.za).
- 5 If you wish to oppose this application, you must:
- 5.1 Within 15 days after receipt of this notice of motion or any amendment of it, give notice to the applicant that you oppose the application and, in the notice, appoint an address within 25



kilometres of the office of the Registrar at which you will accept service of all documents in these proceedings.

- 5.2 Within 30 days after expiry of the time referred to in Rule 53(4), deliver your answering affidavit, if any.

**DATED AT CAPE TOWN ON THIS 25<sup>th</sup> DAY OF MAY 2026.**



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**TO : THE REGISTRAR OF THE HIGH COURT, CAPE TOWN**

**AND TO : JUSTICE SANDILE NGCOBO**

First Respondent

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**PER E-MAIL**

**AND TO : JUDGE THOKOZILE MASIPA**

Second Respondent

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**AND TO : MAHLAPE SELLO SC**

Third Respondent

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**AND TO : THE SPEAKER OF THE NATIONAL ASSEMBLY**

Fourth Respondent

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**AND TO : ASHERSONS ATTORNEYS**

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**PER E-MAIL**

**THE HIGH COURT OF SOUTH AFRICA  
WESTERN CAPE DIVISION, CAPE TOWN**

Case:

In the matter between:

**MATAMELA CYRIL RAMAPHOSA**

**Applicant**

And

**SANDILE NGCOBO NO**

**First Respondent**

**THOKOZILE MASIPA NO**

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**MAHLAPE SELLO NO**

**Third Respondent**

**SPEAKER OF THE NATIONAL ASSEMBLY**

**Fourth Respondent**

**VUYOLWETHU ZUNGULA**

**Fifth Respondent**



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**FOUNDING AFFIDAVIT**

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I, the undersigned,

**MATAMELA CYRIL RAMAPHOSA**

make the following statement under oath.

**THE PARTIES**

1 I am the applicant. I am the President of South Africa. I have personal knowledge of the matters to which I depose in this affidavit except where it is evident from the context that I do not. My submissions of law are made on the advice of my lawyers.



2 The first, second and third respondents are cited in their capacities as members of an Independent Panel appointed in terms of rule 129D of the Rules of the National Assembly. They are:

2.1 Justice Sandile Ngcobo, a former Chief Justice of South Africa.

2.2 Justice Thokozile Masipa, a retired judge of the High Court of South Africa.

2.3 Advocate Mahlape Sello SC, a senior advocate in private practice.

2.4 The first, second and third respondents conducted their business from Room 701, 7<sup>th</sup> Floor, 100 Plein Street Building, Parliament, Cape Town.

3 On 20 May 2026 the Chief Justice granted consent in terms of section 47(1) of the Superior Courts Act for me to institute these proceedings against former Chief Justice Ngcobo. A copy of Chief Justice Maya's letter

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is attached marked “**MCR 1**”. On 22 May 2026, Judge President Ledwaba similarly granted me consent in terms of section 47(1) of the Act to institute this application against retired Judge Masipa. A copy of the letter received from Judge President Ledwaba is attached hereto as “**MCR 2**”.

- 4 The fourth respondent is the Speaker of the National Assembly, Parliament, Cape Town.
- 5 The fifth respondent is Mr Vuyolwethu Zungula, a member of the National Assembly, who was the leader of the African Transformation Movement at the time when the motion was proposed. I do not seek any relief against him. I cite him only because he proposed the motion which triggered the National Assembly’s appointment of the Panel.
- 6 A copy of this application will be delivered to each of the political parties represented in the National Assembly, for such interest as they may have.



## THE ESSENCE OF THIS APPLICATION

- 7 Section 89(1) of the Constitution provides for the removal of the President as follows:

*“The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of -*

- (a) *a serious violation of the Constitution or the law;*
- (b) *serious misconduct; or*
- (c) *inability to perform the functions of office.”*

- 8 Rules 129A to 129Q of the Rules of the National Assembly prescribe the procedure for the removal of the President. A copy of the then extant

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Rules as published by the National Assembly is annexed to the Report of the Panel as “Annexure IP 5”.<sup>1</sup>

9 On 18 July 2022, the fifth respondent, Mr Zungula, initiated proceedings for my removal from office by the submission of a notice of motion in terms of rule 129A. A copy of the notice of motion is annexed to the Report as “Annexure IP2”.<sup>2</sup>

10 The National Assembly appointed the first, second and third respondents as an Independent Panel to undertake a preliminary inquiry in terms of rules 129D to 129H.



11 The Panel rendered its report on 30 November 2022. Annexure “MCR3” is a copy of the report. It comprises three volumes. Volume 1 is the report itself. Volumes 2 and 3 comprise the information on which the Panel based its report. I shall, for convenience, refer to volume 1 as “the report” unless I specify otherwise.

12 As appears from paragraph 264 on page 82 of the report, the Panel concluded that the information placed before it “discloses, prima facie, that the President may have committed” serious violations of the Constitution and the law and serious misconduct within the meaning of section 89(1) of the Constitution.

13 The purpose of this application is to review and set aside the report and particularly its recommendation in paragraph 264.

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<sup>1</sup> Pp.11-15, Volume 2.

<sup>2</sup> Pp. 2-4. Volume 2.

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- 14 The Panel rendered its report and made its recommendation in the exercise of public power. They are thus reviewable under the constitutional principle of legality. I submit that the Panel misconceived its mandate, misjudged the information placed before it and misinterpreted the four charges advanced against me. It moreover strayed beyond the four charges and considered matters not properly before it.
- 15 Immediately after the Panel rendered its report, on 5 December 2022 I instituted an application to the Constitutional Court for an order reviewing and setting it aside.
- 16 On 13 December 2022 the National Assembly voted against proceeding with an inquiry under section 89(1) of the Constitution.
- 17 On 1 March 2023, the Constitutional Court held that the matter did not fall within its exclusive jurisdiction and declined to grant direct access.
- 18 By this time, the matter had been rendered moot by the resolution of the National Assembly.
- 19 In *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others* [2026] ZACC 17 (8 May 2026), the Constitutional Court declared that Rule 129I was inconsistent with the Constitution and invalid, and set it aside.
- 20 The Court ordered that, pending any amendment, rule 129I shall read as follows:



*“Rule 129I Consideration and referral of panel report*

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- (1) *Once the panel has reported the Speaker must inform the Assembly of the report.*
- (2) *The President must be provided with a copy of the report forthwith.*
- (3) *In the event the panel concludes that sufficient evidence exists as contemplated in Rule 129G, the matter must be referred to the Impeachment Committee established by the rule (or by the National Assembly Rules) for that purpose.*
- (4) *In the event the panel concludes that sufficient evidence does not exist as contemplated in Rule 129G, the Speaker must schedule the report for consideration by the Assembly; and in the event the Assembly nonetheless resolves that a Section 89(1) enquiry be proceeded with, the matter must be referred to the Impeachment Committee established by this rule (or by the National Assembly Rules) for that purpose."*



21 The Court also ordered that the panel report be referred to the Impeachment Committee established in terms of the Rules of the National Assembly.

22 The Speaker is currently in the process of establishing an Impeachment Committee.

## THE PANEL

23 On 14 September 2022, the Speaker appointed the Panel.

24 On 19 October 2022, the Speaker formally referred the Motion to the Panel in terms of rule 129C(1).<sup>3</sup>

25 Shortly after the referral of the Motion to it, the Panel issued a timetable for the conduct of the preliminary enquiry, setting out the timelines for its work. In addition, the Panel issued a Notice in terms of rule 129G(1)(c)(i) inviting additional information from members of the National Assembly

<sup>3</sup> Report vol 1 para 15

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within six days of the publication of the Notice in the Announcements, Tablings and Committee Reports.<sup>4</sup>

26 The Panel received submissions from the ATM, Economic Freedom Fighters and the United Democratic Movement on 27 October 2022.<sup>5</sup>

27 Under cover of two letters dated 20 and 28 October 2022, the Panel provided me with copies of the information before it. This consisted of documents running to 1627 pages and ten video clips.

28 In its letter of 28 October 2022, annexure “**MCR4**”, the Panel invited me to respond, in writing, to “*all relevant allegations*” against me. Its invitation accorded with rule 129G(1)(c)(iii). The Panel gave me ten calendar days to respond. It meant that I had to respond by 7 November 2022, that is, after only six working days.



29 I understood the Panel’s invitation to mean that I was invited to respond only to the allegations relevant to the four charges against me. I made that clear in my response dated 6 November 2022. There is a copy of my response in the Panel’s report volume 3 at pages 1627 to 1765. I confined my response to the allegations which I considered to be relevant to the four charges against me.

30 As I demonstrate below, the Panel went beyond the four charges. In so doing, it strayed beyond its mandate. This was also unfair to me because in its report it raised matters to which I have never been invited to respond.

<sup>4</sup> Report vol 1 para 17

<sup>5</sup> Report vol 1 para 18

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## THE PANEL'S MANDATE

### Introduction

31 Section 89(1) of the Constitution sets a high bar for the removal of the President. The President may only be removed for "*a serious violation of the Constitution or the law*" or "*serious misconduct*", and then only by a two-thirds majority of the members of the National Assembly.

32 The rules of the National Assembly define the grounds upon which the President may be removed as follows:



*"a serious misconduct" means "unlawful, dishonest or improper behaviour performed by the President in bad faith".* (my emphasis)

*"a serious violation of the Constitution or the law" means "behaviour by the President amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith".* (my emphasis)

33 As these definitions make clear, the President may only be removed for intentional or malicious conduct in bad faith. Only deliberate misconduct can found the removal of the President.

### A substantive notice of motion

34 Rule 129A provides that the process for the removal of the President may only be triggered by a substantive notice of motion. It must comply with the following requirements:

J.M

34.1 The notice of motion must be limited to “*a clearly formulated and substantiated charge*” on the grounds specified in section 89 of the Constitution.

34.2 The clearly formulated and substantiated charge must “*prima facie show that the President committed a serious violation of the Constitution or law; [or] committed a serious misconduct*” as defined.

34.3 The charge must be confined to the President’s conduct “*in person*”.

34.4 The notice of motion must be accompanied by all the evidence on which it is based.



35 I highlight the fact that the notice of motion must be limited to “*a clearly formulated and substantiated charge which... must prima facie show*” that the President is guilty of conduct of the kind contemplated in section 89 of the Constitution. A prima facie case is, in other words, a threshold requirement for such a notice of motion. It does not get out of the starting blocks unless it makes a prima facie case.

36 In terms of rule 129B, the Speaker must ensure that the notice of motion complies with rule 129A.

### **Appointment of an Independent Panel**

37 If the notice of motion meets the threshold requirements of rule 129A, the National Assembly must appoint an Independent Panel to undertake a preliminary inquiry in terms of rules 129D to 129G. This requirement recognizes that, in a democratic society, the removal of a democratically

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elected president is a grave matter of high national importance. It is not something upon which Parliament should lightly embark. That is why Parliament may not embark on an impeachment process unless an independent panel has considered the evidence and concluded that there is sufficient evidence to justify doing so.

38 The Panel's procedure is subject to the following rules:

38.1 The Panel may, in terms of rule 129G(1)(c)(i) afford members of the National Assembly an opportunity to place relevant information before it.



38.2 The Panel must provide the President with all the information in terms of rule 129G(1)(c)(ii).

38.3 The Panel must provide the President with a reasonable opportunity to respond, in writing, to "*all relevant allegations against him or her*".

39 Rule 129G(1)(b) defines the Panel's mandate. It must determine and make a recommendation to the Speaker "*whether sufficient evidence exists to show that the President*" committed a serious violation of the Constitution or the law or committed a serious misconduct. I emphasise that question which the Panel must determine is whether "*sufficient evidence exists to show*" that the President so acted.

40 I highlight the following features of the Panel's mandate:

40.1 The Panel must first ask itself whether the evidence shows that the President committed,

J.M

- “a serious violation of the Constitution or law” as defined, that is, “behaviour by the President amounting to an intentional or malicious violation of the Constitution or the law performed in bad faith”; or
- a “serious misconduct”, as defined, that is, “unlawful, dishonest or improper behaviour performed by the President in bad faith”.

40.2 If there is evidence that the President committed such an offence, then the Panel must ask itself whether the evidence is “sufficient”



40.3 One might ask “sufficient for what?”. I submit that the answer is clear. There must be sufficient evidence to embark upon a public inquiry into the impeachment of the President. Such an inquiry is a grave matter. It is not a process upon which the National Assembly should lightly embark.

### The subsequent processes

- 41 Under rule 129I(3), as the Constitutional Court has now amended it, the matter must be referred to an impeachment committee if the Panel concludes that there is sufficient evidence of the kind contemplated by rule 129G.
- 42 This is an important innovation. The National Assembly no longer acts as gatekeeper between the Panel and the Impeachment Committee. If the Panel determines that there is sufficient evidence of the kind contemplated by rule 129G, then the matter is automatically referred to an impeachment

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committee. This makes the Panel's finding all the more important, because it determines whether the matter should be referred to an impeachment committee.

- 43 The Committee reports to the National Assembly in terms of rule 129O. If its report recommends that the President be removed from office, the question is put to the National Assembly for a vote. Such a resolution may only be adopted by a two-thirds majority of the members of the National Assembly.



### Core features of the process

- 44 I emphasise the following core features of the process for the removal of the President.
- 45 The President may only be removed for a serious violation or serious misconduct committed in bad faith.
- 46 The violation or misconduct of which the President is accused is limited to "a clearly formulated and substantiated charge" in the original notice of motion. The entire process is confined to the charge so formulated. The Panel is confined to consideration of the charge, and so is the Impeachment Committee in terms of rule 129M(1).
- 47 In terms of rule 129A(1)(a), it is a threshold requirement that the charge contained in the motion "must prima facie show" that the President has been guilty of a serious violation or a serious misconduct. A prima facie case is, in other words, a threshold requirement for a charge. If it does not make a prima facie case, it does not get out of the starting blocks.

J. M

- 48 The remit of the Panel is to determine whether there is “*sufficient evidence*” to show that the President is guilty of serious misconduct. This requires more than a prima facie case. It recognises that an impeachment process is a serious matter of high public importance. The Panel must assess whether there is “*sufficient evidence*” to justify such a process.
- 49 In making its assessment of whether there is “*sufficient evidence*” that the President is guilty of a serious violation or serious misconduct, the Panel must bear in mind that a serious violation or serious misconduct is confined to the President’s deliberate personal conduct in bad faith. The Panel must, in other words, determine whether there is sufficient evidence, not merely that the President committed a serious violation or serious misconduct, but also that he did so deliberately and in bad faith. There cannot be sufficient evidence that the President is guilty of a violation or misconduct as defined unless there is also sufficient evidence that he acted deliberately and in bad faith.



## THE PANEL MISUNDERSTOOD ITS MANDATE

- 50 I am advised and submit that the Panel misunderstood its mandate in at least four respects.
- 51 First, it interpreted its remit, which is to determine “*whether sufficient evidence exists*”, to mean “*whether there is a prima facie case against the President*”. It put it as follows in paragraph 75:

*“In the context of the scheme for the removal of the President from office, we therefore construe the phrase “whether sufficient evidence exists” to mean whether, based on the information received, the President has a case to answer. Put differently, we construe the*

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*phrase to require the Panel to determine whether there is a prima facie case against the President.”*

52 The Panel repeated in paragraph 76 that it functions as a filter to ensure that only a motion “*which establishes, prima facie, that the President has a case to answer, is considered by the Impeachment Committee*”.

53 The Panel implemented this standard, as appears from its final recommendation on page 82 in paragraph 264. It concluded that the information before it “*discloses, prima facie*” that the President may have been guilty of a serious violation or serious misconduct.



54 The Panel was thus mistaken. It is a threshold requirement for any charge against the President that it discloses a prima facie case in terms of rule 129A. The Panel does not simply repeat the same requirement. It must determine whether “*sufficient evidence exists*” to warrant an impeachment process.

55 Second, the Panel failed to have regard to the requirement that it determine whether sufficient evidence exists “*to show that*” the President “*committed*” the alleged serious violation or misconduct. In other words, the question is whether there is sufficient evidence to show that the President actually committed the serious violation or misconduct.

56 Instead of making that determination, the Panel determined that the information before it disclosed, prima facie, that the President “*may*” have committed the alleged violation or misconduct. This is not the finding required by rule 129G(1)(b), namely that the evidence shows that the

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- President actually committed the alleged serious violation or serious misconduct.
- 57 Third, the Panel did not appreciate the significance of the distinction which the rules draw between “information” and “evidence”.
- 58 The rules provide that members of the National Assembly may, in the discretion of the Panel, place “relevant written or recorded information” before it: Rule 129G(1)(c)(i). The Panel is confined to the “information” placed before it by members: Rule 129G(1)(c)(iv).
- 59 The Panel is required to consider that information, and decide whether “sufficient evidence” exists to show that the President committed the alleged serious violation or misconduct.
- 60 I am advised and submit that this distinction is important. The Panel consists of people (who may include a judge) who collectively possess the necessary legal competence and experience: Rule 129E(1). I submit that part of the mandate of the Panel is that it must sift through the “information” provided to it, and determine which part of it constitutes admissible “evidence” against the President. The Panel did not do this.
- 61 The Panel’s fourth misunderstanding of its mandate was that it overlooked the fact that “*serious misconduct*” and “*a serious violation of the Constitution or the law*”, as defined in the rules of the National Assembly, are confined to deliberate misconduct by the President acting in bad faith. The Panel did not inquire into the President’s bad faith at all. It could not rationally conclude that there is sufficient evidence of the President’s



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alleged misconduct without any assessment of the question whether he had acted in bad faith.

## THE PANEL'S EVALUATION OF THE EVIDENCE

### The Panel's approach

62 In terms of Rule 129G(1)(b) the Panel was required “[to] consider the preliminary enquiry relating to the motion ... and make a recommendation to the Speaker ... whether sufficient evidence exists to show that the

President:

- i. committed a serious violation of the Constitution or the law;
- ii. or committed a serious misconduct; or...



63 I am advised that this required the Panel to do three things, namely:

- 63.1 determine whether the charges, if proven, would establish a basis for impeachment under section 89(1)(a) or (b) of the Constitution;
- 63.2 establish, as a matter of fact, whether there is evidence to support the charges. I am advised that over and above establishing as a matter of fact whether evidence exists, the Panel is also required to consider the admissibility of such evidence and its probative value; and
- 63.3 determine whether the evidence is sufficient – i.e., whether that evidence would be sufficient to establish the charges at the relevant standard of proof in a section 89 impeachment enquiry.

J. M

64 What then was the Panel meant to make of my submissions and the evidence I provided?

64.1 I am advised that my submissions and the evidence I provided could not and should not have diverted the Panel from the enquiry outlined above. The Panel ought to have considered my explanation and the evidence I provided only if all three questions referred to above were answered in the affirmative. It ought to have determined whether (a) the explanations and/or evidence provided undermine some of the evidence placed before it to support the charges and (b) whether whatever evidence is left undisturbed would still nevertheless be sufficient to prove the charges.



64.2 The enquiry does not start with a presumption that the charges are established and then move on to considering the explanation and/or evidence provided by the President to determine whether it would be sufficient to defeat the charges.

65 Respectfully, the Panel misconstrued the enquiry it was supposed to conduct:

65.1 The Panel determined that it was not required to conduct the enquiry outlined above:

*"It is inconceivable that the National Assembly would have given both the Panel and the Impeachment Committee the same powers, namely, to recommend whether the President is in fact guilty on any of the grounds for the removal of the President from office. Were this to be the case, the work of the Impeachment Committee would be superfluous. We think that the lack of the power to test the reliability of the information placed before it, in particular the absence of the*

J. M

*power to hear evidence from persons or institutions that might have information relevant to the removal of the President from office, ineluctably leads to the conclusion that it was never intended that the Panel should make a finding on whether the President is in fact guilty of any of the acts listed in section 89(1).<sup>6</sup>*

65.2 I am advised that this is a fundamental misdirection. The fact that a Panel cannot conduct a hearing is no impediment to the discharge of its mandate to consider whether (a) the charges brought if proven would rise to an impeachable ground under section 89(1)(a) or (b); and (b) there exists evidence to support the charges; and (c) whether the evidence is sufficient.



65.3 The Panel determined that *“[i]t is not the function of the Panel to enquire into whether the President is guilty of a serious violation of the Constitution or the law, or a serious misconduct”<sup>7</sup>* but instead to *“ ... conduct a preliminary assessment of the Motion proposing a ... section 89(1) enquiry ... and to make a recommendation as to whether the ... President ... has a case to answer.”<sup>8</sup>* I am advised that this is not correct. As the Panel notes in paragraph 72 of the Report, *“this Panel is required to ‘make a recommendation whether sufficient evidence exists to show that the President committed’ one of the grounds for removal from office.”* This enquiry is moored on the Motion and the charges set out in it, because those are the

<sup>6</sup> Report vol 1 para 71

<sup>7</sup> Report vol 1 para 75

<sup>8</sup> Report vol 1 para 73

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charges that have to be supported by sufficient evidence to establish a ground of impeachment.

65.1 The Panel determined that there was no difference between “evidence” and “information” – *“Nor does the use of the word ‘evidence’ instead of ‘information’ in the Terms of Reference for this Panel matter.”*<sup>9</sup> Based on that determination it went on and considered “information” placed before it, not evidence – *“The provisions of Rule 129G(1)(c)(iv) are clear and admit of no ambiguity, the Panel ‘must limit its enquiry to the relevant written and recorded information placed before it by members in terms of this rule’”*.<sup>10</sup>



66 Accordingly, the Panel did not consider the charges levelled against me to determine whether:

66.1 if proven, they would amount to impeachable grounds under section 89(1)(a) or (b) of the Constitution; and

66.2 there was sufficient evidence to support the charges.

67 I am advised and submit that once the Panel set itself on the wrong path, it could not conduct a rational enquiry nor could it reach a rational conclusion. In this chapter I analyse the flawed enquiry in relation to the principles the Panel ought to have applied when considering whether the evidence placed before it was sufficient. In the next chapter I analyse each

<sup>9</sup> Report vol 1 para 74

<sup>10</sup> Report vol 1 para 74

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of the charges further to show that the Panel's approach was fundamentally flawed.

68 Once the Panel determined that there was no difference between evidence and information, it:

68.1 failed to undertake the enquiry to determine (a) whether there was evidence to support the charges and (b) whether such evidence was sufficient.

68.2 failed to consider and interrogate whether there was lawfully obtained admissible evidence, and if so, what was its probative value.



### Legality of the information

69 I am advised that it is trite that unlawfully obtained evidence may be excluded in civil or criminal proceedings. This principle applies with equal force to a section 89 enquiry. The Panel was established because its members have legal expertise. They are trained in the rules of evidence and can test the evidence for admissibility.

70 I submit that the Panel failed to test the evidence for admissibility in two crucial respects. First, whether it would be admissible during the enquiry by reference to the credibility and legality of its sources. If the evidence has been obtained in breach of the law, it may be inadmissible on that account alone. Second, the evidence should have been tested for admissibility by applying the provisions of section 3 of the Law of Evidence Amendment Act, 1988. The provision states:

J. M

*"3 Hearsay evidence*

*(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-*

*(a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings;*

*(b) the person upon whose credibility the probative value of such evidence depends, himself testifies at such proceedings; or*

*(c) the court, having regard to-*

*(i) the nature of the proceedings;*

*(ii) the nature of the evidence;*

*(iii) the purpose for which the evidence is tendered;*

*(iv) the probative value of the evidence;*

*(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;*

*(vi) any prejudice to a party which the admission of such evidence might entail; and*

*(vii) any other factor which should in the opinion of the court be taken into account, is of the opinion that such evidence should be admitted in the interests of justice."*



71 The Panel did not apply any of these mandatory provisions. It did not appreciate the default rule that hearsay evidence must be excluded, and can only be admitted in certain defined circumstances. As a result, the Panel made conclusions, based on hearsay statements, without regard to the law. Save for the limited evidence I introduced in my response, there was no evidence before the Panel.

72 For completeness, I point to the following fundamental errors of law. The "[i]nformation submitted by the ATM" to the Panel included:

J.M

- 72.1 Mr Fraser's two statements to the SAPS (one on 1 June 2022 and the other 23 June 2022)<sup>11</sup> and their "annexures"; and
- 72.2 Mr Fraser's statement to the Public Protector on 26 September 2022 and its annexures, which, in turn, include a "confidential report by the Namibian Police pertaining to Mr Imanuwela David".
- 73 The panel also refers to an "audio clip" of an "intervie[w]" with "a suspect or suspects". The panel does not identify the suspect or suspects (it may be Mr David, but the panel does not seem to know). We also do not know from this who interviewed the suspect (it may be Major-General Rhooode, someone else from SAPS, or someone from the Namibian police – no one knows).
- 74 There is no explanation for how the confidential Namibian police report and the audio clip found their way to the Panel. All that appears is that the confidential police report was an annexure to one of Mr Fraser's statements, and that the audio clip was "provided" to the Panel. But the crucial question is whether the report lawfully landed in Mr Fraser's hands. Mr Fraser should have explained this. The Panel had a duty to ensure that any evidence before it is lawfully obtained, or exclude it. It is likely that the Namibian report, if it is at all legitimate, landed in Mr Fraser's hands unlawfully.



<sup>11</sup> The latter was not actually a "statement" – it was a letter from Mr Fraser to the DPCI: Annexure IP13 Vol 1 p 355

J.M

75 The Panel did not consider whether the confidential Namibian police report or the audio clip were lawfully obtained. On its own, this was an irregularity.

75.1 The Panel was under a duty to satisfy itself that the information placed before it was lawfully obtained.

75.2 The Panel knew (or must have known) that the Namibian police report was confidential. After all, the Panel describes it as “confidential”. The Namibian police are presumably the custodians of the report. The Panel knew (or must have known) that it did not set the report from the Namibian police. Instead, the Panel reports that it was part of one of Mr Fraser’s statements.



75.3 If, as the Panel describes it, the Namibian police report is confidential, then it follows that no one besides the Namibian police is entitled to distribute the report.

75.4 It is therefore possible that the Namibian police’s confidential report reached the Panel by unlawful means. The Panel – being a panel of lawyers and judges – should have enquired whether the report was lawfully obtained and excluded the report if it came to it unlawfully. However, quite to the contrary, the Panel placed heavy reliance on the report without testing its reliability, its source and whether it formed part of other documents which were carefully excluded when the report was made available to Mr Fraser.

75.5 This was a relevant consideration that the Panel failed to take into account.

J.M

75.6 Much of what is said in this report is contradicted by admissible evidence and information in the public domain that was available to the Panel at the time. An example of this is the Panel's account of General Rhooode's trip to Namibia. That account is not only not supported by any admissible evidence, it is directly contradicted by evidence that was in the possession of the Panel: an affidavit by General Rhooode stating that his trip to Namibia with Mr Chauke was not in connection with the robbery at Phala Phala<sup>12</sup>; and an affidavit from Mr Chauke denying that he participated in any investigation into the robbery that took place at Phala Phala.<sup>13</sup> The facts about the nature of the co-operation between Namibia and South Africa on this matter are clarified in a public statement made by Minister Ronald Lamola on 26 July 2022<sup>14</sup>. Namibia had made a mutual legal assistance request to South Africa not specifically in relation to Mr David Immanuwela and Minister Lamola's statement sets out the details in that regard. For the record, to the extent that the report suggests that I was in ongoing discussions with President Geingob about matters relating to the theft at Phala Phala, that is simply not true. And the report of the Public Protector, to which I refer below, records at paragraphs 6.3.87-6.3.89 that Mr Chauke explained that his visit to Namibia was as my envoy, to deliver to President Geingob a letter about a matter of national security that was unrelated to the theft at Phala Phala.



<sup>12</sup> Report vol 3; IP19, p 1327

<sup>13</sup> Report vol 3; IP82, p 1664

<sup>14</sup> <https://www.gov.za/news/speeches/minister-ronald-lamola-high-profile-extradition-and-mutual-legal-assistance-matters>

J.M

75.7 The same goes for the audio clip. The Panel describes it as a recording of an interrogation. The Panel knew (or must have known) that it did not get the audio clip from the SAPS or their Namibian counterparts.

75.8 There exists a real possibility that the clip reached the Panel by unlawful means. The Panel did not enquire into the circumstances in which the clip made its way to it, the conditions of the interrogation, or whether any other facts were unearthed during the interrogation which could explain or contradict it. The Panel should have been astute enough not to allow itself to be presented with a slanted picture emanating from obscure sources, which have not been identified. The evidence must be credible. The clip was not examined by the Panel for credibility. It is not an answer for the Panel to say that its function is not to test veracity. Its duty is to consider whether there is "sufficient evidence". That means that the starting point is that the information must qualify as evidence that is admissible, reliable and credible. In situations like this there is every incentive to hoodwink decision-makers to make rushed decisions based on half-truths. This is what appears to have happened. While I accept that ultimately the veracity of the evidence would be tested in a hearing before the Committee, I am advised and submit that the Panel is duty bound to make formal enquiries whether the information before it appears to be admissible, reliable and credible evidence. The Panel failed to do so.

75.9 This was another relevant consideration that the Panel failed to consider.

J. M



76 I submit that there exists a real possibility that this information came to the possession of Mr Fraser illegally, and that it is unclear if any other information was known but deliberately suppressed from the same sources. I am, however, advised that this Court does not need to decide whether the confidential Namibian police report or the audio clip were, in fact, unlawfully obtained (and, if so, whether the Panel should have excluded them). It is not necessary because the Panel's failure to consider this point is fatal on its own.

77 The Panel should have considered the source of the confidential Namibian police report and the audio clip and how they made their way from Namibia - or wherever the audio clip is from, the Panel does not say - to Parliament. The Panel should then have considered whether they would be admissible. I am advised that the second leg of the enquiry involves several factors including the nature and content of the evidence, and whether attempts were made to obtain it by lawful means. The Panel failed to consider any of this, and so it failed to consider a relevant consideration about the sufficiency of the evidence to support the charges against me.

78 I am advised that this analysis also applies to what Mr Fraser said in his statements about the confidential Namibian police report and the audio clip. Put another way, if the Panel should have excluded from its consideration the confidential Namibian police report and the audio clip, then it should also have excluded from its consideration what Mr Fraser had to say about them in his statements.



J.M

79 I am also advised that it does not matter that there might have been other evidence to support the Panel's findings (which I deny). It does not matter because the Panel's irregular consideration of the confidential Namibian police report and the audio clip taints its other reasons.

79.1 The Panel did not consider whether the Namibian police report and the audio clip were lawfully obtained (nor did it consider whether to exclude them if they were unlawfully obtained).

79.2 This was a failure to consider a relevant consideration.



79.3 The failure to consider this relevant consideration means the Namibian police report and the audio clip - or, more accurately, the Panel's consideration of them - are a bad reason for the Panel's recommendation.

79.4 The Panel's consideration of other evidence thus does not matter because, so I am advised, if a decision-maker takes into account any reason for the decision which is bad, or irrelevant, then the whole decision is vitiated even if there are other good reasons for it. To be clear, though, I deny there are other good reasons for the Panel's recommendation.

80 To sum up this point:

80.1 The Panel failed to consider whether Mr Fraser (or someone else) lawfully obtained the confidential Namibian police report and the audio clip of the unknown suspect's interrogation.

J.M

80.2 The Panel's failure to consider whether to exclude the Namibian police report and the audio clip:

80.2.1 is, on its own, an irregularity; and

80.2.2 taints its consideration of the Namibian police report and the audio clip as a bad reason, and it does not matter if there are other reasons for the Panel's recommendation (which I deny).

### Irrational evaluation of the evidence



81 The Panel has a clear mandate: to make a recommendation whether "*sufficient evidence exists*". There are two parts to that statement of the Panel's mandate.

81.1 The first part sets the standard for the Panel's mandate: sufficiency.

81.2 The second part explains what the standard must be applied to: evidence.

82 The Panel's approach had no rational connection to its mandate or purpose:

82.1 The Panel did not apply the standard of sufficiency. It instead asked, to use its words, "*whether there is a prima facie case against the President.*"

82.2 The Panel did not apply its standard to "*evidence*". It instead applied its standard (*of prima facie*) to, in its words, "*information*".

J.M

A large, stylized handwritten signature in black ink, located in the bottom right corner of the page.

## The Panel imposed a reverse onus on me

83 I am advised that sufficient evidence means enough evidence. This means that the Panel's purpose was to determine whether the evidence placed before the panel shows, on its own, a serious violation of the law or the Constitution or serious misconduct.

84 I am advised that the concept of *prima facie* is different. This will be dealt with in argument, but this summary suffices:

84.1 The concept of *prima facie* proof is tied to the onus of proof, which, in turn, is the duty that is placed on a party to ultimately convince the decision-maker of his or her case.



84.2 *Prima facie* proof means evidence that discharges a party's onus if the evidence is not rebutted at the close of the case.

84.3 It is in this sense that courts sometimes say that *prima facie* proof is evidence that 'calls for an answer'. The Panel echoes this phrase several times in its report (it says, for example, that there are "*unanswered questions*" and that I have a "*case to answer*").

85 This framework has no rational connection to the Panel's purpose, because this stage of the removal process does not require me to rebut the evidence that is placed before the Panel. The Panel must instead consider all the evidence that is placed before it and decide whether that evidence is enough.

J.M

- 86 The Panel's approach ended up something like this: "*Mr Fraser makes these allegations; the President should answer them; the President's response leaves some questions unanswered*".
- 87 If anything, the Panel's use of a *prima facie* framework ended up placing a reverse onus of proof on me. This explains the Panel's reference to there being "*unanswered questions*" and that I have a "*case to answer*". This was irrational because the Panel's task was to determine the sufficiency of the evidence that was before it; its task was not to consider whether there are questions that I should answer. The only rational way for the Panel to achieve its purpose is to ask, 'is this evidence, on its own, enough to show a serious violation of the law or the Constitution or serious misconduct?' The Panel asked a different question that missed the mark set in the Panel's mandate.
- 88 For similar reasons, it was irrational for the Panel to focus on an absence of explanations. An absence of evidence is not evidence of absence. The Panel's approach reduced to this: anything I did not answer is *prima facie* true. As a matter of logic and a matter of law, there is no rational connection between that approach and the Panel's evidence-based purpose.
- 89 A good example of the Panel's irrational (and illogical) absence-of-evidence approach is the Panel's conclusion that the "information" placed before the Panel "*prima facie discloses*" that I asked the president of Namibia to "*assist with the apprehension*" of Mr David (paragraphs 163 to 168 of the report). The only "information" - note: not "evidence" - before



J. M.

the Panel on this point was Mr Fraser's allegations. The rest of the Panel's reasoning was based on nothing more than an absence of evidence to the contrary. The Panel should have asked whether the evidence was sufficient to support its conclusion. There was no evidence, let alone sufficient evidence, because all the Panel had was Mr Fraser's say-so. The rest of the Panel's reasoning is an illogical and irrational attempt to patch together evidence from an absence of evidence.

90 Another example of the Panel's irrational (and illogical) approach to evidence is the rejection of the only evidence before it and relying on conjecture or speculation instead. In this regard the Panel speculated that I gave permission that the cash should be stuffed inside a sofa, when the only evidence which was before the Panel was that I had given the contrary instruction to Mr Ndlovu, namely that the money must be banked. The basis given by the panel for its conclusion as to my "knowledge" and "acquiescence" of the placement of the money inside a couch is that, according to the Panel, it is improbable that Mr Ndlovu did so on his own. The reason why it is suggested that this would be improbable is solely because he is a junior employee. But the Panel ignores the actual evidence, and instead relies on its own speculative inferences which are not grounded on any actual fact. The fact that Mr Ndlovu was a junior employee is entirely neutral.



**The distinction between “information” and “evidence”**

91 The Panel's approach was irrational for another reason: though its purpose was to consider “evidence”, the Panel ended up considering, to

J. M

use its vague word, "*information*". On its own version, it did not sift through the "*information*" to focus on and identify "*evidence*", as its mandated purpose directed.

92 This argument goes to the very purpose of the Panel: to make a recommendation based on evidence. Evidence has probative value. Information sometimes has probative value, but not always. The Panel never sifted through the information to focus on evidence.

93 Take the first charge (that I allegedly undertake "other paid work" contrary to section 96(2)(a) of the Constitution) as an example. According to the report, the "*source of the foreign currency*" forms the "*foundation*" of this charge.



94 According to the report, the "*main source of information*" about the source of the dollars is Mr Fraser's "*statements*" (paragraph 90 of the report).

94.1 So what is in Mr Fraser's statements?

94.1.1 According to the report, Mr Fraser's statements "*sugges[t]*" that "*this money was illegally brought into the country after the President's advisor, Mr Chauke, collected the money for both him and the President on certain trips he undertook to the Middle Eastern and African countries, on behalf of the President*" (at paragraph 90 of the report).

94.1.2 The report then lists Mr Fraser's four "*alleg[at]ions*" (at paragraph 91 of the report).

J. M

94.2 That is all: a suggestion and some allegations. What Mr Fraser suggests and what he alleges is not evidence. He produces no evidence to justify his suggestion and his allegations.

94.3 The Panel says this out loud: Mr Fraser *“has not disclosed the source of his information”* (at paragraph 92 of the report).

94.4 The closest Mr Fraser comes to evidence is a laundry list of “records” that he says “may be obtained” (at paragraph 92 of the report). But note well: Mr Fraser’s wish list is not presented as a list of incriminating documents that he (somehow) knows is out there. His list does not say, for example, *“Mr Chauke’s travel records that reveal ABC”*, or the *“mobile telephone and tower networks of both Mr Chauke and Major Rhooode’s mobile telephones and vehicle tracking devices that show XYZ”*. The list is neutral. If a mere list of documents can ever have any probative value, the list would at least have to describe what the documents actually show, not what they might show.

94.5 Yet the Panel leaps from this to conclude that Mr Fraser’s statements *“provide information that may help verify the truthfulness or otherwise of his allegations”* (paragraph 92 of the report). But how? Mr Fraser speculated about documents that might exist and that might prove his allegations. He gave the Panel no evidence, just a wish list of possible sources of potential evidence.

94.6 In this way, the Panel’s conclusion on the *“foundation”* of the first charge skips a big step: Mr Fraser did not *“provide information that*



J. M

may help verify the truthfulness or otherwise of his allegations” (at paragraph 92 of the report). Instead, Mr Fraser speculated about a list of documents and that those documents, in turn, might “provide information that may help verify the truthfulness or otherwise of his allegations”.

94.7 There is, in other words, no rational link between the list of documents in paragraph 92 of the report and the conclusion in paragraph 94 of the report that Mr Fraser’s statements “provide information that may help to verify the truthfulness or otherwise of his allegations”.



95 The Panel reached the same irrational conclusion about “the instructions that were given to General Rhooode”. The Panel somehow discounted Major-General Rhooode’s own sworn statements disputing Mr Fraser’s allegations (at paragraphs 155 to 171 of the report). Mr Fraser alleges something from a movie: a “fictitious drug smuggling claim”, a clandestine “informal investigation team” meeting in “no man’s land”, and a mysterious list of telephone numbers “extracted” from unidentified “devices”.

96 The Panel never explains why Mr Fraser’s allegations have any probative value. Yet the Panel concludes “as a matter of probability” that Major-General Rhooode went to Namibia as part of his Phala Phala investigation and that “information ... prima facie discloses that” an “SAPS official” set up a meeting with “the Namibian Special Branch” about the theft.

J.M

97 What actual evidence supports those conclusions? There is only Mr Fraser's allegations and a redacted report of the Namibian Police Crime Intelligence.

97.1 Mr Fraser's allegations are just that: allegations, which are based on speculation, fiction and conjecture. They are not evidence. It is understandable why the Panel ended up like this – it is the result of drawing no distinction between “evidence” and “information”. The rules of Parliament require it to focus on evidence.

97.2 The Panel does not explain the origins of the Namibian Police Crime Intelligence report, how it came to be in Mr Fraser's possession, or how it has any probative value despite its redactions.



98 Similarly, the Panel concludes that I asked the President of Namibia to “assist with the apprehension of [Mr David], the mastermind behind the farm housebreaking and theft.” As I have noted above, this conclusion is based on no more than an absence of evidence to the contrary - a logically flawed and legally irrational way for the Panel to have gone about discharging its mandate.

### Failure to apply the hearsay rule

99 The Panel's purpose is tied to evidence: it was to make a recommendation about whether there is “sufficient evidence” of a constitutional violation. To rationally achieve that evidence-based purpose, the Panel had to determine the admissibility and probative value of the evidence it was considering.

J. M

100 The Panel never properly engaged with the hearsay nature of Mr Fraser's allegations.

100.1 If anything, it is charitable to describe Mr Fraser's allegations as hearsay. They are better characterised as conjecture and speculation, without a single fact to underpin them. The Panel notes that Mr Fraser did not "*indicate the basis of his allegations*" (paragraph 97 of the report; the use of "*Nor*" in the next sentence suggests a "*not*" is missing from that sentence in the report). Mr Fraser did not claim, as the report notes, that he "*obtained this information from a source or was advised of this.*" The Panel should have stopped there: if Mr Fraser did not "*indicate the basis*" for his allegations and did not explain the source of his "*information*", then considering what he had to say served no rational purpose.



100.2 That threshold point aside, if Mr Fraser did not explain the source of his information, then everything he said is hearsay. It is hearsay because, on Mr Fraser's own version, the probative value of his allegations depends on someone else's credibility.

100.3 The Panel acknowledged that Mr Fraser's statements are "*full of hearsay*" (paragraph 83 of the report, noting that my criticism on this point was "*rightly*" made). The Panel's stated cure was to seek corroboration in "*some other independent information*". But, in the main, there is no other "*independent information*". Time and time again, the panel reflexively falls back on Mr Fraser's say-so.

J.M

100.4 What's more, the Panel did not even bother to apply the legal framework for the admission of hearsay evidence. The Panel says not a word about the Law of Evidence Amendment Act and its careful calibration of when hearsay evidence should be admitted in the interests of justice. The Panel skipped considering, for example, the nature, reliability, and probative value of Mr Fraser's statements, which it ought to have considered under the Act. Because the Panel's purpose is tied to evaluating the sufficiency of evidence, this failure is fatal.



101 The Panel tried a rough and ready balancing act: Mr Fraser's hearsay should be balanced against "*some aspects*" of my evidence, which, according to the Panel, were "*also hearsay*". The panel pointed to my evidence about what Mr Ndlovu told me about the sale.

101.1 That is not how admissibility of hearsay evidence works: one party's hearsay evidence does not get weighed against another party's hearsay evidence. As part of its mandated purpose to recommend whether there is sufficient evidence of a constitutional violation, the Panel should have considered each item of evidence (and, where necessary, decide whether each item of evidence is hearsay evidence and, if so, whether it should be admitted in the interests of justice).

101.2 The Panel's assessment was, in any event, based on a flawed understanding of the rule relating to hearsay. I am advised that it is not hearsay for me to give evidence about what Mr Ndlovu told me.

J.M

That is direct evidence, not hearsay evidence. That evidence has probative value, because our conversation informed what I knew about the money that was received and later stolen. The probative value of the evidence depends on my credibility because I was a party to the conversation. This means that my evidence about the conversation was not hearsay. My evidence in this regard was not tendered to prove the truth of what Mr Ndlovu said: it was tendered to prove what Mr Ndlovu said to me, and what I knew about the money.



- 101.3 In the end, the Panel's consideration of hearsay information led it to "*balance out*" my evidence and Mr Fraser's allegations as though they had equal probative value. This was an irrational way for the Panel to try to discharge its mandate.

J.M



- 104.1 The prohibition states that a member of Cabinet may not “*undertake any other paid work*”. Its language is plain. A member of Cabinet may not do other work for which he or she is paid. I did not do any other work and I was certainly not paid for anything of the kind.
- 104.2 The Panel is mistaken in its assertion that the purpose of the prohibition is to avoid conflicts of interest. There is a separate prohibition in section 96(2)(b) of conduct involving the risk of conflicts of interest.
- 104.3 The Panel’s interpretation of the prohibition, to extend to all business interests, is thus incompatible with its language and its purpose.



### **I acted in good faith**

- 105 I in any event, at all times, acted in good faith.
- 106 I remain the sole member of Ntaba Nyoni. I have systematically declared this, and any other financial interests, with the Secretary of Cabinet and, when I was a member of Parliament, to the relevant Parliamentary authorities. In all instances, my membership of Ntaba Nyoni has been reflected in the public section of the declaration; it is therefore readily available for those wishing to see it, contrary to the assertions by the ATM. A copy of the publicly available declaration from the relevant period is attached marked “**MCR5**”. In this regard, attached hereto marked “**MCR 6**” is an affidavit deposed to by the Director-General of the Presidency, Ms Baleni.

J. M

107 I point out that the Executive Members' Ethics Act requires the disclosure of financial interests held at the time of assuming office, and financial interests acquired after assuming office. Paragraph 6.1 of the Code of Ethics provides under the heading "Financial Interests to be Disclosed", that a member must disclose

***"Shares and other financial interests in companies and other corporate entities by indicating:***

*(a) The number, nature and nominal value of shares of any type in any public or private company;*

*(b) the name of that company; and*

*(c) the nature and value of any other financial interests held in any company or any other corporate entity."*



108 This implicitly recognises that members of the Executive may hold and acquire financial interests, including shares and other financial interests, in companies and other corporate entities. The Panel never considered whether I acted in bad faith, and accordingly could not conclude that there was sufficient evidence that I had done so.

109 The Panel's finding on this issue is thus legally flawed and irrational.

J.M

## CHARGE 2: SECTION 34 OF PRECCA

### *The charge*

110 "The President is guilty of serious violation of section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No 12 of 2004) (the Act), which places a duty on any person to report corrupt transactions to any police official, in that:

*"(a) The President failed to report the theft on his farm to any police official as required by the Act;*

*(b) Reporting the matter to General Wally Rhoode, a member of the Presidential Protection Unit, is not in compliance with the South African Police Service Amendment Act, 2012 (Act No 10 of 2012) which directs that reporting should be made to the police official in the Directorate for Priority Crime Investigation in terms of Section 34(1) of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004); and*

*(c) The fact that there is no case number to date is proof that the manner in which the purported reporting was made was irregular and unlawful."*



### **I did not contravene section 34**

111 In paragraph 249 of its report the Panel concluded that I was dutybound to report the theft at Phala Phala because I am the sole member and therefore a person who holds the position of authority within the meaning of sections 34(1) and 34(4).

112 The Panel's conclusion is based on a misunderstanding of section 34(4)(e), which provides that *"For purposes of subsection (1) the following persons hold a position of authority, namely ... the manager, secretary or a director of a company as defined in the Companies Act, 1973 (Act No.*

J.M

61 of 1973), and includes a member of a close corporation as defined in the Close Corporations Act, 1984 (Act No. 69 of 1984).”

113 The distinction between a company and a close corporation, and the inclusion of a member of a close corporation but not a shareholder of a company among persons who hold a position of authority, is because a member of a close corporation is entitled to participate in the running of the business whereas a shareholder of a company has no such entitlement. It is clear therefore that a member of a close corporation is included amongst persons who hold a position of authority only to the extent that they are responsible for the operations of the business. Where a separate management team is responsible for the running of the operations it is therefore that management team that holds the position of authority. As I have always maintained,



113.1 I am the sole member of Ntaba Nyoni but I do not run Phala Phala. It has a management team; and

113.2 I did not know about the theft until I was informed of it by Mr Ndlovu.

114 Submissions are made in my submission to the Panel in relation to why the provisions of PRECCA are inapplicable in the circumstances, both in relation to the purpose of PRECCA and the applicability of section 34.<sup>15</sup> I stand by those submissions, and ask that they be read as specifically incorporated into this affidavit.

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<sup>15</sup> Annexure IP82, page1649-1650 of Volume 3 of the Report.

J.M

115 On the basis set out in those submissions, I was under no duty to report the theft in terms of section 34(1) of PRECCA.

116 In any event, I reported the matter to Major-General Rhooode, and I assumed and expected that he would do whatever had to be done to ensure that the matter is properly handled.<sup>16</sup> Major-General Rhooode, in fact, reported the matter to the Deputy Commissioner of Police who assumed responsibility for the matter.

### I acted in good faith

117 In any event, I did not deliberately fail to report the matter in bad faith. I reported the matter to Major-General Rhooode in the expectation that it would be dealt with appropriately. The Panel did not even enquire into the question whether I had acted in bad faith. It could accordingly not rationally conclude that I was guilty of “*a serious violation of... the law*” as defined in the rules of the National Assembly.



## CHARGES 3 AND 4: MY REQUEST TO GENERAL RHOODE

### The charges

118 These charges relate to the alleged abuse of my position for my own personal benefit in that I asked Major-General Rhooode, a member of the Presidential Protection Services (“PPS”) to investigate a crime committed on my private farm.

<sup>16</sup> See my statement to the National Assembly IP82 vol 3 p 1696.

J. M 

119 Charge 3 reads:

*“The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that Members of the Cabinet and Deputy Ministers may not, inter alia, expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, in that:*

*(a) A member of the Presidential Protection unit, General Wally Rhoode, was directed to deal with security issues in the private farm (of the President) in violation of the provisions of section 96(2)(b) of the Constitution;*

*(b) President Ramaphosa’s life and limb was not threatened by the burglary and thus General Wally Rhoode had no business to be investigating anything at the Phala Phala farm, as unlawfully directed by the President; and*

*(c) By violating section 96 (2) (b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.”*



120 Charge 4 reads:

*“The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that Members of the Cabinet and Deputy Ministers may not, inter alia, act in a way that is inconsistent with their office, in that:*

*(a) The President gave an unlawful instruction to General Wally Rhoode, a member of the Presidential Protection Unit, to investigate the burglary on his private farm and the instruction to investigate rather than to report the matter in terms of the law shows dishonesty and constitutes misconduct and unlawfulness on the part of the President; and*

*(b) By violating section 96(2)(b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.”*

### **The scope of the charges**

121 The charges accused me of abusing the services of General Rhoode, who was a member of the “PPS”, to do a criminal investigation which should have been done by a regular SAPS detective.

J.M

122 I was not guilty of any misconduct on this score, because I did not say or suggest that General Rhooode must personally undertake the investigation. I left it to General Rhooode to deal with the matter in whatever way was appropriate. It was entirely appropriate for General Rhooode to consider the matter in so far as it exposed a risk to my security and safety. I did not tell him how to take the matter further. I understand that he in fact reported the matter to the Deputy Commissioner of Police who took charge of the matter.

123 Respectfully, such alleged abuse of my position by asking a member of the PPS to look into a breach of security at my farm could never rise to the level of serious violation of the Constitution or the law as defined the rules of the National Assembly. In any event, that is a matter the Panel never considered.



124 The Panel's findings are on something unrelated. They suggest that General Rhooode embarked on a rogue investigation to conceal the crime. I do not understand how that, if it is true, can be blamed on me. First, the charges did not accuse me of doing anything of the kind. There is no evidence that I was complicit in any rogue investigation. The highwater mark was the suggestion that I had asked the President of Namibia for assistance to apprehend the culprit. There is also no admissible evidence to show that I made such a request, and this allegation is simply not true.

125 The Panel never considered whether I acted in bad faith and accordingly could not conclude that there was sufficient evidence that I had done so.

126 The Panel's finding on this issue is thus flawed and irrational.

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## THE SOURCE OF THE FOREIGN CURRENCY

127 On page 32 in paragraph 87 of its report, the Panel held that one of the issues “*which form the foundation of the proposed charges*” is “*the source of the foreign currency that was stolen*”. It then devoted an entire chapter to this issue from page 33 in paragraphs 89 to 138. Twenty percent of the report is addressed to this issue.

128 The Panel was confined to the four charges raised in the Motion. None of them raise this issue.

129 Further examples of the Panel going beyond the charges include the following enquiries:

129.1 The panel remarked that “*General Rhooode travelled to Namibia. Why he travelled to Namibia is a contested issue.*” Various conclusions are thereafter reached throughout the report in relation to Major-General Rhooode’s trip to Namibia, such as that “*the information before the Panel also establishes, prima facie: that the President sought assistance from the President of Namibia in apprehending the suspect who was in Namibia at the time*”. This enquiry has nothing to do with the four charges.

129.2 The panel asked rhetorically “*How did he get this huge amount of cash into South Africa? When he entered the country, did he declare to the South African authorities at the point of entry that he was carrying this amount of cash? What is the source of this cash he had in his possession? Did he produce any document indicating that he*



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*had authority from his country to take out of his country this amount of money? How did Mr. Hazim carry this money into South Africa?"*

129.3 The Panel thereafter makes the following finding: *"We find the behaviour of Mr. Hazim in carrying more than half a million US\$ in cash into South Africa and thereafter transporting it to the farm to be un-businessmenlike."* (sic) and *"as a businessperson we would not have expected Mr. Hazim to go about the country carrying more than half a million US\$ in cash."*



129.4 Matters relating to Mr Hazim and Phala Phala were not raised in or part of any of the charges.

129.5 The Panel also explores matters connected to the transaction for the buffalos and questions the reasons for Mr Hazim not collecting the buffalos following the transaction. The panel expresses reservations about the acknowledgement of receipt furnished to Mr Hazim on the basis that it does not, amongst other things, reflect his particulars or that of his business and further asks, *"why would anyone pay such a huge sum of money in cash and thereafter leave the goods without indicating when he would come back to collect the buffaloes or leaving an address for the delivery of the animals..."* Once again, this has nothing to do with any of the charges in the Motion.

130 I made it clear to the Panel, in my response, that I confined my submissions to the allegations relevant to the charges.

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131 The Panel acknowledged that there was a paucity of information on these matters, which are extraneous to the charges. That caused it to resort to suspicion and speculation:

“

*But as we have pointed out earlier, there are a number of important questions relating to this transaction that remain unanswered. These questions relate to Mr. Hazim's visit to the farm; the acknowledgement of receipt itself; concealment of the money inside a sofa; the fact that for over two years the buffaloes are still on the farm; the fact that Mr. von Wielligh, the General Manager, did not know about the money; and the amount that was stolen. It is significant that the origin and the transaction pertaining the foreign currency became the subject of an investigation by the SARB. This suggests that the SARB had no records of this currency coming to South Africa. The Panel has no information whether this investigation has been concluded, and if so, what the outcome was.”<sup>17</sup>*



132 The findings of the Panel in paragraphs 136, 171, 172 and 263 are based on these extraneous enquiries and are central to the Panel's recommendation. In paragraph 136 the Panel expresses an opinion on whether the stolen foreign currency was the proceeds of a sale, which is a matter that does not form part of the charges and is beyond its remit. In paragraphs 171 and 172 the Panel addresses and makes findings with regard to the sequence of events in relation to the discovery and reporting and investigation of the theft. In paragraph 263 the Panel makes findings as to an alleged intention not to investigate the theft openly. None of these matters fell within the scope of the charges that I was required to answer. The same issue arises with regard to paragraphs 98, 107 and 126. They too deal with matters that did not fall within the scope of the charges that I was required to answer. The examples can be multiplied.

<sup>17</sup> Report vol 1 paras 256 and 257

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133 The Panel accordingly exceeded its mandate. It was also most unfair to me because I was never called upon to address these issues beyond the four charges.

## OTHER INVESTIGATIONS

134 As the Panel noted in its report, the allegations on the basis of which Mr Zungula formulated the charges in the notice of motion were also referred to other government institutions for investigation. The Panel lamented that it did not know what the other institutions were investigating and how their investigation had progressed.<sup>18</sup>



135 I briefly set out what was investigated by these institutions and what they concluded, to the extent that this is known to me.

## The Public Protector

136 The notice of motion that formed the basis of the Panel's inquiry was also referred as a complaint to the Public Protector by Mr Zungula in June 2022. Mr Zungula's complaint was followed by three other similar complaints. The Public Protector investigated and determined the complaints in her Report Number 12 of 2023/24 ("the PP Report"). The PP Report (attached as "MCR7") is dated 30 June 2023. On page 9 she summarised the issues she investigated as follows:

*"(a) Whether the President of the Republic of South Africa, Mr MC Ramaphosa acted in a manner that is inconsistent with his office in dealing with the alleged housebreaking with the intent to steal and theft of cash in foreign currency that took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo*

<sup>18</sup> Report vol 1 paras 28 to 30,

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*Province and thus abused state resources, exposed himself to any situation involving a risk of a conflict between his constitutional duties and obligations and his private interests arising from or affected by his alleged paid work in violation of clause 2.1(b) and (d) and clause 2.3(d), (f) and (g) of the Executive Ethics Code;*

*(b) Whether the President failed to report the alleged crime that took place at Phala Phala farm on or about 09 February 2020 and abused his power in utilising state resources by causing the Presidential Protection Services (PPS) to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft of cash in foreign currency at Phala Phala farm, thus violating clause 2.3(d) and (f) of the Executive Ethics Code; and whether such conduct constitutes improper conduct as contemplated in section 182(1) of the Constitution and abuse of power as contemplated in section 6(4)(a)(ii) of the Public Protector Act; and*

*(c) Whether the members of the South African Police Service (SAPS) attached to the PPS acted improperly by investigating the alleged housebreaking with the intent to steal and theft of cash in foreign currency, which took place on or about 09 February 2020 at Phala Phala farm, Waterberg in the Limpopo Province, and if so, whether such conduct constitutes improper conduct as contemplated in section 182(1)(a) of the Constitution and maladministration as contemplated in section 6(4)(a)(i) of the Public Protector Act.”*



137 The Public Protector found that the allegations against me were not substantiated. Her findings in relation to complaints against me are recorded in paragraph 7 of her report as follows:

*“7.1.1 The allegation that the President improperly and in violation of the provisions of the Executive Ethics Code exposed himself to any risk of a conflict between his constitutional duties and obligations and his private interests is not substantiated.*

*7.1.2 The allegation that the President undertook remunerated work at Phala Phala farm, is not substantiated.*

*7.2.2 The allegation that the President abused his power in utilising state resources by causing the PPS to be deployed to Phala Phala farm and to investigate a housebreaking with the intent to steal and theft at the said farm, is not substantiated.”*

138 The ATM applied to the Gauteng Division (Pretoria) of the High Court, under case number 2023/70532, for the review and setting aside of the

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PP Report. The ATM has not progressed that application, which is still pending.

### South African Revenue Service

139 SARS investigated allegations against me of possible violation of tax laws.

On 7 March 2023 It issued a statement (attached as “MCR8”) stating the following:

*“Mindful of the considerable public interest and concern in the affairs of the taxpayers Mr Matamela Cyril Ramaphosa, Ntaba Nyoni and Ntaba Nyoni Feedlot, SARS has received the consent of the Taxpayers in terms of section 69 (6) of the Tax Administration Act no 28 of 2011 (TAA), to make a public statement.*



...  
*To date, audits have been concluded without any adverse tax findings. SARS wishes to confirm that the taxpayers are compliant with their tax obligations to date.”*

### South African Reserve Bank

140 Through its Financial Surveillance Department, which administers the Exchange Control Regulations and investigates contraventions of those Regulations, the SARB investigated the allegation against me of Exchange Control violations. In its report dated 8 August 2023 (“MCR9”) it concluded:

*“The applicability of Exchange Control Regulation 6(1) in this particular matter would depend on whether there existed a perfected transaction, i.e., an unconditional contract for the purchase and sale of the buffalos. It follows that if there was such an unconditional contract, an entitlement to the foreign currency on the part of Ntaba Nyoni Estates CC would exist, triggering the obligation under Exchange Control Regulation 6(1) for Ntaba Nyoni Estates CC to make or cause to be made, within 30 days, a declaration in writing of such foreign currency to FinSurv or to an Authorised Dealer. Conversely, if there was no perfected transaction, there would not be a legal entitlement by Ntaba Nyoni Estates CC) to the foreign*

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currency and therefore Exchange Control Regulation 6(1) would not apply.

Based on the information available to FinSurv, as set forth above, as well as that the sale was subject to conditions precedent, FinSurv is of the considered view that the transaction was not a perfected transaction which gave rise to a legal entitlement by Ntaba Nyoni Estates CC to the foreign currency.

It appears from the facts available to FinSurv (as related to exchange controls) and which have not been contradicted by any other evidence which is available to FinSurv, that the obligation under Exchange Control Regulation 6(1) was not triggered on the part of Ntaba Nyoni Estates CC upon receipt of the foreign currency from Mr Hazim. In these circumstances there would not be a breach of Exchange Control Regulation 6(1) by Ntaba Nyoni Estates CC.

Accordingly, FinSurv, on the facts available to it, cannot conclude that there was a contravention of Exchange Control Regulation 6(1) by either, the President or Ntaba Nyoni Estates CC."



## Joint Standing Committee on Intelligence

141 An undated report of the Joint Standing Committee on Intelligence to the National Assembly found the following:

*"On 5 August 2022, the Speaker of the National Assembly, Hon N Mapisa-Nqakula requested the Joint Standing Committee on Intelligence (JSCI), to investigate specific allegations arising out of the Phala Phala game farm theft.*

...

*The specific allegations that the Speaker requested the Committee to investigate were:*

- *"that (Deputy Minister in The Presidency responsible for State Security) (NG) Kodwa knew about the Phala Phala robbery and opted to keep the matter a state secret, rather than reporting the matter to the appropriate authorities. It has also been alleged that Kodwa accompanied Major General Wally Rhooode, the head of the Presidential Protection Unit during secret interactions between the South African and Namibian authorities; and*
- *[that] reports emerged that a secret Crime Intelligence Fund was used to finance the undercover operations which traced the thieves, with the goal of recovering the stolen money. It has been alleged that almost R2 million a month from this fund was spent to send an elite special task force to guard President Ramaphosa's private game farm theft. Should this be true, this would constitute a flagrant abuse of our taxpayer's money".*

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...  
*The Committee found that there was no independently verifiable information to support the allegations against Hon NG Kodwa and the use of funds from the Secret Services Account of SAPS-CI."*

### National Prosecuting Authority

142 I do not know the details of the matter, but it has been reported in the media that prosecutions of persons alleged to be responsible for the theft are proceeding, and that the accused have appeared in court.

143 As far as my own position is concerned, the South African Government News Agency reported on 11 October 2024 that:



*"The National Prosecuting Authority (NPA) has taken a decision not to prosecute anyone in relation to the Phala Phala case.*

*The decision was taken by Limpopo Director of Public Prosecutions (DPP), Advocate Mikhali Ivy Thenga.*

*This decision follows a comprehensive investigation process that was conducted by the Directorate for Priority Crimes Investigation [DPCI] following a complaint laid by Mr Arthur Fraser with the South African Police Service [SAPS].*

*The criminal complaint was registered against the President of the Republic of South Africa, Mr Matamela Cyril Ramaphosa," the NPA said in a statement.*

*According to the statement, the decision not to prosecute was taken by Thenga after a "careful assessment of all available evidence presented to the prosecutors by the DPCI.*

*She concluded that there is no reasonable prospect of a successful prosecution based on evidence contained in the docket."*

144 The third and fourth paragraphs of that report demonstrate that "the Phala Phala case" to which the first paragraph refers is the complaint laid by Mr Fraser, and the criminal case that was registered against me. It has, however, been reported in the public media that a prosecution for the theft of the money is proceeding.

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145 I readily accept that subsequent events cannot be a basis for reviewing and setting aside earlier administrative action.

146 However, I rely on these investigations and their outcomes to demonstrate that if on the Panel's view I had a case to answer based on Mr Arthur Fraser's allegations, which were repeated and relied on by Mr Zungula, I have answered that case more than once.

## DELAY

147 The Panel rendered its report on 30 November 2022. On 5 December 2022 I applied to the Constitutional Court for the review and setting aside of the report.



148 On 13 December 2022 the National Assembly voted against proceeding with an enquiry under section 89(1) of the Constitution. The result was that my intended challenge to the report became moot.

149 On 8 May 2026 the Constitutional Court declared that Rule 129I is inconsistent with the Constitution and invalid, and referred the report of the Panel to the Impeachment Committee. The result is that the report of the Panel and my challenge to it are no longer moot. I am therefore immediately proceeding with this application.

150 I respectfully submit that the delay in instituting this application is reasonable. To the extent that the delay is found not to be reasonable, I respectfully submit that it is in the interests of justice that it be condoned, having due regard to the far-reaching significance and consequences of

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an impeachment process in respect of a President, and the factual circumstances set out above.

## THE WAY FORWARD

151 It would be intolerable and a travesty if the National Assembly were to proceed with an impeachment process triggered by the Panel's report, at a time when a challenge to the lawfulness and validity of that report is pending. I trust that the National Assembly will not do so.

152 I also accept, however, that the matter is urgent and that it is in the public interest that it be determined without delay. I shall, to that end, propose to the respondents that we agree on expedited timeframes for the determination of this application. I trust that good sense will prevail.

153 In the unlikely event that the National Assembly insists on going on proceeding with the impeachment process while this application is pending, I shall be compelled to launch an urgent application to this court for an interdict precluding it from doing so. I trust, however, that such an urgent application would not be necessary.

## CONCLUSION

154 I do not make this application lightly. I have carefully considered the report and respectfully submit that the process followed by the Panel and its conclusions are seriously flawed, thus making the recommendations irrational and contrary to the principle of legality. I submit that the Panel misconceived its mandate, misjudged the information placed before it and



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misinterpreted the four charges advanced against me. It moreover strayed beyond the four charges and considered matters not properly before it.

155 I submit that a proper case is made out for this Court to review and set the report aside.

156 I ask for the orders sought in my notice of motion.

*[Handwritten signature]*

Matamela Cyril Ramaphosa



I hereby certify that the deponent stated that he knows and understands the contents of this affidavit and that it is to the best of his knowledge both true and correct. This affidavit was signed and sworn to before me at Johannesburg on this 24<sup>th</sup> day of **MAY 2026**. The Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, have been complied with.

COMMISSIONER OF OATHS

I certify that the above statement was taken by me and that the deponent has acknowledged that he / she knows and understands the contents of this statement. This statement was sworn to / affirmed before me and the deponent's signature / mark was placed thereon in my presence.

at Johannesburg 2026-05-24 at 21:00

[Signature] w/o

(SIGNATURE) COMMISSIONER OF OATHS

JOSEPH MASHOBO MOORE

FULL FIRST NAMES AND SURNAME IN BLOCK LETTERS

03 TROY STREET SUNNYSIDE

BUSINESS ADDRESS (STREET ADDRESS)

w/o

RANK

SA POLICE SERVICE

