

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
(HELD AT BRAAMFONTEIN)**

CASE NO. CCT45 / 23

In the matter between:

MEDIA MONITORING AFRICA TRUST

Applicant

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA First Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Second Respondent

**MINISTER OF COMMUNICATIONS AND
DIGITAL TECHNOLOGIES**

Third Respondent

**SOUTH AFRICAN BROADCASTING
CORPORATION SOC LIMITED**

Fourth Respondent

EXPLANATORY AFFIDAVIT

NOSIVIWE NOLUTHANDO MAPISA-NQAKULA

do hereby make oath and say:

1. I am an adult female and the Speaker of the National Assembly of the Parliament of the Republic of South Africa ('Parliament').
2. The facts deposed to herein are within my personal knowledge and belief, except where the context shows otherwise, and are true and correct.
3. I depose to this affidavit purely for purposes of setting the record straight insofar as the role which Parliament has played thus far in the appointment

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process of the South African Broadcasting Corporation SOC Limited (“SABC”) Board.

4. Although no relief is sought against my Office, I am aware that I am cited owing to the interest the National Assembly (“NA”) may have in these proceedings, particularly the selection of SABC Board members under section 13(1) of the Broadcasting Act, No.4 of 1999 (“the Act”).
5. On 15 October 2022, the term of office of all the last non-executive members of the SABC Board came to an end.
6. On 13 June 2022, and in anticipation of this, the Minister of Communications and Digital Technologies (“the Minister”) issued correspondence to the Portfolio Committee on Communications and Digital Technologies (“the Committee”), informing the NA about the impending expiry of the SABC Board members’ terms, and requesting the NA to initiate the process to appoint non-executive Board members in terms of section 13 of the Act. The referral to the Committee was published in the Announcements, Tablings and Committee Reports (“ATC”) on 30 June 2022 during the time when the proceedings of Parliament were temporarily suspended due to the constituency period. The Committee shortly advertised for nominations, the closing date for which was 06 August 2022.
7. The Committee established a seven-member multiparty subcommittee to oversee the process of appointing the SABC Board and to report back on it.

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During the course of September 2022, the subcommittee shortlisted and interviewed candidates.

8. On 24 November 2022, the subcommittee finalised its deliberations and recommended twelve candidates to be appointed. This was done after the security vetting of candidates had been completed.
9. Due to the fact that the appointment process had taken a considerable amount of time and coupled with the prejudice visited on the South African public by the absence of the SABC Board, the Committee took a decision to recommend three additional candidates as a reserve pool. I am informed that the intention of the Committee with nominating three names in a reserve pool was to ensure that there are available candidates to appoint to the SABC Board in the event that any of the twelve candidates were unavailable.
10. On 6 December 2022, the NA adopted the Committee's report in its entirety which included the twelve persons to be appointed to the Board, as well as the three additional candidates as a reserve pool.
11. The President of the Republic of South Africa ("the President") received notification from my Office of the outcome of the NA process on 20 December 2022 and was placed in receipt of the CVs of the selected persons, following a request, on 10 January 2023.

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12. On 03 February 2023, the President addressed correspondence to my Office in which he, amongst others, sought clarity about the vetting of the selected candidates and the status of the three additional names which constituted the reserve pool.
13. Subsequently, I took legal advice and I was advised that the Act does not sanction the nomination of a reserve pool and I accordingly informed the President to ignore the three names in the reserve pool. Confirmation was also provided to the President that all the names that had been forwarded to his Office were vetted.
14. Furthermore, I was advised that the inclusion of the three additional names in the reserve pool does not affect the legal status of the twelve names recommended to the President for appointment to the SABC Board. Accordingly, the three names in the reserve pool are clearly distinguishable from the other twelve names and can be severed without any impact on the latter.
15. On 03 March 2023, the Chairperson of the Committee, responding to a request from my office, addressed correspondence to me in which he fully apprised me of the work the Committee had undertaken leading up to the adoption of its report by the NA and post the Committee process. On 04 March 2023, and acting on the strength of this correspondence, I penned a letter to the President in which I informed the President that I have obtained additional information on this matter from the Chairperson of the

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Committee. In the same correspondence, I attached the letter from the Chairperson of the Committee, for the President's ease of reference.

16. On 09 March 2023, the President wrote to me in which he, amongst others, avers that "*Whilst you have informed me that the so-called 'reserve pool' names ought, in your words, not to be considered at all, these feature in the decision of the National Assembly of 06 December 2022. Notwithstanding your letter, I do not believe myself constitutionally empowered to ignore the contents of a resolution of the National Assembly.*"
17. In light of the above, the President has requested that the matter be referred to the Committee for its urgent consideration and that he be given a clear, legally accurate record of what precisely the NA has determined with respect to the persons the NA resolved to advise him to consider for appointment to the SABC Board.
18. On 09 March 2023, the President's referral to the Committee was published in the ATC. This means that this matter is before the Committee for consideration and report to the NA.
19. I am advised that the Committee has procured an independent legal opinion from Senior Counsel with a view to advise it on how to take this matter forward. As things currently stand, the Committee is awaiting the said opinion and will seek guidance from it as soon as the independent legal opinion is on hand.


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NOSIVIWE NOLUTHANDO MAPISA-NQAKULA

I certify that the deponent has acknowledged that she knows and understands the content of this declaration, has no objection to taking the prescribed oath and considers the prescribed oath to be binding on her conscience. The deponent thereafter uttered the words: 'I swear that the contents of this declaration are true, so help me God.' The deponent signed this declaration in my presence in JOHANNESBURG on this the 27 day of **MARCH** 2023.


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COMMISSIONER OF OATHS

Name: Dlamini T.K
Address: CLEVELAND
Capacity: Police officer

SOUTH AFRICAN POLICE SERVICE
COMMUNITY SERVICE CENTRE
27 MAR 2023
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