

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
BRAAMFONTEIN**

CASE NO: 45/23

In the matter between:

MEDIA MONITORING AFRICA TRUST

APPLICANT

and

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

1ST RESPONDENT

SPEAKER OF THE NATIONAL ASSEMBLY

2ND RESPONDENT

**MINISTER OF COMMUNICATIONS AND
DIGITAL TECHNOLOGIES**

3RD RESPONDENT

**SOUTH AFRICAN BROADCASTING
CORPORATION SOC LIMITED**

4TH RESPONDENT

FILING SHEET

DOCUMENT:

**FIRST RESPONDENT'S SUPPLEMENTARY
AFFIDAVIT**

FILED BY:

**RESPONDENT'S ATTORNEYS
STATE ATTORNEY, PRETORIA
SALU BUILDING
316 THABO SEHUME STREET
CNR THABO SEHUME AND FRANCIS BAARD
PRETORIA
PRIVATE BAG X91
PRETORIA
Enq: AGF MOKGALE
Ref: 0630/23/Z53/me
Tel: (012) 309 1662
E-MAIL: FMokgale@justice.gov.za**

**C/O OFFICE OF THE STATE ATTORNEY
10TH FLOOR NORTH STATE BUILDING
85 ALBERTINA SISULU STREET
JOHANNESBURG
2101
TEL: 082 926 0705
ENQ: MR V DHULAM
E-MAIL: VDhulam@justice.gov.za**

**TO: THE REGISTRAR OF THE CONSITUTIONAL COURT
BRAAMFONTEIN**

**AND TO: APPLICANT'S ATTORNEYS
POWER SINGH INC.
20 BAKER STREET
ROSEBANK
JOHANNESBURG
2196
TEL: 011 822 7860
FAX: 086 614 5818
REF: PSIMM-202303
EMAIL: tina@powersingh.africa;slindile@powersingh.africa;
legal@powersingh.africa**

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**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
BRAAMFONTEIN**

Case No: 45/23

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

SUPPLEMENTARY AFFIDAVIT

I, the undersigned,

GEOFFREY MPHAPHULI

state under oath as follows:

- 1 I am an adult male Principal State Law Advisor and Acting Head of Legal and Executive Services in the Office of the Presidency.

IS NA

- 2 The facts in this affidavit are true and correct and, unless otherwise indicated, are within my personal knowledge.
- 3 I depose to this affidavit on behalf of the first respondent ("*the President*") in order to ensure that it is timeously filed for this Court's consideration. I am duly authorised to do so.
- 4 In my capacity as Acting Head of Legal and Executive Services, amongst others duties, I am responsible for processing all pleadings relating to litigation and legal matters involving this office, and am privy to all related correspondence.

PURPOSE OF THIS AFFIDAVIT


- 5 I have read the answering affidavit deposed to by the President in this matter. In that affidavit, the President anticipates that, due to the evolving nature of the appointment process of the Board of Directors of the South African Broadcasting Corporation ("*SABC*"), it may be necessary to provide further information to the Court as matters progress.
- 6 The purpose of this affidavit is indeed to update the Court on the status of process, and the President's engagement with the National Assembly on the issue.
- 7 Insofar as leave is required from the Court to file this supplementary affidavit, I beg the Court's leave to do so. I submit that it is in the interests of justice that leave be granted for the following reasons:

 NA

- 7.1 It was not possible to have provided the information contained in this affidavit at the time that the answering affidavit was compiled as it deals with subsequent events.
- 7.2 The information will be useful to the Court in its adjudication of the issues.
- 7.3 I am advised and submit further that there will be no prejudice to the applicant if leave were granted. The President has no objection to the applicant filing a supplementary replying affidavit in response to this affidavit to the extent that it is necessary for it to raise any facts in reply.

EVENTS SUBSEQUENT TO THE FILING OF THE PRESIDENT'S ANSWERING AFFIDAVIT

- 8 The President's answering affidavit made reference to his letter to the Speaker, dated 9 March 2023, in terms of which he requested to be provided with a clear, legally accurate record of precisely what the National Assembly had determined with respect to the persons they resolved he should appoint to the SABC Board.
- 9 Notwithstanding the President's concern with the "*extreme urgency*" of the situation, almost a month later, the Office of the Presidency had not received a response from the Speaker to the President's request.
- 10 Accordingly, on 2 April 2023, the President addressed further correspondence to the Speaker. I attach a copy of that letter, which I mark as Annexure "*SA1*".
- 10.1 The letter notes that the President is deeply concerned that the issue is not being attended to by the National Assembly with sufficient urgency.

 NA

- 10.2 The President demanded a response to his letter by close of business on Tuesday, 4 April 2023.
- 10.3 The President further suggested that the circumstances would justify an urgent, virtual sitting of the National Assembly to finalise the matter.
- 10.4 The letter notes further that it had come to the President's attention (through the Heads of Argument filed on behalf of the applicant in this matter) that one of the candidates, a Mr Franz Kruger, may have withdrawn his candidacy for appointment to the SABC Board. The President noted that he did not know whether or not the allegation was correct. If it was correct, the President stated that Parliament should fully inform his Office and the Court should of the situation.
- 11 By letter dated 5 April 2023, the Speaker responded to the President's letter of 2 April 2023. The letter is attached as "SA2". In it, the Speaker indicates that the Parliamentary Portfolio Committee on Communications and Digital Technologies ("the Committee") has procured a legal opinion as to how to take the matter forward and that it is awaiting the opinion. The Speaker also confirmed in her letter that Dr Franz Kruger has withdrawn as a candidate for appointment to the Board. Finally, the Speaker states that Committees are empowered to determine their own working arrangements and that she does not have the authority to direct the business of the Committee.
- 12 In the circumstances, I am advised and submit that the President has attempted to impress upon the National Assembly the urgency of this matter, and he has made all possible attempts to get clarity from the National Assembly as to which candidates it requires him to appoint to the Board of the SABC – to no avail.

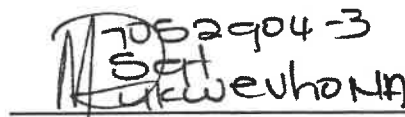
 NA

13 I depose to this affidavit to bring the above sequence of events to the Court's attention.



GEOFFREY MPHAPHULI

I hereby certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at PRETORIA on this the 05 day of APRIL 2023, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

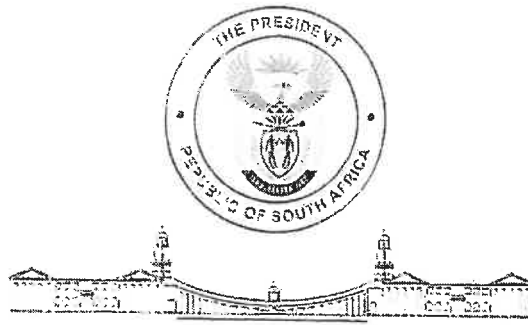


COMMISSIONER OF OATHS

Full names: **NDIFHEDZO ALPHOSINAH NLUKWEVHO**
 Business address: **GOVERNMENT AVENUE**
 Designation: **SGT**
 Capacity: **SGT**



(/SA 1)



02 April 2023

Dear Madam Speaker

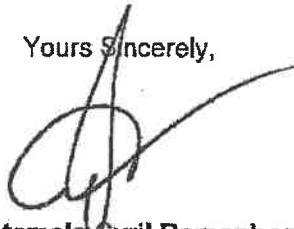
APPOINTMENT OF SABC BOARD MEMBERS

1. My letter to you, dated 9 March 2023, refers.
2. You will be aware that in that letter I raised my concerns with contradictory instructions which I have received from yourself and the Chairperson of the Portfolio Committee on Communications and Digital Technologies as well as my concerns regarding the National Assembly's resolution on SABC Board Appointments dated 6 December 2022.
3. I further urgently requested that I be provided with a clear, legally accurate record of precisely who the 12 persons are that the National Assembly has determined I should appoint. In particular, I stressed that the need to finalise the appointment process is "*extremely urgent and critical*".
4. More than three weeks have since passed without a response to my request.
5. I note that in an affidavit you deposed to, which has been filed before the Constitutional Court under Case Number CCT 45/23, you stated that the matter is "*before the Committee for Consideration [which] will report to the NA*" and that the Committee has procured an independent legal opinion to advise it.
6. It has further come to my attention that in heads of argument filed on Thursday 30 March 2023, by the applicant in the same Constitutional Court case, it is stated that "*one of the originally chosen twelve, Dr Franz Krüger, has withdrawn his candidacy*" for appointment to the SABC Board. It is not clear to me whether this is correct or on what basis the applicant states this. However, should be this be correct, it is information which my office, and the Court should be formally notified of by the National Assembly in order that it may properly adjudicate this matter.
7. Importantly, I am deeply concerned that this issue is not being attended to by the National Assembly with sufficient urgency. Without the National Assembly providing me with clear and legally accurate advice on who to appoint, I am unable to exercise my statutory functions to make the necessary appointments.

IS NA

- 9 I note, moreover, that Parliament's constituency period has begun. I am therefore deeply concerned that this may occasion a further extended period of delay.
- 10 I therefore ask that you to respond to my request by no later than close of business on Tuesday, 4 April 2023. Should it be necessary in order to do so, I would suggest that the circumstances would justify for you to consider the convening of an urgent, virtual sitting of the National Assembly to finalise the matter.
- 11 Should the above steps not be taken, in order to secure the public broadcaster and ensure its governance, I consider myself enjoined to appoint persons that I understand the National Assembly to have agreed upon, despite your acknowledgement (from the contradictory advice sent and the current work on procuring legal opinion on the matter) that the resolution of the National Assembly on this matter may be legally flawed.
- 12 I am advised that, while courts have made clear mine is a formal power, my general obligations to the Constitution warranted that I raise my concerns as done in previous correspondence. These obligations however now seriously clash with my obligation to ensure the proper governance of the public broadcaster.
13. Please note that I reserve the right to place this letter before the Constitutional Court to the extent necessary.

Yours Sincerely,



Mr Matamela Cyril Ramaphosa
President of the Republic of South Africa

Hon Ms Nosiviwe Mapisa-Nqakula
Speaker of the National Assembly
Parliament, Cape Town

cc: Hon Mr L Tsenoli, Deputy Speaker of the National Assembly
cc: Hon Mr BM Maneli, Chairperson of the Portfolio Committee on Communications and Digital Technologies

AS NA

11SA2))



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

THE SPEAKER
PO Box 15 Cape Town 800 Republic of South Africa
Tel 27(21) 403 2595 Fax 27(21) 461 9462
speaker@parliament.gov.za

Mr M C Ramaphosa
President of the Republic of South Africa
Tuynhuys
CAPE TOWN
8000

By email: presidentrsa@presidency.gov.za

Dear Mr President,

APPOINTMENT OF SABC BOARD MEMBERS

The President's letter dated 02 April 2023, bears reference.

As the President may be aware, the President's letter dated 09 March 2023 was published in the Announcements, Tablings and Committee Reports ("ATC") and is currently serving before the Portfolio Committee on Communications and Digital Technologies ("the Committee"), for consideration and report to the National Assembly.

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.

I have further been recently advised that after the President's letter of 09 March was published in the ATC, one of the originally chosen twelve, Dr Franz Kruger, wrote to the Committee directly withdrawing his candidacy.

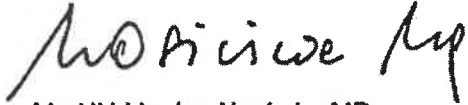
Finally, it must be mentioned that Committees are empowered to determine their own working arrangements, therefore the Speaker does not have the authority to direct the business of the Committee.

 NA

I trust that the President will find this in order.

I have the honour to be,

Yours faithfully,



Ms NN Mapisa-Nqakula, MP

Speaker of the National Assembly

Date: 05 APRIL, 2023



NA