

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

CASE NO.: 2026-109516

In the matter between:

HELEN SUZMAN FOUNDATION

Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

JULIUS SELLO MALEMA

Second Respondent

JUDICIAL SERVICE COMMISSION

Third Respondent

MINISTER OF JUSTICE AND CONSTITUTIONAL

Fourth Respondent

DEVELOPMENT

ALL PARTIES REPRESENTED IN THE

Fifth and Further Respondents

NATIONAL ASSEMBLY

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

TABLE OF CONTENTS

OVERVIEW OF THE SPEAKER'S OPPOSITION	4
THE LEGAL FRAMEWORK AND THE SPEAKER'S RESPONSE ON THE ALLEGED DUTY	11
WHO MAY INITIATE A RECALL MOTION IN THE NATIONAL ASSEMBLY ..	17
THERE IS NO FRAMEWORK FOR REMOVAL AND THE SPEAKER/NATIONAL ASSEMBLY CANNOT READ IN PROVISIONS	19
SECTION 47 OF THE CONSTITUTION AND THE ELECTED MANDATE	20
THE CORRESPONDENCE EXCHANGED BETWEEN THE APPLICANT AND THE SPEAKER.....	22

B *A.T.*

NO REVIEWABLE DECISION BY THE SPEAKER EXISTS AND NO GROUNDS OF REVIEW ARE MADE OUT.....	28
THE ALLEGED DECISION LACKS DIRECT, EXTERNAL LEGAL EFFECT ..	30
THE LETTER DOES NOT ADVERSELY AFFECT RIGHTS	31
THE ALLEGED DECISION IS NOT AN IMPLEMENTATION OF LAW OR POLICY	32
THE LETTER IS NOT A DECISION REVIEWABLE UNDER THE PRINCIPLE OF LEGALITY	32
HLOPHE II DOES NOT MAKE THE SPEAKER'S LETTER REVIEWABLE	34
SEPARATION OF POWERS.....	36
THE APPLICATION IS PREMATURE AND OVERLY BROAD	38
THE CHALLENGE TO THE JSC ACT	42
AD SERIATIM RESPONSE	43
CONCLUSION	49

 *h.7.*

I, the undersigned,

ANGELA THOKOZILE DIDIZA

do hereby make oath and say that:

1. I am the Speaker of the National Assembly and the first respondent in this application. I was elected as Speaker by the NA on 14 June 2024, in accordance with section 52(1) of the Constitution of the Republic of South Africa, 1996 (**"the Constitution"**).
2. The content of this affidavit is within my personal knowledge and, unless the context indicates otherwise, is to the best of my belief both true and correct.
3. Where I make submissions of a legal nature, I do so on the advice of Parliament's legal representatives, which I accept as correct.
4. I have read the applicant's notice of motion and founding affidavit together with its annexures and respond to it below. Any allegation not specifically admitted, and which is inconsistent with what I say in this affidavit must be regarded as denied.
5. The applicant has elected to bring this review application under Rule 6 of the Uniform Rules of Court and to waive its entitlement to a record under

 27

Rule 53.¹ Consequently, the reasons for my opposition and the relevant documents are those set out in this affidavit and in its annexures.

OVERVIEW OF THE SPEAKER'S OPPOSITION

6. The applicant seeks to set aside a decision that I allegedly made on or about 30 April 2026, purportedly declining to ensure that the National Assembly considers the suitability of the second respondent to remain designated to the third respondent, the Judicial Service Commission ("**JSC**").
7. The applicant further seeks to set aside the National Assembly's alleged failure to consider the suitability of the second respondent to remain the National Assembly's designee on the JSC and to direct the National Assembly to consider replacing the second respondent as a designee to the JSC within 20 court days of the granting of the relief sought. The applicant further seeks a declaratory order that the Judicial Service Commission Act 9 of 1994 ("**JSC Act**") is unconstitutional for failing to require the adoption of a code of conduct for commissioners.

¹ FA, at para 113.

 27.

8. The applicant does not ask this Court to decide the second respondent's suitability to remain a designee to the JSC.²
9. As I understand it, the applicant's case proceeds from three central propositions:
 - 9.1. First, that the National Assembly is obliged, on the facts placed before it by the applicant, to consider whether the second respondent remains suitable to serve as one of its designees to the JSC.
 - 9.2. Second, that I have the power to place the matter of the second respondent's suitability before the National Assembly for consideration as the applicant demands, but unlawfully refused to ensure that the matter is so placed before the National Assembly for consideration.
 - 9.3. Third, that the National Assembly has failed to take a decision which it was legally required to take.

² Founding affidavit ("FA"), at para 26.

§ 1.

10. At the outset, I do not dispute the importance of the JSC and of an independent and respected judiciary. I accept that, like the Speaker, the National Assembly is bound by the Constitution.
11. But it is important to highlight that the designation by the National Assembly of members to serve on the JSC is essentially a political decision. My constitutional role requires that I maintain an impartial position in relation to political decisions of the Assembly. Political decisions are generally very contentious.
12. There are mechanisms through the Ethics Committee to address the propriety of the conduct of members of political parties in the National Assembly. As I explain below, I drew the attention of the applicant to these mechanisms but it chose not to follow them.
13. The application has the effect of converting my constitutionally neutral presiding role into a partisan role or politically partial. It seeks a finding that I have failed to initiate an essentially partial or partisan process for the recall of a member of the National Assembly from the JSC. The Constitution, the Rules of the National Assembly and the Joint Rules do not confer a power on me or impose an obligation on me as the Speaker to do what the applicant wants.

 h. 7.

14. The applicant does not contend that the Rules of the National Assembly and the Joint Rules are unconstitutional for failing to confer the power on me or impose an obligation on me that the applicant contends for. The applicant does not seek a declaration that such a power should be conferred on the Speaker and the obligation imposed on her, nor does it seek an order that the National Assembly should adopt any Rule that would confer powers upon the Speaker to do what the applicant wants and to provide for a process for doing so lawfully. Prayers 2 and 3 of the applicant's notice of motion are predicated on the existence of a power and a lawful process for the Speaker to follow to have the continued suitability of the second respondent as a designee to the JSC considered by the National Assembly. Absent such a power and lawful process, the relief sought cannot be granted. Granting the relief would breach the separation of powers between the judiciary and the legislature.
15. The applicant's case against me is based principally on correspondence exchanged between its attorneys and my office. The applicant alleges that after it wrote to me on 17 November 2025 and again on 31 March 2026, I refused to ensure that the issue of the second respondent's continued designation to the JSC was placed before the National Assembly for consideration.
16. I deny these allegations. I neither refused nor took any reviewable "*decision*" as alleged by the applicant. The correspondence relied on by

 h.7.

the applicant of 30 April 2026 was my response to a demand from a private organisation. There was no decision in it that would be reviewable on the basis that it constitutes administrative action. It determined no rights or obligations. It is also not an instance of a failure to take a decision that is reviewable. My response was that I was not empowered to take the decision sought and to proceed as the applicant wanted me to proceed.

17. I further suggested alternative parliamentary processes which (in line with Parliament's constitutional mandate to regulate its own internal processes) provides for ethical issues of Members of Parliament to be addressed. I pointed out that this process was open to the applicant as a mechanism through which to raise their dissatisfaction regarding the second respondent.³ The applicant opted to ignore this and to approach this Honourable Court rather than to use the parliamentary mechanisms in place by which the same concern could have been raised and addressed.
18. I have no unilateral power to cause the National Assembly to recall or reconsider the continued designation of a member to the JSC in the manner demanded by the applicant.

³ See annexure "HSF19" to FA, wherein the Speaker states, "If at any point, the HSF is of the view that there are further issues relating to Mr Malema's conduct that requires consideration by the Joint Committee on Ethics and Members' Interests, I wish to remind you that provision is made for such further complaints in terms of the Joint Rules regulating the work of that Committee."

 h 7.

19. The applicant's complaint is in substance directed at the internal proceedings of the National Assembly and seeks to undo a political decision taken by the National Assembly as mandated by the Constitution in terms of the designation of Members of Parliament to serve on the JSC. Those matters engage the separation of powers, the National Assembly's constitutional power to regulate its internal arrangements, proceedings and procedures, and the rights and privileges of elected representatives understood within the context of a representative democracy. This Court should decline the invitation to direct the Speaker to initiate or procure a process that the Constitution and Rules do not authorise or require the Speaker to initiate.
20. I further did not "*refuse*" to perform a legal duty as asserted by the applicant. I meaningfully engaged with the applicant's demands fully and in good faith, by way of detailed correspondence on 16 February and 30 April 2026, respectively and explained the correct constitutional and procedural position to the applicant.
21. That the applicant disagrees with my explanations does not result in an unlawful and reviewable decision.
22. Thus, the real dispute in this application is narrow. It concerns the constitutional competence of the Speaker, the internal arrangements and processes of the National Assembly, the separation of powers and whether

 47.

a Court may compel the Speaker to embark upon a particular process directed at the recall of an elected member from the JSC (the designation which is the result of a political decisions taken by the elected representatives as the collective constituting the National Assembly), in circumstances where the Constitution and the Rules do not confer powers on the Speaker to do so.

23. The application lacks any merit.

24. The remainder of this affidavit and my opposition to the relief sought is structured as follows:

24.1. First, it is demonstrated that the Constitution, the Rules of the National Assembly and the Joint Rules do not vest in me the power or duty to initiate the recall or replacement of a National Assembly designee to the JSC on demand by an outside body.

24.2. Second, I deal with the correspondence exchanged with the applicant to show that I did not refuse to decide the second respondent's suitability, nor do my correspondence with the applicant and what I say in it bind the National Assembly.

 h 7.

24.3. Third, I demonstrate that the applicant has not established that I took a decision which amounts to administrative action or any final reviewable decision.

24.4. Fourth, I address the mandatory relief that the applicant seeks and impermissibly intrudes into parliamentary processes and encroaches upon the separation of powers.

24.5. *Finally*, I address the overarching prematurity and impermissible breadth of the applicant's case and the relief sought.

THE LEGAL FRAMEWORK AND THE SPEAKER'S RESPONSE ON THE ALLEGED DUTY

25. I am the presiding officer of the National Assembly elected in terms of section 52 of the Constitution. I am required to act with impartiality in the management of the proceedings of the House.

26. I am not empowered to, at the request of a private organisation, initiate quasi-disciplinary steps against a member of the National Assembly outside the mechanisms provided for by the Constitution, the Rules of the National Assembly and the Joint Rules.

Handwritten signature and initials, likely of the Speaker, in the bottom right corner of the page.

27. In terms of section 57(1)(a) of the Constitution, the National Assembly is empowered to determine and control its internal arrangements and procedures.
28. My role as Speaker is to ensure that those arrangements and procedures are implemented consistently with the Constitution and the Rules which govern the National Assembly.
29. Section 178(1)(h) of the Constitution provides that the National Assembly designates six of its members to the JSC, at least three of whom must be members of opposition parties. Section 178(1)(i) deals with permanent delegates to the NCOP that it may designate to the JSC. These provisions are to be read together with section 47 of the Constitution that speaks to an individual's qualification as a member of the National Assembly.
30. Section 178(3) of the Constitution provides specifically that members of the JSC designated by the NCOP serve until they are replaced together, or until any vacancy occurs in their number. It provides that the other members who were designated or nominated to the JSC serve until they are replaced by those who designated or nominated them. The latter would include members of the JSC designated by the National Assembly.
31. The second respondent was designated in 2014 and again in 2019 and 2024. He serves on the JSC until replaced by the National Assembly or

Handwritten signature and initials, possibly reading 'S. 7.' or similar.

until he loses his membership as per the requirements set out in section 47(3) of the Constitution.

32. Item 20 (4)(h) of the *Code of Ethical Conduct and Disclosure of Members Interests for Assembly and Permanent Council Members to the Joint Parliamentary Rules* ("**the Code**") provides that the Joint Committee on Ethics and Members Interests, established in terms of the Joint Rules of Parliament ("**the Committee**") must recommend such penalty as the Committee may deem appropriate in the circumstances where a member has breached the Code as set out in item 16 of the Code. A copy of the Joint Parliamentary Rules, including Schedule "A": the Code is annexed hereto as annexure "**AD1.**"
33. But neither the latter Code, nor section 178(3), read with section 165(4) of the Constitution imposes a free standing legal duty on the Speaker to ensure, upon demand by the applicant and on the applicant's timetable, to initiate a process to consider the suitability and designation of a particular member for continued designation to the JSC. Nor does it do so in relation to the National Assembly. To the extent that such a power and duty exists on the part of the National Assembly, it would have to be exercised in terms of the Rules of the National Assembly or the Joint Rules.
34. The Constitution prescribes no grounds upon which a designee to the JSC may or must be removed or replaced and further prescribes no process for

 47.

doing so. The Rules of the National Assembly and Joint Rules likewise contain no mechanism for the removal of a designee to the JSC through a process initiated by the Speaker. There can be no duty upon the Speaker to initiate such a partisan and/or disciplinary process without the Constitution and the Rules of the National Assembly or the Joint Rules conferring such a duty and a corresponding power to exercise to fulfil the duty.

35. The applicant incorrectly relies on *Hlophe II*⁴ to establish the latter duty. *Hlophe II* however concerned the lawfulness of the original act of designation of a person who had been impeached as a Judge for gross misconduct. It turned, as that judgment itself records, on facts that were “*unique and exceptional*”.⁵ *Hlophe II* did not establish a general test for the recall of sitting designees, nor did it hold that the Speaker is obliged, on demand, to place a recall motion before the National Assembly in respect of conduct that falls short of a disqualification under the Constitution.
36. To the extent that the applicant contends that a “*fit and proper*” qualification or a recall obligation must be read into section 178, that is a matter for constitutional or legislative amendment and not for interpretation that

⁴ Democratic Alliance v Hlophe and Others (16170/24 ; 16463/2024 ; 16771/2024) [2025] ZAWCHC 234; [2025] 3 All SA 447 (WCC); 2025 (5) SA 166 (WCC); 2025 (10) BCLR 1206 (WCC) (“*Hlophe II*.”)

⁵ *Hlophe II*, at para 46.

 27.

extends beyond the express terms of the provision and the case specific context of *Hlophe II*. Even if a constitutional interpretation of section 178 yielded such an outcome, I would still have no powers conferred by the Constitution or the Rules of the National Assembly and the Joint Rules as the Speaker to initiate such a removal or possible removal. The applicant does not attack the absence of such a power conferred upon the Speaker and a process for the Speaker to exercise the power as unconstitutional and does not seek appropriate relief following upon such a constitutional attack. It proceeds on the acceptance that the current Rules of the National Assembly and the Joint Rules are constitutional and valid.

37. But the implications of the applicant's reading-in or interpretation that imposes the "*fit and proper*" standard extends beyond just the National Assembly's designees. Section 178(1)(h) is not the only provision in terms of which members of Parliament are designated to the JSC. Section 178(1)(i) provides for the designation of four permanent delegates to the National Council of Provinces ("**NCOP**") to the JSC. So do other provisions of section 178(1) in respect of other designees.
38. Consequently, any "*fit and proper*" qualification or recall obligation read into section 178 in respect of the National Assembly's designees under section 178(1)(h) would, on the same reasoning, fall to be applied to the delegates designated under section 178(1)(i) and the other provisions of section 178(1) of the Constitution. That is a further indication that the relief sought

 h. 7.

engages a structural question concerning the composition of the JSC as a whole, which is properly the subject of constitutional or legislative amendment, and is not a duty capable of being imposed upon me in the present application.

39. The applicant's interpretation and imposition of a duty upon the Speaker contended for also ignores the distinction between:

39.1. the National Assembly's institutional power to designate and replace members by way of a political decision in terms of section 178;

39.2. the Speaker's procedural and presiding role within the National Assembly and;

39.3. the parliamentary mechanisms by which motions and decisions are initiated, debated and adopted in the House – which are governed by its Rules as determined under section 57 of the Constitution.

40. Ultimately, the applicant seeks to impose a legal duty on the Speaker that the Constitution does not impose, the Rules do not provide for, and that the separation of powers does not permit.

 h. 7.

Who may initiate a recall motion in the National Assembly

41. In terms of National Assembly Rules 123 and 124, as well as the established practices, motions in the National Assembly are moved by the Chief Whip or a member and not the Speaker.
42. The applicant contends that, in terms of National Assembly Rule 26, the Speaker has the authority to place matters before the National Assembly and that my contrary view reflects an error of law about my own powers.⁶ This contention is incorrect and does not take into consideration the context of the role of the Speaker.
43. National Assembly Rule 26(1)(a) relied upon by the applicant states: *"In exercising the authority of the Speaker, as provided for in the Constitution and legislation and the rules of Parliament, the Speaker must ensure that the National Assembly provides a national forum for public consideration of issues, passes legislation and scrutinises and oversees executive action in accordance with Section 42(3) of the Constitution."* (Emphasis added)
44. The provision applies to the exercise of the Speaker's authority as provided for in the Constitution, legislation and the Rules of Parliament. These are the National Assembly Rules and the Joint Rules. The provision does not

⁶ FA, at para 99.

8 47.

identify the authority in question, let alone empower the Speaker to initiate a process for the possible removal of a designated member to the JSC. It is not itself an empowering provision. It assumes the existence of authority and requires it to be exercised in a manner that ensures that the National Assembly provides a national forum for public consideration of issues, passes legislation and scrutinises and oversees executive action in accordance with Section 42(3) of the Constitution.

45. There is no basis upon which National Assembly Rule 26(1)(a) can be interpreted to vest the Speaker with unfettered powers to move a motion unilaterally or initiate a process not provided for in the Constitution, legislation, the Rules of the National Assembly or the Joint Rules.
46. As set out above, I preside over the National Assembly impartially, in a non-partisan manner, and am responsible for the orderly conduct of its business. I do not initiate substantive political motions of my own accord. A motion to recall and replace a member designated to the JSC is a substantive motion that calls for a political decision to be taken by the House.
47. National Assembly Rule 26, properly interpreted, only describes my general responsibility to ensure that the House provides a national forum for the consideration of issues. It does not empower nor authorise me to

 A. F.

introduce a substantive recall motion, still less to ensure that the NA adopts one.

There is no framework for removal initiated by the Speaker

48. The Constitution and the National Assembly Rules contain no framework and no defined grounds for the removal or replacement of a designee to the JSC by the Speaker.
49. The applicant ought to have followed the advice of the Speaker as per the correspondence of 16 February 2026 on the process to deal with its dissatisfaction or it ought to have accepted that its course of action requires changes to the National Assembly Rules, the Joint Rules, legislation or the Constitution and should have sought appropriate relief in this regard.
50. This is not a theoretical concern. As I explained in the correspondence exchanged with the applicant, the Legislature is obliged to respect the wording of the Constitution and cannot, through interpretation, impose qualifications that the text does not contain. I drew the applicant's attention to the Constitution Twenty-Second Amendment Bill, 2025, introduced for that purpose in my correspondence of 30 April 2026 and I invited the applicant to participate in the public-comment process on that Bill. A copy of my correspondence of 30 April 2026 is annexed hereto as annexure "AD2."

 7.

51. The latter is an appropriate constitutional route to achieve what the applicant wants.

Section 47 of the Constitution and the elected mandate

52. The recall of a member from the JSC engages the elected mandate of that member as a public representative in terms of section 47 of the Constitution.
53. The applicant contends that section 47 confers only eligibility for membership of the National Assembly and that participation in the JSC is a separate privilege contingent on remaining fit and proper, so that no section 47 right is curtailed by a recall.⁷
54. Absent a clear constitutional or legislative framework, the adoption by the National Assembly of criteria that disqualify or remove a sitting member from a position to which the Constitution entitles members of the National Assembly implicates section 47 of the Constitution. This is a further reason why the matter of "*fit and proper*" criteria is one for a constitutional amendment rather than for an order compelling the National Assembly to act in the absence of any framework.

⁷ FA, at para 89.

 h. 7.

55. Moreover, section 47 of the Constitution is concerned only with the criminal disqualification of a member of the National Assembly within clearly set sentencing parameters. Section 47(1)(e) provides for the loss of membership upon conviction of an offence and sentence to imprisonment without the option of a fine, and then only once any appeal has been determined or the time for noting an appeal has expired.⁸ The Constitution contains no equivalent mechanism by which a civil judgment against a member operates to disqualify that member or to require that member's recall from a designation held by virtue of his or her membership of the National Assembly .
56. The conduct on which the applicant relies in respect of the Equality Court proceedings resulted in a civil judgment against the second respondent. It has not previously occurred that a member of the National Assembly has been recalled from the performance of his functions, or from a designation held by virtue of his membership of the National Assembly , on the strength of a civil judgment.
57. To compel the recall of the second respondent from the JSC on the aforementioned basis would be to create a ground of removal that neither

⁸ As at the time of deposition, with regard to the firearms conviction, the second respondent does not fall within the scope of s 47(1)(e) of the Constitution, as *"no one may be regarded as having been sentenced until an appeal against the conviction or sentence has been determined, or until the time for an appeal has expired"*.

 h. 7.

the Constitution nor the National Assembly Rules and Joint Rules recognise, and would do so in respect of conduct that falls short of any disqualification contemplated by section 47 of the Constitution.

58. If the applicant was convinced of its case, it ought to ask the Court to declare that the second respondent is no longer "*fit and proper*" to continue as a designee. It expressly does not go that far.

THE CORRESPONDENCE EXCHANGED BETWEEN THE APPLICANT AND THE SPEAKER

59. On 17 November 2025, the applicant's attorneys addressed a letter to the Chairperson of the NCOP and I. The letter stated that the applicant supported a call by certain civil society organisations for the second respondent to step down from the JSC or for the National Assembly to take steps to remove him.⁹
60. The applicant's letter of 17 November 2025 further called on the NA to decide whether the second respondent was suitable to remain a Commissioner of the JSC and, if not, to take steps to ensure his removal as a designee of the National Assembly to the JSC. The applicant accordingly called on the National Assembly to decide by way of a motion

⁹ Annexure "HSF18" to FA.

 47.

moved by the Speaker, in light of the factors enumerated, whether the second respondent is suitable to remain a commissioner of the JSC and, if not, to take steps to ensure his removal as a designee of the National Assembly to the JSC.

61. On 16 February 2026, I responded. My response recorded *inter alia* that:¹⁰

61.1. Section 178(3) of the Constitution provides for the replacement of members designated to the JSC, but that there is no definition of the grounds on which such members may or must be removed or replaced and that the National Assembly Rules and the Joint Rules provide no direct mechanism for the removal of members designated by the NA to serve as members of the JSC.

61.2. That a motion to remove and replace a member designated to the JSC was not a motion for the Speaker to initiate, given the Speaker's neutral role in managing proceedings of the National Assembly and that such motions stand to be moved by the Chief Whip.

¹⁰ Annexure "HSF19" to FA.

 67.

- 61.3. That the *Hlophe II* judgment was confined to Dr Hlophe's unique facts, lacked any general test, and noted Dr Hlophe's stated intention to appeal, resulting in no settled judicial guidance.
- 61.4. That recalling the second respondent's designation by creating an express rule-based "*fit and proper*" qualification on the National Assembly's constitutional designation mandate could unjustifiably limit his rights in terms of section 47 of the Constitution, in that acting at the time of the correspondence would be premature while his court matters (firearm conviction sentencing set for 23 January 2026, plus appeals) were not yet finalised and noted that the National Assembly has undertaken to implement the 2021 ethics recommendations by the first term of 2026. This does not prevent the House as a collective moving for his removal as a political decision, that motion just cannot come from the nonpartisan incumbent in the Office of the Speaker.
62. The applicant addressed further correspondence on 31 March 2026 in which it disputed my view and requested that I place the matter of the second respondent's continued designation to the JSC before the National Assembly in an appropriate fashion.
63. The applicant persisted that designation is a decision of the National Assembly as a unified body and that section 178(3) implicitly empowers

 47.

and section 165(4) of the Constitution obliges the National Assembly to recall and replace designees whose conduct calls their suitability into question, and that the Speaker has the authority and mechanisms to out of her own accord bring the matter before the National Assembly. The applicant further contended that the absence of explicit recall rules does not absolve the National Assembly of its constitutional duty, since the matter can be handled under the existing rules governing motions and that if it did not receive confirmation by 30 April 2026 that the matter would be addressed appropriately by the National Assembly, it would understand this as a refusal and institute an application to the High Court.¹¹

64. On 30 April 2026, I responded to the applicant's correspondence of 31 March 2026. The decision impugned in prayer 1 of the notice of motion is the decision said to have been taken "*on or about 30 April 2026*". That purported decision is allegedly contained in my letter of 30 April 2026. That letter is however not annexed to the founding papers and is annexed hereto marked as annexure "**AD2**".

65. My correspondence of 30 April 2026 sets out *inter alia*:¹²

¹¹ Annexure "**HSF20**" to FA.

¹² Annexure "**AD2**" to this affidavit.

A handwritten signature in black ink, appearing to be 'A. L. 7.' or similar, located at the bottom right of the page.

- 65.1. That no admission is made regarding the applicant's persistent allegations.
- 65.2. That the National Assembly in 2021 determined sanctions following the Council for the Advancement of the South African Constitution's complaint ("**CASAC 2021**") against the second respondent regarding utterances made during JSC interviews, that based on the clear parameters of the CASAC 2021 complaint the National Assembly (following a tabled report of the Joint Committee on Ethics and Members' Interest reflecting that the second respondent was in breach of the Code of Ethics Conduct and Disclosure of Members' Interest ("**Code**") imposed a sanction against the second respondent, that internal processes are in place for addressing the second respondent's non-compliance with the imposed sanction, and that is not for the Speaker to add onto the CASAC 2021 sanction (resulting from an ethics process that has concluded) based on facts that arose after the CASAC 2021 complaint was processed.
- 65.3. That the role of the Speaker is to maintain order and impartiality, not to initiate new disciplinary processes.
- 65.4. That the demand for removal based on the CASAC 2021 sanction is viewed as an overreach beyond established procedures.

Handwritten signature and initials, possibly reading 'S. 7'.

- 65.5. That the Equality Court's hate speech ruling is outside the scope of the CASAC 2021 complaint. That the Equality Court's decision in the latter regard does not disqualify the second respondent from JSC membership and does not establish a new process for removal from parliamentary committees and that, in this regard, it is recommended that the applicant uses existing parliamentary channels, such as the Joint Committee on Ethics and Members' Interests to address public comments attributed to the second respondent.
66. The applicant's attempt to characterise the correspondence of 30 April 2026 as administrative action and as a reviewable decision is artificial. At most, there was engagement and disagreement between the applicant and I, about the Speaker's powers and role.
67. I deny that my aforementioned responses constituted a refusal to perform a legal duty. The responses were a statement of my understanding of the constitutional and procedural position. It did not decide the second respondent's suitability, nor did it decide that the National Assembly may never reconsider his continued designation.

Handwritten signature and initials, likely of the Speaker, at the bottom right of the page.

NO REVIEWABLE DECISION BY THE SPEAKER EXISTS AND NO GROUNDS OF REVIEW ARE MADE OUT

68. The applicant seeks to review and set aside an alleged “*decision*” taken by me on 30 April 2026. I deny that any such reviewable decision exists and no tenable grounds of review are established by the applicant.

The correspondence of 30 April 2026 is not a “decision” of an administrative nature

69. The 30 April 2026 letter is not a decision of an administrative nature or a decision at all that is adverse to the applicant. The placing of, or refusal to place, a matter before the National Assembly and the National Assembly’s consideration of the designation and recall of its own members in the manner called for by the applicant in the above reference correspondence does not constitute administrative action as defined in the Promotion of Administrative Justice Act 3 of 2000 (“**PAJA**”). It is the exercise of constitutional and legislative power and concerns the internal arrangements of Parliament. Substantively, all I said is that I lack the powers to do what the applicant asked of me in the manner they required. I would have made a decision if I had such powers. I then pointed to who may have the power to assist the applicant in considering the concerns raised within the parliamentary mechanisms and structures available. But the applicant chose to come to Court instead of pursuing the official I pointed out, i.e., the Chief Whip or the Committee that could consider their

Handwritten signature and initials, possibly reading 'S. 7'.

grievance, i.e., the Joint Committee on Ethics and Members' Interests At this point it stand to be highlighted that this honourable court in *Malema v Speaker and Others*¹³ explained that "[w]hilst the Code is not a statute, it is a public policy document of considerable importance". Not to make use of the Code as such an important document open to persons and bodies to rely on for the basis of a complaint as that which substantively informs the applicant's position is an oversight on the side of the applicant.

70. The applicant's own formulation of its relief exposes the problem. The relief is not directed at an existing parliamentary decision about Mr Malema's designation. It is directed at my alleged failure or refusal to ensure that the National Assembly considers the matter of his recall.
71. The 30 April 2026 letter does not decide that the National Assembly may not consider the second respondent's continued designation, nor does it decide that the second respondent is suitable to remain a designee, nor does it decide that no party or member may place a motion or complaint before the National Assembly Rules.
72. A refusal is reviewable only if it is the refusal of a legally operative request under an empowering provision. The applicant has identified no rule or constitutional provision that makes its attorneys' letter a jurisdictional

¹³ *Malema v The Speaker and Others* [2025] JOL 68967 (WCC) 1 at par 16.

Handwritten signature and initials, possibly 'A. 7.', in black ink.

trigger for a formal Speaker's decision and the empowering provision under which I could make the requested decision.

73. At most, the letter states the Speaker's position on the applicant's demand, that the Constitution and existing parliamentary processes do not impose on me the unilateral obligation demanded by the applicant. A statement of constitutional and procedural position in correspondence is not without more, administrative action.

The alleged decision lacks direct, external legal effect

74. The letter has no direct, external legal effect. It changes nothing in law. At most it is an attempt by the applicant to litigate by way of correspondence. The second respondent's position on the JSC is unaffected by the letter, the National Assembly's institutional power under section 178(3) of the Constitution, and the rights and privileges of members and parties in the National Assembly are unaffected by the letter.
75. The letter's practical consequence is only that the applicant was informed that I did not accept its characterisation of my powers and duties. That is not the same as a legally operative decision. Administrative action requires conduct with direct and immediate legal consequences. The 30 April 2026 letter has none of the latter characteristics.

Handwritten signature and initials, possibly 'S' and 'h. 7.', in the bottom right corner.

76. The applicant has attempted to create reviewability by announcing in its own correspondence that, if it did not receive confirmation by 30 April 2026 that the matter would be addressed by the National Assembly, it would understand that as a refusal and institute proceedings, but a private litigant cannot by imposing a deadline and pre-empting disagreement as a refusal, transform a responsive letter into administrative action.

The letter does not adversely affect rights

77. The applicant identifies no right adversely affected by the 30 April 2026 letter itself or that the letter has the capacity to adversely affect any identified rights. The asserted right is framed at a higher level, a public interest entitlement to have the National Assembly comply with the Constitution and consider the second respondent's continued designation. Even if such an obligation were ultimately established, which I dispute, the letter does not itself affect that obligation.
78. PAJA is not triggered by disagreement with a public functionary's legal opinion or procedural stance. There must be an administrative act with legal consequences.
79. The applicant's complaint is, in truth, that the National Assembly has not done what the applicant says the Constitution requires it to do. That complaint cannot be recast as a PAJA review of my correspondence.

 7.

The alleged decision is not an implementation of law or policy

80. The subject matter of the letter itself also confirms that the letter is not administrative action. The applicant seeks to compel an internal process internal to the National Assembly concerning whether a member designated by the National Assembly to another constitutional body should be reconsidered or replaced. That is far removed from the daily functions of the State or the strict implementation of legislation.

81. The matter concerns the management of parliamentary business, my role as the Speaker and presiding officer, the initiation of parliamentary processes, and the National Assembly's internal arrangements. These are questions that relate to the constitutionally sensitive legislative domain. They may, in an appropriate case, be subject to constitutional review, but they are not converted into administrative action merely because they are raised in correspondence with the Speaker.

The letter is not a decision reviewable under the principle of legality

82. The applicant seeks review under the principle of legality as alternative relief.¹⁴ The alternative review relief sought does not cure the threshold defect. Reviews under the principle of legality apply to the exercise of

¹⁴ FA, at paras 97, 102, 104 and 109.

 R.T.

public power. Such exercise must also have finality and be capable of causing prejudice to a party. The letter has none of these attributes.

83. It does not follow that every letter written by a public office holder is an exercise of public power susceptible to review.
84. The 30 April 2026 letter does not exercise public power. It did not bind the National Assembly nor did it bind the applicant. It further did not finally dispose of a request placed before the National Assembly under a recognised parliamentary procedure and did not close any statutory or constitutional process.
85. The applicant may aver that my letter had a practical effect because it indicated that I would not initiate the process it wanted, but the applicant's disappointment is not a legal effect. Reviews under the principle of legality are not a mechanism to review every refusal by a public office bearer to accede to a request made by a private organisation, particularly where the request is the initiation of constitutionally sensitive parliamentary proceedings when the functionary has no power to act in the manner requested.
86. I am advised that it is trite that the test in reviews under the principle of legality is whether there was a legally defined power or duty that I exercised or failed to exercise in a manner with legal consequences. The applicant



points to no provision that requires me, upon demand by an outside private body, to place before the National Assembly the question whether an existing JSC designee should be recalled or replaced, nor does the applicant identify a rule under which its correspondence triggered a formal decision-making process by the Speaker.

87. The absence of such a power or duty is fatal to the attempt to characterise the letter as a decision that is reviewable under the principle of legality. The letter is, at most, evidence of the Speaker's position in response to the applicant's threatened litigation. It is not itself the legal act that can be reviewed and set aside.

Hlophe II does not make the Speaker's letter reviewable

88. The applicant's reliance on *Hlophe II* should be confined to what that case decided.
89. I am advised that in *Hlophe II*, the National Assembly had taken a completed decision to designate Dr Hlophe to the JSC, and the Court considered the lawfulness of that designation decision. It did not decide that every subsequent correspondence from the Speaker concerning a public request for reconsideration of a designation is administrative action.

Handwritten signature and initials, possibly "A. L. 7."

90. I am further advised that the distinction between the facts in *Hlophe II* and the matter at hand is decisive. A designation by the National Assembly under section 178(1)(h) of the Constitution is a formal act of the National Assembly with legal consequences. It changes the composition of the JSC and authorises the designated member to participate in JSC processes. By contrast, the Speaker's 30 April 2026 reply did not change the composition of the JSC, did not designate or replace anyone, and did not exercise section 178(3) powers.
91. *Hlophe II* moreover, did not hold that the Speaker has a free-standing duty to initiate or procure a recall process on demand. That case concerned an exceptional factual situation, i.e., the original designation of a former judge who had been impeached for gross judicial misconduct serving on a body that appoints members of the judiciary, the argument being that the impeached judge himself falls short of the standard that he would be measuring others against for judicial appointment. The present application concerns an attempt to compel the Speaker to trigger a reconsideration process after designations and in circumstances where the Constitution and Rules prescribe no dedicated or direct recall mechanism.
92. Even if the applicant were correct that the National Assembly bears some duty to consider continued suitability in appropriate circumstances, that would not make my letter an administrative action. The alleged duty would

 87.

be an institutional duty of the National Assembly, not a unilateral administrative duty of mine arising from a letter of demand.

93. In the circumstances, the applicant's remedy lies in engaging the political parties represented in the National Assembly, invoking any available parliamentary mechanisms, or lodging any appropriate complaint under the applicable parliamentary rules (such as that reflected in the Code, a schedule to the Joint Rules) as advised in my correspondence for the outcome it seeks. It does not lie in demanding that the Speaker must *mero motu* initiate or ensure a process outside the scope of the Speaker's powers under the Constitution, legislation, the National Assembly Rules or the Joint Rules.

SEPARATION OF POWERS

94. The relief sought against the first respondent and the National Assembly encroaches on the separation of powers directly. The manner in which the National Assembly arranges its internal affairs, the motions it permits and the processes by which it considers and decides questions concerning its own members, as constitutionally mandated, are matters falling within the exclusive domain of the legislative branch. The Courts have repeatedly held that they will not dictate to Parliament how it should arrange or conduct its internal affairs.

 b.7.

95. The applicant's relief asks the Court to require the National Assembly to consider the continued designation of a named member to the JSC within a judicially fixed period. That relief is not merely declaratory; it is a mandatory intervention into the initiation and substance of parliamentary affairs.
96. For that reason, an order directing the Speaker or the National Assembly to place a particular matter before the NA within a fixed period or to embark upon a recall process, for which the Constitution and the Rules make no provision, would be a significant judicial intrusion into the internal processes of the legislature and would not be just and equitable.
97. Moreover, such an order would have significant consequences for the internal functioning of the National Assembly, it would invite private organisations to demand that I place matters before the National Assembly for consideration whenever it is contended that a member is unsuitable for a parliamentary designation. The latter is inconsistent with my neutral role and with the National Assembly's entitlement to regulate its internal arrangements.
98. It would be different if there was an identified power under the Constitution, legislation or the National Assembly Rules or the Joint Rules for the Speaker to act; where the Speaker has refused or unreasonably failed to act; and all the applicant seeks is an order by the Court directing that the

 7.

Speaker must consider the matter in the exercise of her discretion and act. If the Speaker then acted and the applicant was aggrieved, the Court could consider the matter on review. This is not such a case.

THE APPLICATION IS PREMATURE AND OVERLY BROAD

99. The applicant's founding affidavit relies substantially on allegations arising from criminal proceedings, hate speech proceedings, media reports, and earlier parliamentary ethics proceedings, i.e. CASAC 2021, involving the second respondent.
100. My correspondence of 16 February 2026 recorded that certain court processes were underway, and the applicant itself records in its founding affidavit that the second respondent has noted an appeal against the sentence and has applied for leave to appeal against the conviction in his criminal proceedings. Such facts trigger the qualification reflected in section 47(1)(e) of the Constitution, a qualification that the drafters of the Constitution clearly regarded as important and necessary enough to expressly articulate.
101. The applicant also records that, depending on the appellate process, the second respondent's membership of the National Assembly may be

 27.

affected by section 47(1) of the Constitution, which would have consequences for his membership of the JSC.¹⁵

102. In these circumstances, the applicant's demand for urgent mandatory intervention is premature.

103. It was accordingly reasonable for me in both correspondence of 16 February 2026 and 30 April 2026 to take into account the absence of finality in relevant proceedings and the absence of a specific rule-based process requiring immediate action by me and/or the National Assembly. It remains rational to have regard to the state of finality in the aforementioned proceedings to fairly assess the parties' positions.

104. Further, the National Assembly has taken steps to ensure that the recommendations of the Joint Committee on Ethics and Members' Interests arising from the CASAC 2021 report concerning the second respondent are implemented, as follows:

104.1. On 7 December 2021, the National Assembly adopted the Report of the Joint Committee on Ethics and Members' Interests concerning the complaint against the second respondent and resolved to impose on him the sanction that he enter an apology

¹⁵ FA, at paras 20 and 82.2.

 7.

in the National Assembly, specifically apologising to Judge Matojane and the JSC in respect of his question to Judge Matojane during the interview process relating to the order to pay the quantum of R500 000 damages for the defamation of Mr Trevor Manuel. The relevant Minutes of Proceedings of the National Assembly of 7 December 2021 are annexed hereto, marked as annexure "**AD3**".

104.2. On 26 January 2022, the then Speaker of the National Assembly communicated the latter resolution of the National Assembly to the second respondent and called upon him to take the necessary steps to comply with it by no later than 28 February 2022. A copy of that correspondence of 26 January 2022 is annexed as annexure "**AD4**".

104.3. The second respondent thereafter served Parliament with an urgent application on 14 February 2022 seeking to restrain the implementation of the resolution pending a review of the decision. This Court dismissed that application on 21 May 2025 in the above referenced *Malema v Speaker and Others*,¹⁶ with the result that

¹⁶ *Malema v the Speaker and Others* [2025] JOL 68967 (WCC) 1.

 7.

the resolution of the National Assembly remains binding upon the second respondent as a sitting member of the National Assembly.

104.4. Following the dismissal of those proceedings, on 4 December 2025, I addressed further correspondence to the second respondent directing him to enter the apology in the National Assembly by no later than 27 February 2026. A copy of this correspondence is annexed as annexure "**AD5**". The second respondent failed to comply by that date.

104.5. In consequence of the second respondent's failure to comply, on 9 June 2026, I referred the conduct of the second respondent to the Powers and Privileges Committee, in terms of National Assembly Rule 214(1) read with section 12 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 for consideration and report. The referral is annexed hereto as annexure "**AD6**".

104.6. The aforementioned processes are ongoing, and the matter is accordingly being addressed through the established parliamentary processes.

105. The steps set out above demonstrate that the conduct of the second respondent arising from the CASAC 2021 report of the Joint Committee on

Handwritten signature and initials, possibly "A. 27."

Ethics and Members' Interests and the second respondents consequential undermining of parliament's authority in terms of the imposed sanction is already being addressed through an ongoing parliamentary process. The latter process is presently underway and has not yet been concluded.

106. In light of this state of affairs, the urgent mandatory relief sought by the applicant is premature. To grant the relief sought in these circumstances would be to compel a duplicative and premature intervention into a live parliamentary process, before the existing processes have been permitted to run their course. The appropriate course is to allow those processes to be completed.

THE CHALLENGE TO THE JSC ACT

107. The relief concerning the constitutional validity of the JSC Act, and the proposed reading-in of a new section 6A, is directed principally at the third and fourth respondents. I am advised that the fourth respondent abides by the decision of the Court regarding the relief sought in respect of the challenge to the JSC Act. I do the same, save to state the following:

- 107.1. To the extent that the proposed reading-in and the period of suspension of any declaration of invalidity affect Parliament's legislative competence, the first respondent supports affording Parliament an adequate opportunity to consider and, if

Handwritten signature and initials, possibly "S. 27".

appropriate, to cure any defect found in accordance with the separation of powers.

107.2. The first respondent abides and supports a period of suspension of not less than 24 months in respect of any declaration of invalidity.

AD SERIATIM RESPONSE

AD PARAGRAPHS 1 TO 9

108. Save to deny that the content of the founding affidavit is true and correct, the content of these paragraphs is noted.

AD PARAGRAPHS 10 TO 11

109. The content of these paragraphs is admitted.

AD PARAGRAPHS 12 TO 12.3

110. Save to admit that the issues in these paragraphs are in dispute in the application, it is denied that the applicant has established the legal and factual bases for relief.

R. 12.1

AD PARAGRAPHS 13 TO 20

111. Save to admit that the second respondent is a member of the National Assembly designated to the JSC, the importance of the JSC and the importance of an independent and respected judiciary, the remaining contents of these paragraphs are matters within the knowledge of the second respondent and are not admitted for purposes of this application. They fall to be fully addressed by the second respondent should he be so advised.

AD PARAGRAPHS 21 TO 22

112. The contents of these paragraphs are admitted insofar as they accord with the express wording of section 178(1)(h) of the Constitution.

AD PARAGRAPHS 22.1 TO 22.4

113. Save to deny that section 178(3), whether read alone or with section 165(4), of the Constitution, imposes upon me a free-standing legal duty to ensure, upon demand by the applicant and on the applicant's timetable, that the National Assembly initiates a process to reconsider or recall the designation of a particular member, I admit that a member designated to the JSC has no vested right to retain that position and that the National Assembly is empowered by section 178(3) of the Constitution to replace its designees.

 7.

114. I further deny that the applicant's reliance on *Hlophe II* is well-founded for the reasons already set out above.

AD PARAGRAPHS 23 TO 26

115. Save to deny that I refused to perform any legal duty, that I took any reviewable decision, or that the National Assembly failed to fulfil any obligation owed to the applicant and that the applicant is entitled to the relief sought, I admit that the applicant addressed correspondence to me calling upon the National Assembly to consider the second respondent's continued designation to the JSC and I admit that the applicant does not ask this Court to decide the second respondent's suitability to remain a designee.

AD PARAGRAPHS 27 TO 27.6

116. The content of these paragraphs is noted, and I abide the Court's decision in respect of the relief sought relating to the JSC Act.

AD PARAGRAPHS 29 TO 35.2

117. Save to deny that the applicant has the necessary standing and interest to compel me to initiate or procure the process it demands, the remaining content of these paragraphs is noted.

AD PARAGRAPHS 36 TO 65

118. Save to admit the central role of the judiciary in our constitutional democracy, the importance of an independent, impartial and respected judiciary, the importance of the JSC and of the appointment of judges who meet the "*fit and proper*" standard, and the principle that the National Assembly, in designating its members to the JSC, must act lawfully and

 47.

rationality and must have regard to whether its designees are "*fit and proper*", the remaining content of these paragraphs is denied on the basis set out in this affidavit.

AD PARAGRAPHS 66 TO 83

119. Save to admit that the National Assembly adopted the Report of the Joint Committee on Ethics and Members' Interests concerning the complaint against the second respondent, that sanctions were determined in consequence, and that, as set out in the body of this affidavit and in my correspondence, the National Assembly has taken steps to ensure that the recommendations arising from that report are implemented and that the sanctions imposed are being enforced and the matter is being addressed through the established parliamentary processes, the remaining content of these paragraphs is matter within the knowledge of the second respondent and, to the extent that they are matters of public record, the records and reports concerned are self-explanatory.
120. The specific steps taken to implement and enforce the sanction imposed on the second respondent are set out in this affidavit and in annexures "**AD3**" to "**AD6**" attached.
121. The concerns underlying the present application were also raised with me by CASAC. In a letter dated 28 April 2026, CASAC renewed its concern regarding the second respondent's continued membership of the JSC and requested the National Assembly to reconsider his designation. A copy of CASAC's letter of 28 April 2026 is annexed as annexure "**AD7**".
122. I responded to CASAC on 20 May 2026, explaining, for substantially the reasons set out in this affidavit, that I was unable to give effect to the request that the specific question of the second respondent's designation

Handwritten signature and initials, possibly "J. L. 7.", in black ink.

to the JSC be tabled before the National Assembly. A copy of my response to CASAC on 20 May 2026 is annexed as annexure "AD8."

123. Save as aforesaid, I deny that the matters set out in these paragraphs establish any legal duty resting on me of the kind contended for by the applicant, or that they render my correspondence a reviewable decision.

AD PARAGRAPHS 84 TO 96

124. The content of these paragraphs is addressed above.

AD PARAGRAPHS 97 TO 109

125. The content of these paragraphs is denied and is addressed above.

AD PARAGRAPHS 110 TO 113

126. The content of these paragraphs is denied. I deny that the applicant is entitled to the mandatory relief sought against the National Assembly. An order directing the Speaker or the National Assembly to place a particular matter before the National Assembly within a fixed period, or to embark upon a recall process for which the Constitution and the Rules make no provision, would constitute an impermissible intrusion into the internal processes of the legislature and would not be just and equitable. I repeat that the relief is overbroad, vague and intrusive.
127. I admit the content of paragraph 113, namely that the applicant proceeds with its review under Rule 6 and waives any entitlement to a record under Rule 53.

 h 7.

AD PARAGRAPHS 114 TO 135

128. The content of these paragraphs is noted. It concerns the alleged constitutional deficiency of the JSC Act, the absence of a code of conduct for commissioners of the JSC, the correspondence and submissions addressed to the JSC, and the remedy sought in that regard. This relief is directed principally at the third and fourth respondents, and the factual averments concerning the JSC and the submissions made in that regard are within the knowledge of those respondents.
129. I have already indicated my position regarding the challenge to the JSC Act. I repeat what I have said above.

AD PARAGRAPHS 136 TO 138

130. The contents of these paragraphs are denied and the applicant is put to the proof thereof.

CONCLUSION

131. For the reasons set out above, I respectfully submit that the application against the first respondent ought to be dismissed. I did not act unlawfully. I engaged fully with the applicant at all material times and stated the correct constitutional position as advised.
132. The relief sought would intrude impermissibly upon the internal processes of the National Assembly and the separation of powers. Even if the applicant succeeded in establishing a basis for relief, the relief sought is not appropriate and ought not to be granted. Further submissions will be made at the hearing of the application in this regard.

 47.

133. In the circumstances, I respectfully submit that this application ought to be dismissed with costs, including the costs of two counsel.

Angela Thokozile Didiza
DEPONENT
ANGELA THOKOZILE DIDIZA

SIGNED AND SWORN TO BEFORE ME AT CAPE TOWN ON THIS THE 10
DAY OF JULY 2026, the deponent having acknowledged that she knows and
understands the contents of this affidavit, that she has no objection to taking the
prescribed oath and that she considers the oath to be binding on her conscience.

James Wallaue Sleigh Smuts
194616325
JWS Smuts

COMMISSIONER OF OATHS

Full names: James Wallaue Sleigh Smuts

Capacity: SAPS Warrant officer

Address: Good Hope Building, Parliament, Cape Town

