

**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
DEVELOPMENT**

Fourth Respondent

**ALL PARTIES REPRESENTED IN THE NATIONAL
ASSEMBLY**

Fifth and further
Respondents

SECOND RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

JULIUS SELLO MALEMA

do hereby make oath and say that:

1. I am an adult male and the Commander-in-Chief of the Economic Freedom Fighters ("EFF"). I am also a Member of Parliament, serving in the National Assembly. The EFF is a registered political party, having its national office situated at Winnie Madikizela Mandela House, 119 Marshall Street, Marshalltown, Johannesburg. I am the Second Respondent in this application.
2. Save where otherwise stated, the facts deposed to in this affidavit are within my personal knowledge and are, to the best of my belief, both true and correct.
3. Where I make legal submissions, I do so on the basis of legal advice given to me by my legal representatives.
4. I have read the Applicant's founding affidavit deposed to by Naseema Fakir. I oppose the relief sought by the Helen Suzman Foundation ("HSF") and I respond thereto as set out below.
5. Unless specifically admitted, I dispute each and every averment and legal conclusion which is inconsistent with the position set out in this answering affidavit, as if specifically traversed.

STRUCTURE OF THIS AFFIDAVIT

6. This affidavit is structured as follows:

6.1. I provide a short introduction.

6.2. I set out the grounds of my opposition.

6.3. I say why there is no live issue for determination before this Court.

6.4. I explain why the relief sought by HSF violates the doctrine of separation of powers.

6.5. I explain why the comments I made about the judiciary is protected political speech and falls within my right to freedom of expression.

6.6. I provide an *Ad seriatim* response to the founding affidavit.

6.7. I deal with costs; and

6.8. Lastly, I set out my conclusion.

INTRODUCTION

7. In June 2014, I was appointed by the National Assembly to serve as one of its six designated members to serve on the Judicial Services Commission ("JSC"). I am one of the three designated members who are drawn from the opposition parties represented in the National Assembly. I was re-appointed to serve in this capacity by the National Assembly in 2019 and once more in 2024. I continue to serve in this capacity on the JSC.

8. The HSF impugns statements I made to support the grant of the relief that it seeks. These statements I made from 2019 until 16 April 2026. In particular, the HSF says that the statements I made after my recent criminal conviction on 16 April 2026, requires the National Assembly to consider whether my continued membership of the JSC is tolerable (FA, para 16).
9. The statements that the HSF seeks to rely on, is protected speech. I elaborate on this more fully below.
10. While I accept that our legal system permits any interested party from bringing a dispute to Court, this case is nothing more than an abuse of court process. I do not say this lightly. If HSF truly had a genuine, bona fide concern that my statements bring the National Assembly, the JSC and the appointment of the judges into disrepute, the question arises as to why this application was not brought at an earlier stage. The HSF's failure to bring this case, even as far back as 2019, speaks to the HSF's ulterior purpose to target my membership, as a leader of the opposition, to sit on the JSC. It is also an attempt to stifle my ability to make political speech and to restrain my freedom of expression. I invite this Court to take this into account when it considers the issue of costs.
11. I deny that my statements unfairly maligns and undermines the credibility of our judges and the judiciary (FA, para 14).
12. As a member of the National Assembly I have taken an oath of office to uphold the Constitution and the rule of law. I take my responsibility as the leader of the EFF, a member of the National Assembly and as a member of the JSC very

seriously. I accept that the views that I express are not popular. However, that does not mean that I should be silenced because my views are unpopular.

THE GROUNDS OF OPPOSITION

13. I oppose the grant of the relief sought on the following grounds:

13.1. HSF's application seeks to have me removed from the JSC HSF has not made out a proper case for this remedy, let alone that this relief is not available as a matter of law.

13.2. The factual basis on which HSF brings this application does not support the extraordinary relief sought. The case does not present a live issue for determination by this Court and/or will have no practical effect. The matter is moot. On this ground alone, the application falls to be dismissed with costs.

13.3. The relief that HSF seeks is extensive and extraordinary. The relief is impermissible because it violates the separation of powers doctrine. With respect, the relief that HSF is seeking effectively amounts to this Court telling the National Assembly how to do its work.

13.4. Similarly, this Court cannot take over the functions of the Legislature. Yet this is precisely what HSF is asking this Court to do. If there are gaps in existing legislation it is for the Legislature to determine firstly whether the gap exists and secondly whether new laws should be put in place to regulate the gap.

13.5. HSF has not made out a proper case for the reading-in relief relating to

the Judicial Service Commission Act no 9 of 1994 ("the JSC Act").

13.6. The statements that I made, which HSF takes issue with in its founding affidavit, were made as protected speech in the context of robust political discourse. My right to make political speech is protected by my constitutional right to freedom of expression.

THERE IS NO LIVE ISSUE FOR DETERMINATION

14. The HSF appears to rely on statements that I made about the judiciary from 2019 until 16 April 2026 to seek the relief that it does. It seems to me that HSF's complaint cannot truly be about statements that I made before 16 April 2026. I say this because HSF only brings this application after I made my statements on 16 April 2026. The present application was served on me on 15 May 2026 and a copy reached my attorneys of record on 18 May 2026. It seems obvious that my statements made on 16 April 2026 precipitated this application. There can be no other explanation.
15. I have applied for leave to appeal against my conviction and sentence, as handed down by Magistrate Twanet Olivier sitting in the KuGompo City Regional Court. That conviction is the primary basis for HSF's application. My suitability to serve on the JSC does not arise, because the appeal proceedings have not yet been finalised.
16. The Speaker and the National Assembly cannot be ordered by this Court, to consider my suitability to serve on the JSC until and unless the appeal processes have been exhausted and the last appeal Court upholds my conviction and

sentence. Similarly, the only factual basis that the HSF can rely on to seek the reading-in relief, into the JSC Act, is again pegged on my suitability to serve on the JSC. As the appeal processes are still to run their course, it is premature at this point for this Court to consider this application. There is no live issue that presents for this Court's determination. The matter is not ripe for decision and on this ground alone, the application should be dismissed with costs.

THE RELIEF SOUGHT VIOLATES THE SEPARATION OF POWERS

17. The National Assembly's powers and functions flow directly from the Constitution. Section 43(a) of the Constitution provides that the legislative authority of the national sphere of government is vested Parliament. Section 42(1) of the Constitution provides that Parliament consists of the National Assembly and the National Council of Provinces. Section 57 of the Constitution provides that the National Assembly may determine and control its internal arrangements, procedures and proceedings.
18. HSF seeks an order to impose a legal duty on the National Assembly to consider and decide whether its designees to the JSC remain suitable and if not, whether that designee should be replaced. I am advised that the duty HSF relies upon, does not exist in the Constitution or in the JSC Act. What HSF is asking for, is for this Court to step into the shoes of Parliament and to create this obligation on the National Assembly. This trenches upon the National Assembly's autonomy to regulate its own internal affairs.
19. I am advised that the frontal constitutional challenge is untenable and that this

point will be developed during argument.

NO BASIS HAS BEEN MADE OUT FOR THE GRANT OF THE READING-IN RELIEF

20. I have been advised that this Court may grant reading-in relief, as part of its power to make an order for just and equitable relief under section 172(1)(b) of the Constitution. I am further advised that reading-in relief is not there for the mere taking and a proper basis must be made for reading-in.
21. From HSF's own version, it has been writing to the JSC since February 2022 with the request that the JSC adopt a Code of Conduct for Commissioners (FA, para 121). The JSC's alleged failure to respond does not mean that the next step is to get a court order reading in the provision.
22. The adoption of a Code of Conduct for Commissioners cannot be achieved by reading one word, or one phrase into the existing JSC Act. There is no existing obligation on the JSC to adopt such a Code of Conduct. The Court would not be building on an existing provision to craft the reading-in order. Instead, the Court will be writing a new law by creating the obligation on the JSC. This Court is not well-suited to create this new law. The new section 6A proposed by HSF is extraordinary and far-reaching. The Legislature is best placed to decide whether such an obligation should be created and if so, what form and content that obligation should take. It is for the Legislature to decide first, whether such an obligation should be created on the JSC. It is, with respect not for HSF to try to achieve its ends through the Courts when its efforts to engage with the JSC since 2022 have yielded no response.

MY COMMENTS ARE PROTECTED POLITICAL SPEECH

23. The statements that I made from 2019 until 16 April 2026 were made as protected speech in the context of robust political discourse. They do not meet the prohibited speech in terms of section 16 of the Constitution. My right to make political speech is protected by my constitutional right to freedom of expression.

24. Our Courts have recognised that political debate in our country is robust. In *The Citizen 1978 (Pty) Ltd v McBride* 2011 (4) SA 191 (CC), the Constitutional Court held that political debate in South Africa has always been robust. The Constitutional Court held further at paragraph 100 that:

"Public discussion of political issues has if anything become more heated and intense since the advent of democracy. A constitutional boundary is the express provision in the Bill of Rights that freedom of expression does not extend to hate speech. Another is the legitimate protection afforded to every person's dignity, including their reputation. But, so bounded, it is good for democracy, good for social life and good for individuals to permit maximally open and vigorous discussion of public affairs." (emphasis added).

25. In *Economic Freedom Fighters and Another v Minister of Justice and Correctional Services and Another* [2020] ZACC 25 2021 (2) BCLR 118 (CC); 2021 (2) SA 1 (CC); 2021 (1) SACR 387 (CC) (27 November 2020), Judge Majiedt re-stated the nature of this robust political debate when he summarised the existing Constitutional Court judgments as follows at para 126:

"This is not to say that robust political debate must be stifled, particularly regarding the current highly emotive topic of land reform. Far from it – as is well-known, public debate in our country has always been very

robust. This was so even under apartheid's narrowly delineated bounds of racially demarcated public life. Thus, in *McBride*, this Court referred to Pienaar where, regarding political debate in this country, the court said that "[s]trong epithets are used and accusations come readily to the tongue". The Court also said that some leeway was warranted, "because the subject is a political one, which had aroused strong emotions and bitterness", of which readers were aware and that they "would not be carried away by the violence of the language alone". As Cameron J pointed out in *McBride*, public debates have "if anything become more heated and intense since the advent of democracy". In *Democratic Alliance*, this Court emphasised the "importance, both for a democracy and the individuals who comprise it, of being able to form and express opinions – particularly controversial or unpopular views, or those that inconvenience the powerful". (footnotes omitted).

26. In *Islamic Unity Convention v Independent Broadcasting Authority* [2002] ZACC 3; 2002 (4) SA 294 (CC); 2002 (5) BCLR 433 (CC) (*Islamic Unity*) at para 26, the Constitutional Court held that:

"Freedom of expression is applicable, not only to information or ideas that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the state or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no democratic society." (emphasis added).

27. In *Afriforum v EFF and Others* [2024] 3 All SA 319 (SCA), the SCA explained that the nature of my political speech must be located within the context of the EFF's political ideology. The SCA held as follows at paras 95 and 96:

"

The reasonably informed person would also know that the EFF is a registered political party that competes for seats at all levels of government. The EFF is a very active political party, and its manifesto and pillars of the EFF's political ideology are no secret to the general public. The reasonably well informed person would know that the EFF is a leftist-aligned party, with a particular concern for the struggle to overcome economic and land injustice in South Africa. He or she would know that the party, and its leader, Mr Malema, are very outspoken on these issues. They would know that Mr Malema is often labelled as a populist politician and that he is known not to mince his words."
(emphasis added).

28. My comments about judges and magistrates must be understood against the backdrop of the existing court judgments. Based on the legal principles set out in the above cases, I maintain that my statements were made as political speech in the context of robust political debate. My statements may not be popular but the reasonable listener would know that I am very outspoken and I am known not to mince my words.

AD SERIATIM RESPONSE TO THE FOUNDING AFFIDAVIT

29. I proceed to respond to HSF's founding affidavit. Where any of HSF's allegations, which are inconsistent with the contents of this Answering Affidavit, have not been dealt with directly under reply below, such allegations are denied.

30. Ad para 1

- 30.1. I admit the allegations contained in this paragraph.

31. Ad para 2

31.1. Save to deny the contents of the affidavit are true and correct, I note the remainder of the allegations in this paragraph.

32. Ad para 3

32.1. I admit the allegations contained in this paragraph.

33. Ad paras 4 - 9

33.1. I admit the allegations contained in these paragraphs.

34. Ad paras 10 - 11

34.1. I admit the allegations contained in these paragraphs.

35. Ad paras 12, 12.1; 12.2 and 12.3

35.1. To the extent that the relief described in these paragraphs is consistent with the terms of the notice of motion, same is noted.

35.2. I deny that HSF has made out a case for the relief sought.

35.3. As set out above, the relief sought is extraordinary and violates the separation of powers doctrine. The imposition of a duty on the National Assembly to consider the suitability of its designees to the JSC violates the autonomy of the National Assembly to regulate its own internal affairs. This Court must, with respect, show fidelity to the political choices made and expressed in the Constitution itself. This Court ought to be slow to be

drawn into the debate about whether an obligation ought to be imposed on the National Assembly as pleaded by HSF in paras 12.1 and 12.2.

35.4. The failure of the JSC Act to expressly provide for a Code of Conduct for its Commissioners is a matter that falls within the remit of the Legislature for decision. I caution to add that the creation of a new section 6A into the JSC Act is drastic relief. There is currently no such provision in the statute and the Court would in effect become the Legislature on this issue. The Court's reading-in order will not be bridging a gap – it will be creating a new section into the JSC Act. This would amount to a breach of the separation of powers doctrine as the Court will be entering the terrain of the Legislature and it will also amount to judicial over-reach.

36. Ad paras 13, 13.1 and 13.2

36.1. Save for admitting that I sit on the constitutional body that appoints judges, I deny the remaining allegations contained in these paragraphs.

36.2. I maintain that my statements amount to robust political speech. My statements may be unpopular but my right to freedom of expression protects my statements. Our Courts have recognised in the *Afriforum* and *Gordhan* judgments that the reasonable listener will be aware that I lead a political party that is leftist-aligned and that I do not make popular statements.

37. Ad para 14

Save for admitting that I sit on the body that constitutionally appoints

judges, I deny the remaining allegations in this paragraph.

38. Ad para 15

38.1. I admit the allegations in this paragraph.

39. Ad para 16

40. I deny the allegations contained in this paragraph. The Constitution does not create an obligation for the National Assembly to consider my suitability to represent the National Assembly on the JSC, in my capacity as leader of one of three opposition parties. What HSF is asking for, is for this Court to amend the Constitution through a Court order. This with respect is extreme relief and this Court should be slow to exercise this power.

41. Ad para 17

42. I deny the allegations in this paragraph. While HSF claims to make no comment about my political or social views or that of the politics of the EFF, it is apparent that the HSF finds my statements about judges and magistrates, uncomfortable and unpopular. The essence of this case is directed against my right to freedom of expression and the exercise of my right to make political speech. The HSF cannot claim that it is making no comment about my political views or that of the EFF when this very case demonstrates that my political speech has made the HSF uncomfortable and it has launched litigation to attempt to unseat me from the JSC. The Constitution itself bestows the right on leaders of three opposition parties to sit on the JSC. The HSF's case must overcome this high threshold if it

has to succeed.

42.1. I have no knowledge about what views the HSF holds in relation to the exercise of the right to freedom of expression.

43. Ad para 18

43.1. I have no knowledge about what views the HSF holds and cannot respond to the allegations contained in this paragraph.

44. Ad para 19

44.1. I admit the allegations in this paragraph but must amplify that it is my leadership of an opposition party which forms the basis of the National Assembly nominating me to serve as one of its designated representatives on the JSC.

45. Ad para 20

45.1. Save for admitting that I have recently been convicted and sentenced to an effective five years imprisonment and that I have applied for leave to appeal against my conviction, I also amplify that I have been granted leave to appeal my sentence.

45.2. HSF has left out the material fact that I have been granted leave to appeal my sentence.

45.3. I deny the remaining allegations contained in this paragraph.

45.4. The HSF says in one breath that this application is not concerned about

my current membership of the JSC but at the same time it seeks orders in the notice of motion, reviewing and setting aside a decision taken by the Speaker and a failure by the National Assembly to take a decision about my suitability to serve on the JSC. HSF pertinently seeks an order under prayer 3, directing the National Assembly to consider whether to replace me as one of its designees to the JSC within 20 court days of this Order. Based on the orders that HSF seeks, it is plain to see that this case is concerned about my membership of the JSC.

46. Ad para 21

- 46.1. I admit the allegations in this paragraph.
- 46.2. **Ad paras 21.1, 21.2, 21.3 and 22** To the extent that the allegations made in these paragraphs are consistent with the findings made by this Court in *Hlophe II*, I admit these allegations.
- 46.3. I am advised however, that HSF's reliance on the *Hlophe II* decision has no relevance to the present application. The facts that prevailed in the *Hlophe II* High Court decision differ markedly from the case that is before this Court.
- 46.4. I am also advised that Dr Hlophe had expressed an intention to take the *Hlophe II* judgment on appeal. The HSF's reliance on this Court's findings in *Hlophe II* cannot be definitive.

47. Ad para 22.2

47.1. While section 178(3) of the Constitution provides for the power to replace a designated member, I deny that power gives rise to a constitutional duty as pleaded by HSF in para 22.2.

47.2. The National Assembly's decision to consider the suitability of a member who has already been designated to serve on the JSC, falls to be dealt with under section 57 of the Constitution, which empowers the National Assembly to determine and control its own internal arrangements, proceedings and procedures. I refer to Parliament's press release issued on 3 June 2025 to support this interpretation. A copy of the press release is attached marked as annexure "JM 1".

47.3. The National Assembly has no rules to deal with the removal of its designated Member from the JSC.

48. Ad paras 22.3 and 22.4

48.1. I deny the allegations contained in these paragraphs.

48.2. I am advised that HSF appears to be relying on this Court's decision in *Hlophe II* to support its allegations as pleaded in these paragraphs.

48.3. The facts in *Hlophe II* are materially different from the facts in the present application. Any appeal that Dr Hlophe may have lodged against this Court's judgment in *Hlophe II* means that this Court's findings are not final.

49. Ad para 23

49.1. Save for denying that the Speaker's refusal is unfounded and unlawful, I admit the remaining allegations in this paragraph.

50. Ad para 24

50.1. I deny these allegations.

51. Ad para 25

51.1. To the extent that these allegations are consistent with the orders sought in the notice of motion, same is noted.

52. Ad para 26

52.1. I deny the allegations contained in this paragraph.

52.2. HSF is trying to water down the relief that it is seeking in this matter.

52.3. The relief that the HSF seeks does impugn my suitability to sit on the JSC. The HSF is starting off on the basis that there are grounds to warrant that the National Assembly is obliged at this stage to consider whether I am suitable to remain as one of its six designated members on the JSC. The relief sought by the HSF cannot be separated from an underlying factual basis that my conduct is objectionable.

53. Ad para 27

53.1. I deny the allegations contained in this paragraph.

54. Ad para 27.1

54.1. I admit these allegations.

55. Ad para 27.2

55.1. I deny these allegations.

55.2. In amplification of my denial, I add that:

55.2.1. The composition of the JSC has been carefully crafted by the Constitution makers and the JSC's membership is drawn from the judiciary, Parliament, members of the Executive, persons nominated by the President, members of the legal profession and academia.

55.2.2. There are several interested bodies who are represented on the JSC.

55.2.3. The process of deciding if and how a Commissioner should be held to account for his behaviour is a complex one. As a pre-requisite, the JSC itself must decide that such a mechanism should be created.

55.2.4. In this case, the HSF has already decided four things. First, that there must be a mechanism for Commissioners to be held to account for their conduct within and outside of the JSC. Second, that the JSC should exercise that power through the promulgation of a Code of Conduct. Third, that the JSC must be

given the power to sanction a Commissioner. Fourth, that the JSC must be also be given the power to recommend to a nominating body / person as envisaged in section 178(1) that it should recall its designated nominee.

55.2.5. It is not the HSF's place to foist its own decisions and preferences upon the JSC and /or the bodies /persons who are constitutionally mandated to make nominations under section 178(1).

55.2.6. The HSF's approach not only violates the separation of powers by asking this Court to make such a ruling, HSF's proposal carries the potential to undermine the independence of the JSC.

56. Ad para 28, including sub-paragraphs 28.1 to 28.11

56.1. I note the contents of these paragraphs.

57. Ad paras 29 - 32

57.1. I note the allegations contained in these paragraphs.

58. Ad para 33

58.1. Without conceding that HSF has made out a case for the relief sought, I note the allegations in this paragraph.

59. Ad para 34

59.1. I deny the allegations contained in this paragraph.

59.2. The HSF is trying to impose its own decisions for that of the National Assembly and the JSC.

59.3. This litigation is without legal and factual foundation and as such will not serve a wider public interest.

60. Ad para 35

60.1. I note these allegations.

61. Ad paras 36 – 39

61.1. I admit the allegations contained in these paragraphs to the extent they do not contradict anything I say in this affidavit.

62. Ad para 40

62.1. I deny the allegations contained in this paragraph.

62.2. Section 178(1) of the Constitution does not impose the requirement that a designated person who is to serve on the JSC must be fit and proper.

62.3. Under section 174(1), the Constitution does impose the standard of fit and proper on a candidate who seeks judicial appointment.

62.4. The fact that this standard was not included in section 178(1) cannot be overlooked by this Court. There appears to be deliberate decision to

exclude this standard from the wording of section 178(1).

63. Ad para 41

63.1. The allegation contained in this paragraph appears to be vague as I am not sure what appointment is being referred to here – is it the appointment of a Commissioner under section 178(1) or the appointment of a judicial officer. With respect, I am unable to respond meaningfully to this paragraph.

64. Ad paras 42 - 43

64.1. To the extent that the allegations contained in these paragraphs correctly reflect the contents of the criteria published by the JSC on 4 April 2022, same is noted.

65. Ad paras 44 - 45

65.1. I deny that the submissions advanced by HSF can be taken as far as they are.

65.2. HSF's allegations appear to be limiting the National Assembly's decision-making power, under section 178(1) of the Constitution.

65.3. I deny any allegation that I am not suitably qualified to sit on the JSC as designated by the National Assembly.

66. Ad para 46

66.1. I deny the allegations contained in these paragraphs.

66.2. I especially deny that on numerous occasions I have been guilty of misconduct and that my alleged misconduct prevents the JSC from performing its functions. This is an unsubstantiated conclusion and is not supported by the facts.

67. Ad paras 47 – 49

67.1. To the extent that these allegations are consistent with section 178(1) of the Constitution, I admit same.

68. Ad para 50

68.1. I note this allegation.

69. Ad para 51

69.1. While I note the quotation from the Constitutional Court's judgment in *HSF v JSC*, I must point out that the full text of paragraph 37 has not been quoted.

69.2. The full text of paragraph 37 is included in the quote below and the underlined portion is the text that HSF has left out in its quote. Having regard to the full quote, the proposition that HSF seeks to advance is not as strong as it initially appears to be.

"Since courts play a crucial role in our constitutional democracy, without

doubt the JSC's function of recommending appointments to the senior judiciary is of singular importance. Bearing in mind the importance of this function, I do not think it unreasonable to expect that those that bear the responsibility of nominating, designating or electing individuals for membership of the JSC will take their responsibility seriously and identify people who are suitably qualified for the position. Of course, we cannot be blind to some bad appointments to a variety of senior positions that we have witnessed in litigation that has come before the courts. But that is not reason enough to make an assumption that the JSC may well be saddled with bad appointments. As for those whom the Constitution has identified for membership by virtue of their office, I cannot second-guess the framers of the Constitution in selecting the relevant offices. If anything and barring individual shortcomings which – from time to time – do manifest themselves even in the highest and most respected of offices, these offices are eminently qualified for membership of the JSC.

70. Ad paras 52 - 53

- 70.1. While I note the quotation from the *Hlophe II* judgment issued by this Court, I repeat that the facts in *Hlophe II* are very different from the facts in this matter.
- 70.2. It has been reported that Dr Hlophe expressed an intention to take the *Hlophe II* judgment on appeal. The *Hlophe II* judgment cannot be seen as the definitive interpretation that a JSC Commissioner must be fit and proper to serve on the JSC.

71. Ad paras 54 - 55

71.1. I note these allegations.

72. Ad para 56

72.1. While I note that the allegations rely on this Court's findings in *Hlophe II* judgment, I repeat that the facts in *Hlophe II* are very different from the facts in this matter.

73. Ad para 57

73.1. I admit these allegations.

74. Ad para 58

74.1. I deny these allegations to the extent they contradict anything I say in this affidavit.

75. Ad paras 59 – 60

75.1. I deny these allegations.

75.2. HSF is attempting to create a new obligation on the National Assembly's power which flows directly from section 178(1) of the Constitution. This obligation does not exist in the Constitution. The interpretation advanced by HSF is not supported by the law or the facts in this case.

76. Ad paras 61 - 64

76.1. I deny these allegations.

76.2. There is no obligation under section 178(1) of the Constitution for the National Assembly to only designate members who are fit and proper to serve on the JSC. Similarly, section 178(3) does not provide that the National Assembly must replace its designee if that person objectively ceases to be fit and proper.

76.3. If the National Assembly does not have rules to deal with the circumstances under which and a process to replace its designee on the JSC, the National Assembly cannot replace an existing designee on the JSC.

77. Ad para 65

77.1. This allegation is denied. HSF does not have the legal competence to decide whether I am suitable to retain my seat on the JSC and this issue is not before this Court.

77.2. I am a member of the National Assembly under section 47(1) of the Constitution. I have been properly designated by the National Assembly to serve as one of its six designated members on the JSC, and am one of the three designates serving from the opposition.

77.3. I deny that I am not suitable to continue to serve on the JSC.

78. Ad para 66

78.1. I deny this allegation.

79. Ad para 67

79.1. I admit these allegations to the extent they do not contradict anything I say in this affidavit.

79.2. I maintain that the statements I made on 21 June 2019 amount to robust political speech which is protected under my right to freedom of expression.

79.3. It is telling that HSF has only challenged my statements made on 21 June 2019, at this stage which is seven years after it happened. This demonstrates that HSF is not advancing a bona fide genuine case before this Court.

80. Ad para 68

80.1. Save for admitting the words attributed to me, I deny the remaining allegations contained in this paragraph.

80.2. I note once again that it must be noted that HSF only chooses to raise my speech delivered on Women's Day in 2019 in this application, which is brought almost seven years after my statements were made.

80.3. My statements as set out in this paragraph amount to robust political speech which is protected under my right to freedom of expression.

81. Ad para 69

81.1. I admit that the General Council of the Bar issued the press statement as alleged. However, I deny the correctness of the allegations contained in the press statement.

82. Ad para 70

82.1. I admit making the statements attributed to me in this paragraph.

82.2. My statements as set out in this paragraph amount to robust political speech which s protected by my right to freedom of expression.

83. Ad para 71

83.1. I admit making the statements attributed to me in this paragraph and that CASAC called on the National Assembly to intervene.

83.2. My statements as set out in this paragraph amount to robust political speech which s protected by my right to freedom of expression.

84. Ad para 72

84.1. I admit making the statements attributed to me in this paragraph.

84.2. My statements as set out in this paragraph amount to robust political speech which s protected by my right to freedom of expression.

85. Ad para 73

85.1. I admit that I questioned Judge Matojane during his interview for appointment to the SCA and that I asked about a case in which the EFF was a respondent.

85.2. I admit the allegations detailing the sequence of events as contained in paragraphs 73.1 to 73.9. However, I deny the interpretation and conclusions drawn by HSF in paras 73.1 to 73.10.

85.3. The present matter is not the proper forum for me to respond about the proceedings before the National Assembly in relation to this issue. I will continue to participate and respond appropriately before the National Assembly as required.

86. Ad para 74

86.1. I admit the allegations contained in this paragraph.

86.2. My statement as set out in this paragraph amount to robust political speech which is protected under my right to freedom of expression.

87. Ad paras 75, 75.1 – 75.5

87.1. I admit the statements attributed to me in these paragraphs.

87.2. My statements as set out in this paragraph amount to robust political speech which is protected under my right to freedom of expression.

87.3. My statements may be unpopular and may make people uncomfortable.

But that does not mean that I am not entitled to criticise the judiciary when appropriate. As the Courts have held, the reasonable listener knows that the EFF represents left factional politics and that in representing the EFF I am outspoken and that I do not mince my words.

88. Ad paras 76 - 78

88.1. I admit the statements attributed to me in these paragraphs.

88.2. My statements as set out in this paragraph amount to robust political speech which is protected under my right to freedom of expression.

89. Ad paras 79, 79.1 – 79.4

89.1. This matter is pending on appeal and I do not express any further views at this stage.

90. Ad para 80

90.1. I admit that I was found guilty as alleged in this paragraph.

90.2. I have applied for leave to appeal the conviction and I have been granted leave to appeal the sentence.

90.3. The appeal processes are still underway and I do not make any further comment.

91. Ad para 81

91.1. I admit making the statements attributed to me.

91.2. However I deny the conclusions reached by HSF.

92. Ad paras 82, 82.1 – 82.8

92.1. I admit the details of my sentence as handed down on 16 April 2026 by Magistrate Olivier in the KuGompo Regional Court.

92.2. I have been granted leave to appeal the sentence. As the appeal is pending I do not make any further comments at this stage. I am also pursuing an appeal of the conviction too.

92.3. I admit making the statements attributed to me in these paragraphs.

92.4. My statements as set out in these paragraphs amount to robust political speech which is protected under my right to freedom of expression.

93. Ad para 83

93.1. I deny that I only praise the judiciary when the courts rule in my favour and I deny that my support for the judiciary depends on a favourable finding made in my favour.

93.2. I admit to making the statements attributed to me in this paragraph.

94. Ad para 84 - 96

94.1. While I have had sight of the annexures showing the exchange of correspondence between HSF and the Speaker, I do not have personal knowledge about these facts and cannot admit or deny the allegations contained in these paragraphs.

94.2. This is a matter for the Speaker to respond to.

95. Ad para 97

95.1. I admit that the Speaker has refused to accede to HSF's request and place my continued designation to the JSC before the National Assembly for consideration.

95.2. I am advised that the Speaker's refusal is reviewable under PAJA and /or the principle of legality.

96. Ad para 98

96.1. I deny the allegations contained in this paragraph.

96.2. I am advised that these allegations raise legal issues which will be addressed at the hearing.

97. Ad para 99

97.1. I deny the allegations contained in this paragraph.

97.2. I am advised that the legal interpretation contended for by HSF is incorrect.

98. Ad para 100

98.1. I deny the allegations contained in this paragraph.

98.2. The legal obligation that HSF advances in this paragraph does not exist

in the Constitution.

99. Ad para 101

99.1. I admit that it will be premature for the National Assembly to consider my designation to the JSC as the appeals in relation to my conviction and sentencing are still to be finalised.

99.2. The statements that I made on 16 April 2026 were made as part of my right to freedom of expression and is part of robust political speech. The outcome of my appeals will show whether my statements were true. It is premature for this Court to hear this matter.

100. Ad para 102

100.1. I deny the allegations contained in this paragraph.

100.2. Section 178(1) of the Constitution does not impose the requirement that a designee from the National Assembly must be fit and proper.

100.3. The Constitutional Court's judgment in *HSF v JSC*, at para 37 did not go so far as to impose a fit and proper requirement into section 178(1) of the Constitution.

100.4. The *Hlophe II* judgment which appears to have introduced the fit and proper standard into the National Assembly's decision under section 178(1) does not appear to be the final word as Dr Hlophe has expressed an interest in taking the *Hlophe II* judgment on appeal.

101. Ad para 103

101.1. I am advised that the National Assembly's exercise of its power under section 178(1) is a political act. Further, it is not administrative action.

102. Ad para 104

102.1. I deny that the National Assembly's power under section 178(3) is administrative action and falls to be reviewed under PAJA.

103. Ad paras 105 - 106

103.1. I deny the allegations contained in these paragraphs.

104. Ad paras 107 – 109

104.1. I deny the allegations contained in these paragraphs.

104.2. I am advised that the legal interpretation that HSF contends for is not supported by the Constitution.

105. Ad paras 110 -111

105.1. To the extent that the relief sought is consistent with the allegations made in these paragraphs same is noted.

105.2. However, I deny that HSF has made out a case for the review relief sought.

106. Ad para 112

106.1. I deny the allegations contained in this paragraph.

106.2. HSF has not made out a case to justify a mandatory interdict.

106.3. I deny that HSF has a clear right as alleged and HSF is put to the proof thereof. HSF is not part of the National Assembly and neither is it part of the JSC. Its identity as a non-governmental organisation forming part of civil society does not entitle it, as of right to seek the drastic relief that it does in this case. More especially when the Constitution itself does not provide for the obligation that it seeks to rely on.

107. Ad para 113

107.1. I note this paragraph.

108. Ad para 114

108.1. I deny the allegations contained in this paragraph.

109. Ad para 115

109.1. I deny the interpretation advanced by HSF. This imposition of the standard of conduct that HSF seeks to impute to JSC Commissioners is not borne out by section 178(1) of the Constitution.

110. Ad para 116

110.1. I deny these allegations. I have already explained above that the relief

that HSF seeks is intrusive and extraordinary. The HSF cannot impose its own decision onto the JSC and the Legislature. HSF's proposal violates the separation of powers doctrine and undermines the credibility and legitimacy of the Legislature and the JSC.

111. Ad para 117

111.1. I deny these allegations.

112. Ad para 118

112.1. I deny these allegations. My statements as reported in HSF's affidavit is protected by my freedom of expression and it amounts to robust political speech.

113. Ad paras 119 - 122

113.1. I do not have personal knowledge about the exchange of correspondence between the HSF and the JSC and I cannot admit or deny same.

114. Ad paras 123 -131

114.1. I deny the allegations contained in these paragraphs.

114.2. The JSC Act makes no provision for the JSC to adopt a code of conduct for its Commissioners.

114.3. The HSF does not have any legal authority to advance a case that the JSC is obligated to promulgate a Code of Conduct for its Commissioners.

114.4. The JSC Act is not deficient and no proper case has been made out to show that there is a gap in the legislation.

115. Ad paras 132- 135

115.1. I deny that HSF has made out a proper case for relief under section 172(1)(a) of the Constitution.

115.2. I have explained above that the reading-in relief is extraordinary and has far-reaching consequences.

115.3. The reading-in relief would result in this Court creating new law into the JSC Act, without any existing obligation being in the JSC Act.

115.4. This would amount to judicial over-reach and will violate the doctrine of separation of powers. The allegations in paragraph 135.2 demonstrates the judicial over-reach. This cannot be allowed as the Legislature holds the power to introduce new laws into our statute books. This is not a case where reading-in of a few words or phrase is sought.

115.5. HSF is creating a new obligation namely that the JSC must promulgate a Code of Conduct for its Commissioners and that Code must provide for punitive sanction. This is extreme relief.

116. Ad paras 136 -137

116.1. The allegations contained in these paragraphs are noted.

117. Ad para 138

117.1. I deny that HSF has made out a case for the extraordinary relief sought.

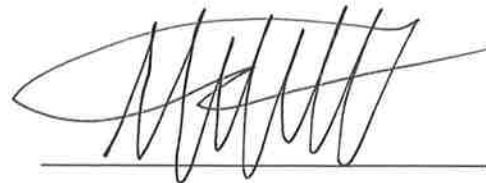
COSTS

118. It is appropriate for this Court to dismiss this application with costs. If this Court seeks to award costs on a party and party scale, I seek an order that costs, including the costs of two counsel, be awarded on scale C as set out in Rule 67A. The application raises complex matters of law and required a detailed response.

CONCLUSION

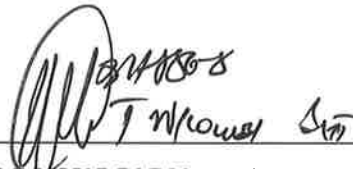
119. I respectfully submit that I have made out a case to oppose the grant of the relief sought. The application ought to be dismissed with costs.

WHEREFORE the Second Respondent respectfully prays that the application be dismissed with costs.



DEPONENT

I hereby certify that the Deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Cape Town on this the 24 day of June 2026, and the provisions of the Regulations contained in Government Gazette No R1258 of 21 July 1972, as amended have been complied with.



COMMISSIONER OF OATHS

SA POLISIEDIENS
SA POLICE SERVICE

TO: Cape Town ON: 2026-06-24 OM: 10 45

BY: T. Nkombe

VOLE VORNAME EN VAN IN DRUKSKRIEF
FULL FIRST NAME AND SURNAME IN BLOCK LETTERS

103-107 PLEIN STREET PARLIAMENT TOWERS

SERGEANT
RANG/RANK

SA POLISIEDIENS
SA POLICE SERVICE

CAPACITY:

FULL NAMES:

PHYSICAL ADDRESS:



PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

(/)

WATCH
(/PARLIAMENT-TV)

LISTEN
(/PODCASTS)

OUR PARLIAMENT

OUR PEOPLE

BUSINESS OF PARLIAMENT

MEDIA

HAVE YOUR SAY

PUBLICATIONS ADMINISTRATION

JUDGEMENT ON THE DESIGNATION OF DR JOHN HLOPHE TO THE JUDICIAL SERVICE COMMISSION

PRESS RELEASES

**For a soundbite of the
Spokesperson of
Parliament, Mr Moloto
Mothapo, please click:
<https://iono.fm/e/1562528>**



**([https://url.za.m.mimecastprotect.com/s/EO_RCNxjmycj3jrkF9SAh?](https://url.za.m.mimecastprotect.com/s/EO_RCNxjmycj3jrkF9SAh?domain=parliament.us15.list-manage.com)
[domain=parliament.us15.list-manage.com](https://url.za.m.mimecastprotect.com/s/EO_RCNxjmycj3jrkF9SAh?domain=parliament.us15.list-manage.com))**

DID YOU KNOW?

The President may attend meetings of the National Assembly and may speak in the Assembly, but he or she does not have a vote.

Parliament, Tuesday, 3 June 2025 - Parliament notes the judgement handed down yesterday by the Western Cape Division of the High Court regarding the review applications brought by the Democratic Alliance, Freedom Under Law, and Corruption Watch. The judgement relates to the National Assembly's decision on 9 July 2024 to designate Dr John Hlophe, MP, to serve as one of its representatives on the Judicial Service Commission (JSC), in terms of section 178 of the Constitution of the Republic of South Africa, 1996.

When the review proceedings were instituted, Parliament expressed its intention to abide with the Court order. In its judgement, the Court has ruled that the National Assembly's decision to designate Dr Hlophe from among its members to the JSC was unconstitutional, invalid, and therefore reviewed and set

VISIT PARLIAMENT

**ARRANGE A
TOUR (/VISITING-
PARLIAMENT#ARRANGE-
TOUR)**

**ATTEND A
DEBATE (/VISITING-**

T.N. JS

aside. In addition, the Court declared that the National Assembly may not designate Dr Hlophe to the JSC under section 178(1)(h) of the Constitution.

Parliament notes the interpretative guidance offered by the Court in relation to the relevant constitutional provisions governing the designation of members of the National Assembly to the JSC. Of particular concern to the Court was the rationality of designating a member who was previously found guilty of gross misconduct and removed from judicial office, and who has continued to demonstrate conduct incompatible with Parliament's obligation to protect and ensure the independence and integrity of the judiciary.

As this judgement bears implications for Parliament's internal arrangements, procedures, and processes relating to the designation of representatives to the JSC and other constitutional bodies, Parliament will take all necessary steps to ensure alignment with the Court's findings. This includes instituting the appropriate processes to ensure that future designations comply with the constitutional principles outlined in the judgment.

ISSUED BY THE PARLIAMENT OF THE REPUBLIC OF SOUTH AFRICA

Media Enquiries – Moloto Mothapo

TERMS OF USE

[Disclaimer \(/disclaimer\)](#)

GET INFORMED

[Glossary \(/glossary\)](#)

[FAQ's \(/faq\)](#)

[Webmail](#)

<https://connect.parliament.gov.za/owa>

CONTACT US

Tel : (021) 403-2911

(tel:+27214032911)

Fax: (021) 403-8219

info@parliament.gov.za

(mailto:info@parliament.gov.za)

ADDRESS

PARLIAMENT#ATTENDING-
DEBATE)

DIRECTIONS
(/VISITING-
PARLIAMENT#DIRECTIONS)

CONTACT
DETAILS (/CONTACT-
US)

FEATURED MEMBER



Dr
Cornelius
Petrus
Mulder

(/person-
details/5696)

(/person-
details/5696

)
National Ass

(/group-
details?

CONNECT

<https://twitter.com/ParliamentofRSA>



<http://www.facebook.com/Parliamentof>



<http://www.youtube.com/user/Parliame>

T.N. JS

Careers (/careers-parliament)
Related Links (/related-links)

Parliament Street, Cape Town
PO Box 15, Cape Town, 8000



(<https://www.instagram.com/Parliament>)



(<https://za.linkedin.com/company/parliament-of-rsa>)



(<https://www.tiktok.com/@parliamentofrsa>)



(<https://whatsapp.com/channel/0029Va>)

T.N. JS