

COURT ONLINE COVER PAGE

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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema, Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

Notice of Motion (Long Form)

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ELECTRONICALLY SIGNED

BY:

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

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

Case no:

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



NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the applicant hereby applies for the following relief:

- 1 The decision of the first respondent (**the Speaker**) on or about 30 April 2026 to decline to ensure that the National Assembly considers the suitability of the second respondent (**Mr Malema**) to be designated to the third respondent (**Judicial Service Commission**) is declared invalid and set aside.
- 2 The failure of the National Assembly to consider and make a decision as to whether Mr Malema continues to be suitable to be designated to the Judicial

Service Commission, in terms of section 178(3) of the Constitution, is declared invalid and set aside.

3 The National Assembly is directed to consider whether to replace Mr Malema as a designee to the Judicial Service Commission within 20 court days of this order and is directed to consider all relevant circumstances including Mr Malema's conduct.

4 The Judicial Service Commission Act 9 of 1994 is declared constitutionally invalid insofar as it does not oblige the Judicial Service Commission to adopt a Code of Conduct for Commissioners.



5 As just and equitable relief:

5.1 The declaration of invalidity in paragraph 4 above is suspended for 24 months in order to allow Parliament an opportunity to remedy the constitutional defect.

5.2 During the period of suspension, section 6A is deemed to be read-in to the JSC Act as follows:

“6A Code of Conduct for Commissioners

(1) The Commission must compile a Code of Conduct for Commissioners within two months.

(2) The Code of Conduct for Commissioners must at minimum—

(a) address the conduct required of Commissioners both during proceedings of the JSC and generally; and

- (b) provide sanctions for acting in a manner that violates the Code, including requesting a designating or nominating body to replace a commissioner.”

5.3 Should Parliament fail to cure the constitutional defect within 24 months from the date of the order or within an extended period of suspension, the interim reading-in order will become final.

6 The Speaker and the fourth respondent are directed jointly and severally to pay the applicant’s costs, including the costs of two counsel on scale C, together with any other respondent that opposes this application.



7 Further and / or alternative relief.

TAKE FURTHER NOTICE that and that the affidavit of **Naseema Fakir** will be used in support of this application.

TAKE NOTICE FURTHER that the applicant has appointed Deneys, 9th floor, 117 on Strand, 117 Strand Street, Cape Town 8001, South Africa, as the address at which it will accept notice and service of all process in these proceedings.

TAKE NOTICE FURTHER that, if you intend opposing this application, you are required to:

- (a) within ten (10) days of service of this notice of motion or any amendment thereof, to notify the applicant’s attorney, in writing, of your intention to oppose this application and to appoint in such notice an address within 25 kilometres of the office of the Registrar of this court, at which you will accept notice and service of all documents in these proceedings; and

(b) to file your answering affidavit, if any, within fifteen (15) days after you have so given notice of your intention to oppose the application, to file your answering affidavits, if any.

KINDLY SET THE MATTER DOWN FOR HEARING ACCORDINGLY.

SIGNED AT **CAPE TOWN** ON this the **14th day of MAY 2026.**

J Whyte



DENEYS REITZ INC

Per J Whyte / C Bubu
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To: REGISTRAR OF THE HIGH COURT
Cape Town

And to: SPEAKER OF THE NATIONAL ASSEMBLY
First Respondent
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Cape Town
Email: speaker@parliament.gov.za
Service by Sheriff and email

And to: JULIUS SELLO MALEMA
Second Respondent
c/o Economic Freedom Fighters
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119 Marshall Street
Marshall Town
Johannesburg
Email: info@effonline.org

Service by Sheriff and email

And to: JUDICIAL SERVICE COMMISSION
Third Respondent
188 14th Road
Noordwyk
Midrand
Email: enquiries@judiciary.org.za; msongca@judiciary.org.za
Service by Sheriff and email

And to: MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT
Fourth Respondent
Momentum Centre
17th Floor 329 Pretorius Street
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Email: ntshaba@justice.gov.za; Lmarwala@justice.gov.za,
SiyaDube@justice.gov.za
Service by sheriff and email



And to: The State Attorney
4th floor
22 Long Street
Cape Town
Service by sheriff

And to: ALL OTHER PARTIES REPRESENTED IN THE NATIONAL ASSEMBLY
Fifth and Further Respondents
C/O Secretary of Parliament
Legal Services
120 Plein Street
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Email: kmeshoe@parliament.gov.za;
raptrollip@parliament.gov.za; mhendricks@parliament.gov.za; vzungula@parliament.gov.za; mmainane@parliament.gov.za; pgroenewald@parliament.gov.za; pdelille@parliament.gov.za; vhlabisa@parliament.gov.za; fadams@parliament.gov.za; gmckenzie@parliament.gov.za; mnyhontso@parliament.gov.za; sszibi@parliament.gov.za; lmahlatsi@parliament.gov.za; sdlamini@parliament.gov.za; wdouglas@parliament.gov.za; bholomisa@parliament.gov.za; maphiri@parliament.gov.za; sgwarube@parliament.gov.za; mdlamini@parliament.gov.za

Service by sheriff and email

IN THE HIGH COURT OF SOUTH AFRICA
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Third respondent

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DEVELOPMENT**

Fourth respondent

**ALL PARTIES REPRESENTED IN THE NATIONAL
ASSEMBLY**

Fifth and further
respondents



FOUNDING AFFIDAVIT

I, the undersigned,

NASEEMA FAKIR

do hereby make oath and say that:

- 1 I am the Executive Director of the applicant, the Helen Suzman Foundation (the **HSF**), and am authorised to bring this application on its behalf.

- 2 The facts contained in this affidavit are within my personal knowledge, unless otherwise stated or appears from the context, and are true and correct. Other

facts are within the public record and have been widely reported on by the media, or appear from official decisions and reports and are, to the best of my knowledge, true and correct.

- 3 Legal submissions are made on the advice of HSF's legal representatives.

PARTIES

- 4 The HSF, the applicant, is a non-governmental organisation situated at North Block, La Val Office Park, 45 Jan Smuts Avenue, Westcliff, Gauteng.



- 5 The first respondent is the Speaker of the National Assembly who is cited as the representative of the National Assembly and shall be served at Parliament. The application will also be served via email speaker@parliament.gov.za.
- 6 The second respondent is Julius Sello Malema (**Mr Malema**), an adult who is currently a member of Parliament for the Economic Freedom Fighters political party (the **EFF**). He is a designee of the National Assembly to the Judicial Services Commission. He is served at care of the Economic Freedom Fighters, Winnie Madikizela Mandela House, 119 Marshall Street, Marshall Town, Johannesburg and by email at info@effonline.org.
- 7 The third respondent is the Judicial Service Commission (the **JSC**) established in terms of section 178 of the Constitution with its address at 188, 14th Road, Noordwyk, Midrand. The application will be served at the aforementioned address and via email at care of Ms Mbali Songca at msongca@judiciary.org.za

8 The fourth respondent is the Minister of Justice and Constitutional Development. The Minister is cited as she is the member of the executive responsible for the Judicial Services Commission Act, 1994 (the **JSC Act**) and the HSF challenges the constitutionality of the JSC Act in these proceedings. The Minister is served Momentum Centre, 17th Floor 329 Pretorius Street, Pretoria and at care of the State Attorney, 4th Floor, 22 Long Street, Cape Town.

9 The fifth and further respondents are those parties represented in the National Assembly: ANC, DA, MKP, EFF, PA, FF+, Action SA, ACDP, UDM, Rise Mzansi, Build One SA, ATM, Al Jama-ah, National Coloured Congress, PAC, United Africans Transformation and GOOD. They are all served at Parliament and through their official email addresses at Parliament as set out in the notice of motion hereto.



OVERVIEW

- 10 Mr Malema was originally designated to the JSC in June 2014 by the National Assembly as one of its six members of in terms of section 178(1)(h) of the Constitution. Mr Malema was one of the three opposition party designees.
- 11 He has served on the JSC since then, having been designated again in 2019 and 2024 by the National Assembly. He has participated in its proceedings throughout, particularly in respect of the interview and selection of candidates for judicial appointment as contemplated by section 178(4) of the Constitution, read with the JSC Act.
- 12 This case is about the following matters:

12.1 whether the National Assembly is under a duty, where the factual circumstances raise actual or potential concerns about the suitability of one of its designees to the JSC for that position, to consider and decide whether that person remains suitable and if not, should be replaced;

12.2 whether the National Assembly is under a duty to consider and decide whether Mr Malema remains suitable for appointment to the JSC in light of his repeated public attacks on and criticism of the Judiciary which transcend legitimate bounds, and undermine the independence, dignity and effectiveness of the judicial arm of government.



12.3 Whether the JSC Act is constitutionally invalid insofar as it does not oblige the JSC to adopt a Code of Conduct for Commissioners

13 Mr Malema—

13.1 repeatedly attacks judges and magistrates where they rule against him or his political party, and also drags judicial officers into political skirmishes.

13.2 at the same time, sits on the constitutional body that appoints judges.

14 Mr Malema thus sits on the body that appoints our judges, while at the same time maligns and undermines their credibility when they apply the law against him.

15 The credibility of the judiciary is critical in a constitutional democracy.

16 This conduct has been occurring for quite some time. But recent conduct of Mr Malema after his criminal conviction and sentencing for unlawful use of a firearm,

requires the National Assembly to consider whether Mr Malema's continued membership of the JSC is tolerable.

17 I emphasise that the HSF makes no comment as to Mr Malema's political or social views or the objectives and policies of his political party, the EFF. The HSF supports the right of every South African to exercise their rights of freedom of expression, freedom of belief and opinion, and political activity in a lawful manner.

18 The HSF also does not believe that the Judiciary is free from criticism. Quite the contrary: debate – even robust debate – about the Judiciary is necessary in our democracy.



19 Mr Malema sits on the JSC as a member of the National Assembly.

20 As I set out more fully below, Mr Malema has recently been convicted on five criminal charges and sentenced to an effective five years' imprisonment. He has noted an appeal against the sentence, and has applied for leave to appeal against his conviction. It is possible that a consequence of the determination of the appellate process will be that he is disqualified from membership of the National Assembly by virtue of section 47(1) of the Constitution. I express no opinion as to whether that will be the outcome. But if it is, Mr Malema's current membership of the JSC will automatically come to an end. That would however not render this application moot, because it is not concerned only with Mr Malema's current membership of the JSC.

21 The appointment of Commissioners to the JSC is governed by section 178 of the Constitution.

21.1 Section 178(1)(h) provides that six persons may be designated by the National Assembly from amongst its members, three of whom must be members of the opposition parties.

21.2 This Court has confirmed that the National Assembly itself is responsible for designating members from its ranks to the JSC.¹

21.3 The Court has also confirmed that when designating members to the JSC, the National Assembly must exercise a discretion and is itself required to determine whether its designees are suitable to serve on the JSC based on all relevant considerations.²



22 Section 178(3) of the Constitution empowers the National Assembly to replace its designees to the JSC.

22.1 A person who is designated does not have the right to retain that position for as long as they remain a member of the National Assembly.

22.2 The power to recall and replace is coupled with a constitutional duty on the National Assembly, where circumstances arise that call into question the suitability of a designee to fulfil their duties on the JSC through their subsequent conduct, to consider exercising the recall power, and in appropriate circumstances to exercise it.

¹ *Democratic Alliance v Hlophe and Others* (16170/2024 ; 16771/2024 ; 16463/2024) [2024] ZAWCHC 282; 2025 (1) SA 169 (WCC) (27 September 2024) (**Hlophe II**).

² *Hlophe II*.

22.3 This arises from the National Assembly's obligation in section 165(4) of the Constitution.

22.4 The National Assembly is under an ongoing obligation to review the performance of its designees to the JSC and to replace them where their conduct renders them not fit and proper to continue to serve on the JSC.

23 The HSF has called on the Speaker to put to the National Assembly the issue of Mr Malema's suitability to continue to serve as a commissioner of the JSC in light of these events. The Speaker has refused to put the matter before the National Assembly on grounds which the HSF submits are unfounded and unlawful.



24 The upshot is that the National Assembly has failed to fulfil its obligation to consider whether Mr Malema's designation to the JSC remains suitable.

25 The HSF seeks orders declaring invalid and setting aside the Speaker's refusal to put the matter before the National Assembly, as well as declaring invalid and setting aside the National Assembly's failure itself to consider Mr Malema's suitability for the JSC, and directing the National Assembly to take such decision.

26 I emphasise that the HSF in this application does not ask the Court to make a final determination regarding Mr Malema's suitability to sit on the JSC. That is a matter that the National Assembly is obliged to consider. The relief sought is aimed at ensuring the National Assembly fulfils that obligation.

27 Mr Malema's conduct has also demonstrated a constitutional lacuna in the JSC Act.

27.1 At present, the JSC has no code of conduct governing its members and their conduct during judicial interviews as well as more generally.

27.2 If commissioners act inappropriately in interviews, or if outside of the JSC they conduct themselves in a manner that undermines the credibility and legitimacy of the JSC and the judiciary generally, the JSC has no recourse against them.



27.3 The JSC Act does not require the adoption of a code of conduct for Commissioners and sanctions for non-compliance with the code.

27.4 The JSC Act is constitutionally deficient in this respect.

27.5 Due to its special place in our constitutional order and its role in appointing judges, the JSC has a heightened duty to "*assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts*" (section 165(4) of the Constitution).

27.6 The JSC Act must itself ensure that this constitutional imperative is given effect to. The Act must ensure that Commissioners are bound to act in an appropriate fashion, and that if they do not do so, that the JSC can sanction them – including recommending to the bodies that designate Commissioners, to recall them.

28 In the remainder of this affidavit I deal with the following matters:

- 28.1 The HSF's interest and standing;
- 28.2 The background to the application;
- 28.3 The importance of the JSC;
- 28.4 The National Assembly's failure to consider Mr Malema's continued suitability for the JSC;
- 28.5 The Chronology of Mr Malema's attacks on the judiciary;
- 28.6 HSF's correspondence with the Speaker;
- 28.7 The grounds of review;
- 28.8 The relief sought in respect of the National Assembly;
- 28.9 The lacuna in the JSC Act;
- 28.10 The remedy sought in respect of the JSC Act; and
- 28.11 The request for a special allocation.



THE HSF'S INTEREST AND STANDING

- 29 The HSF is an independent and not-for-profit institute in South Africa, dedicated to promoting constitutional democracy, human rights, and the rule of law in South Africa. The HSF engages in various activities, including research, publications, litigation, and submissions to the South African Parliament. It advocates for policies that translate the aspirations of the South African Constitution into reality

for all who live in South Africa, emphasising good governance, transparency, and accountability.

- 30 HSF is not aligned with any political party. It actively participates in public debates to uphold constitutional values. The HSF regularly participates in public interest litigation both as a party as well as an *amicus*. The HSF's key focus areas include the rule of law, defence of constitutional and international law rights, and the defence of migrant rights.

- 31 The recent cases in which HSF has participated include:



- 31.1 *Scalabrini Centre of Cape Town v Minister of Home Affairs and Others* [2025] ZAWCHC 202 where HSF acted as *amicus* in the litigation concerning the constitutionality and validity of certain subsections of section 4, section 21(1B) of the *Refugees Act, 1998* and Regulation 8 of the *Refugees Regulations, 2019*, which came into effect at the beginning of 2020. The HSF made detailed submissions on the rights of the child under Constitutional and International law. These submissions were extensively referred to by the Court with approval.
- 31.2 *Helen Suzman Foundation and Another v Minister of Home Affairs and Others* [2023] ZAGPPHC 490, involving the withdrawal of the Zimbabwe Exemption Permit. The HSF successfully litigated this matter as co-applicant through to the Constitutional Court.
- 31.3 *Corruption Watch NPC and Others v President of the Republic of South Africa and Others* [2018] ZACC 23 where the HSF acted as *amicus* in

the litigation concerning Mr Nxasana's removal as Director of the NDPP.

31.4 *McBride v Minister of Police and Another* [2016] ZACC 30 where the HSF acted as *amicus* in proceedings concerning the independence of IPID.

31.5 *Helen Suzman Foundation v President of the Republic of South Africa and Others; Glenister v President of the Republic of South Africa and Others* [2014] ZACC 32. (The so-called Glenister II case.)



32 In addition, the HSF has litigated against the JSC concerning the non-appointment of applicants for judicial appointment. It successfully litigated a matter to the Constitutional Court – *Helen Suzman Foundation v Judicial Service Commission* (CCT289/16) [2018] ZACC 8 – which confirmed that the deliberations of JSC meetings form part of the Rule 53 record and must be disclosed in any review of its decisions.

33 This application falls directly within HSF's mandate and the HSF is well-equipped to deal with the issues raised.

34 The HSF believes that this litigation will have important public interest benefits in that it will establish and clarify:

34.1 The extent of the obligations resting upon the National Assembly (and for that matter other institutions making similar designations) to monitor the conduct of its designees to the JSC, and that it is duty bound to

consider and decide on the recall of its designees where they have been involved in improper behaviour.

34.2 The extent to which the JSC is itself required to assess the performance of its Commissioners and to subject them to sanctions in appropriate circumstances.

35 For these reasons, the HSF brings this application:

35.1 in terms of section 38(a) of the Constitution in its own interest; and

35.2 in terms of section 38(d) in the public interest, since the public has a direct interest in the proper functioning of the JSC.



THE IMPORTANCE OF THE JSC

36 The judiciary has a central role in our democracy, including in identifying and combatting unlawful activity in the public and private sectors. In order for it to be able to fulfil this role, it is imperative for the judiciary to function effectively. It is also critical for the judiciary to maintain the respect of the public.

37 The appointment of judges who meet the “fit and proper” standard required by section 174(1) of the Constitution is crucial in order for the judiciary to apply the law “impartially and without fear, favour or prejudice”, as mandated in section 165(2) of the Constitution, and to ensure the courts’ “independence, impartiality, dignity, accessibility and effectiveness”, as envisaged in terms of section 165(4) of the Constitution.

38 The JSC plays a pivotal role in the appointment of judges to the superior courts in terms of the Constitution and the JSC Act.

38.1 Judges are appointed by the President “on the advice of” the JSC, in terms of section 174(6) of the Constitution.

38.2 The JSC is responsible for preparing a list of nominees for appointment by the President to the Constitutional Court bench, in terms of section 174(4) of the Constitution.

38.3 The JSC plays a consultative role in the appointment of the Chief Justice and Deputy Chief Justice of the Constitutional Court, and the President and Deputy President of the Supreme Court of Appeal, in terms of section 174(3) of the Constitution.



39 In addition, the JSC is mandated in terms of section 178(5) of the Constitution “to advise the national government of any matter relating to the judiciary or the administration of justice ...”. It therefore contributes to creating an enabling environment conducive to the maintenance of an independent and accountable judiciary which, in turn enhances the sustainability of our democracy.

40 The composition of the JSC is accordingly important. Its commissioners must be of a suitable character – i.e. fit and proper – so that its decisions and recommendations will advance the independence and effectiveness of the courts.

41 The JSC has also provided substance to the criteria for appointment – i.e. being “appropriately qualified” and “fit and proper”.

42 Following a special sitting of the JSC on 4 April 2022, the JSC published its understanding of the criteria for judicial selection in its “Summary and Explanation of the Criteria and Guidelines used by the Judicial Service Commission when Considering Candidates for Judicial Appointment”. I annex this document as **HSF1**.

43 In this document, the JSC explains that the assessment of whether a candidate is “fit and proper” for judicial appointment involves a “holistic assessment” of a candidate’s suitability with reference to multiple factors which include integrity, dignity, independence, wisdom and character. The JSC noted that an evaluation of a candidate’s character includes considerations of “whether a candidate is honest, truthful, trustworthy and whether they keep their word” (para 15).



44 In order for the JSC to be able to consider this matter properly and lawfully, its commissioners must themselves have integrity and similar characteristics in order to be able to assess and recommend the appointment of judges. The JSC would not be able to function lawfully in fulfilling its primary mandate, if even one of its commissioners were to lack the integrity required to consider the fitness of prospective judges.

45 In designating its members to the JSC, the National Assembly must have careful regard to whether their designation will further the purposes of the JSC. The Constitution requires that there be a rational connection between the designation decision and the process and purpose of the designation function – namely to constitute the JSC in a manner in which it can perform its functions.

46 Similarly, the National Assembly must have careful regard to whether its current designees are adequately furthering the purpose of the JSC, and there is equally a rational connection between the National Assembly's continuing oversight of its designees and the process and purpose of the designation function. In short, the JSC cannot perform its function where a member has made himself guilty of the type of misconduct that Mr Malema has on numerous occasions.

THE NATIONAL ASSEMBLY'S FAILURE TO CONSIDER MR MALEMA'S CONTINUED SUITABILITY FOR THE JSC



The duty to continuously consider the suitability of designees to the JSC

- 47 Section 178(1) of the Constitution addresses the composition of the JSC.
- 48 Certain commissioners hold membership in the JSC by virtue of their office: the Chief Justice, the President of the SCA, the cabinet member responsible for the administration of justice, and where Judges are appointed to a Provincial Division of the High Court, the Judge President and Premier of the Province (paragraphs (a), (b), (d) and (k)).
- 49 Other commissioners are designated or nominated to the JSC: a Judge President designated by the Judges President, two practising advocates and two practising attorneys nominated by the professions and appointed by the President, a teacher of law designated by teachers of law at South African universities, six members designated by the National Assembly and four persons designated by the National Council of Provinces, and four persons designated by the President (paragraphs (c), (e), (f), (g), (h), (i) and (j)).

50 This case is about the National Assembly's designation of one of its members to the JSC.

51 In *HSF v JSC*, the Constitutional Court emphasised the importance of commissioners of the JSC being suitably qualified for the positions held by them.

It held:

*"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."*³



52 In *Hlophe II*, this Court was called upon to determine whether the impeached former Judge President of the High Court's Western Cape division was "*fit and proper*" to be designated by the National Assembly to the JSC. It found that appointments to the JSC were subject to a fit and proper requirement and that the decision designating Dr Hlophe needed to accord with this requirement. It specifically found,

"Requiring 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', must mean more than simply requiring that designees for appointment to the JSC meet the basic eligibility criterion of being MPs or advocates or attorneys. It means that, to fulfil its constitutional mandate of appointing judges who will uphold the legitimacy of the judiciary and the spirit and tenets of the Constitution, the designating body (the NA) must ensure that the process for the designation and appointment of those responsible for selecting judges is subject to stringent standards. Most importantly, the NA, as the designating authority, must, in exercising its discretion,

³ At para 37

designate from among the nominees' individuals who are not only formally eligible but who are also substantively suited for appointment to the JSC. The judiciary's legitimacy depends heavily on public trust and respect. Once public trust in the judiciary is eroded, democratic foundations are broken and chaos is bound to descend."⁴

53 And further,

*“[d]esignating a person who is not fit and proper to serve on the JSC undermines the constitutional imperative set out in section 165(4) of the Constitution. Such a designation not only erodes public confidence in the independence, impartiality, and dignity of the judiciary but also compromises the integrity and credibility of the JSC itself. Any act that diminishes public respect for the judiciary constitutes an affront to the foundational values of our constitutional democracy.”*⁵



54 In *Hlophe v Judicial Service Commission and Others*⁶ the Gauteng Division of High Court held that “[w]hen choosing judges, the JSC acts as the selection panel of the nation.” Further that section 178 is itself predicated upon the recognition that the JSC must enjoy credibility.

55 These findings are consistent with the principles codified in the Lilongwe Principles.⁷

56 The National Assembly has the constitutional responsibility and power pursuant to section 178(1)(h) of the Constitution to designate six of its members to the JSC, at least three of whom must be from opposition parties in the Assembly. In *Hlophe II*, this Court held that when doing so, the National Assembly is obliged to exercise a discretion, based on all available evidence and relevant

⁴ Para 70, quoting *HSF v JSC*

⁵ Para 71.

⁶ [2022] ZAGPJHC 276 (*Hlophe I*) paras 47-48

⁷ Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers, 2018

consideration, as to whether its designees are fit and proper or suitable to serve on the JSC.

57 Section 178(3) of the Constitution empowers the National Assembly to replace its designees to the JSC.

58 A person who is designated does not have the right to retain that position for as long as they remain a member of the National Assembly.

59 The power to recall and replace is coupled with a duty: where circumstances arise from their subsequent conduct that call into question the suitability of a designee to fulfil their duties on the JSC, the National Assembly is constitutionally obliged to consider exercising the recall power, and in appropriate circumstances to exercise it.



60 This arises from the National Assembly's obligation in section 165(4) of the Constitution.

61 Since the National Assembly is in law required only to designate members who are "fit and proper" to the JSC, it is obliged to replace members from the JSC if they objectively cease to be fit and proper.

62 The National Assembly is under an ongoing obligation to review the performance of its designees to the JSC and to replace them where their conduct renders them not fit and proper to continue to serve on the JSC.

63 This obligation operates irrespective of whether the National Assembly has published rules regarding the designation and withdrawal of its members.

64 I also stress that this is independent of the disqualifying factors for membership in the National Assembly set out in section 47(1), read with section 47(3) of the Constitution.

65 The issue is not whether Mr Malema is qualified for membership of the National Assembly: it is whether he is suitable to continue to be designated to the JSC.

CHRONOLOGY OF MR MALEMA'S ATTACKS ON THE JUDICIARY

66 Mr Malema has a long pattern of attacking judges and magistrates.



67 On 21 June 2019, Mr Malema made a statement outside the Bloemfontein Magistrates Court during a case about land occupations. He made remarks about retired Justice Nugent, insinuating corruption, and that the judiciary is in the process of being captured:

"We cannot have judges that seek to impress politicians. Did you ever ask yourself a question: 'What would happen to this country if the judiciary is captured?' Then we are gone. It is the end of this country," said Malema.

"The judiciary is about to be captured, I'm warning you now and you'll know, in the past five years, I've never misled you."

"There was a judge called Judge Nugent who had a meeting with Pravin Gordhan before Gordhan appeared in that Nugent Commission. The judge did not disclose that he met a politician before that politician came into the commission.

"Why are the judges meeting politicians?" asked Malema.

"South Africa be warned, something is happening to the judiciary, something wrong is happening to the judiciary."

(media reporting is annexed marked **HSF2**⁸)

68 On Women's Day in 2019, Mr Malema attacked judges. He said that young women should be educated so they can replace "*incompetent judges who are threatened by politicians that appear before them*" and he also claimed that our judges are "*traumatized old people*". He also insinuated that the judiciary is biased and that if it is biased that would "*force us into the bush*" and there will be no choice but "*to take up arms*" (media reporting is annexed marked **HSF3**⁹)

69 The General Council of the Bar condemned Mr Malema's comments. It pointed out that Mr Malema's comments were made days after two judgments were handed down by women judges in matters where the EFF was an unsuccessful litigant (media reporting is annexed marked **HSF4**¹⁰).



70 During a meeting with former President Zuma in February 2021, Mr Malema accused certain unidentified judges of accepting bribes from "*white business*", and stated that there are "*...now believable allegations that some prominent members of the judiciary are in the payroll of the white capitalist establishment*". (media reporting is annexed marked **HSF5**¹¹).

⁸ Available at <https://www.news24.com/effs-julius-malema-attacks-captured-judiciary-after-case-postponed-20190621>.

⁹ Available at <https://www.news24.com/SouthAfrica/News/malema-hits-out-at-sas-old-and-traumatized-judges-in-womens-day-speech-20190809>

¹⁰ Available at <https://www.news24.com/SouthAfrica/News/advocates-body-slams-effs-julius-malema-for-his-attack-on-sas-judges-20190816>.

¹¹ Available at <https://www.timeslive.co.za/politics/2021-02-16-malema-takes-aim-at-the-judiciary-in-fiery-post-sona-speech/>.

71 On 30 March 2021, during a televised media briefing on his party's highest decision-making structure, Mr Malema said that *"the rule of law in South Africa is applied selectively"* and that the State Capture Commission of Inquiry headed by Justice Zondo was not holding to account the "Rupert stooges" and the Oppenheims. The Council of the Advancement of the South Africa Constitution (**CASAC**) at that stage called on the National Assembly to intervene (media reporting is annexed marked **HSF6**¹²).

72 During the April 2021 JSC interviews, Mr Malema alleged the judiciary has been "captured" by Mr Pravin Gordhan. He then accused Justice Dhaya Pillay, who was being interviewed for a position of the Constitutional Court, of being biased in relation to former President Zuma. Mr Malema told Justice Pillay that *"I am going to argue in a closed session that you are nothing but a political activist. You are no judge, and you deserve no high office"* (media reporting is annexed marked **HSF7**¹³). (Justice Pillay was not appointed to the Constitutional Court.)



73 In the same April 2021 interviews, Mr Malema questioned Justice Matojane (who was applying for a position in the SCA) regarding an order that Justice Matojane had made in which Mr Malema was the respondent.

73.1 CASAC lodged a formal complaint about Mr Malema's conduct with the Joint Committee on Ethics and Members Interests.

¹² Available at <https://www.dailymaverick.co.za/article/2021-04-13-parliament-asked-to-act-over-malemas-role-in-judicial-interviews-given-his-disparaging-comments-about-judges/> .

¹³ Available at <https://www.dailymaverick.co.za/article/2021-04-15-when-indecency-hatred-came-to-town-it-was-judicial-service-commission-that-brought-politics-not-the-judges/>

- 73.2 On 7 December 2021, the National Assembly adopted a report titled “*Report of Joint Committee on Ethics and Members Interests on Complaint against Honourable JS Malema, MP*”
- 73.3 Mr Malema was found to have had violated the Code of Ethical Conduct and Disclosure of Members’ Interests for Assembly and Permanent Council Members (the **Code**).
- 73.4 The report concluded that Mr Malema, while sitting as a commissioner of the JSC, had not placed the public interest above his own narrow personal interests, and should not have used the JSC as a platform for those interests.
- 73.5 On 22 November 2021, the Ethics Committee recommended a sanction, requiring that Mr Malema make an apology to Justice Matojane and the JSC in a sitting of the National Assembly. The Ethics Committee report and recommendations served before the National Assembly on 7 December 2021 and were adopted. I attach a copy of the Report as well as an extract from Hansard confirming the National Assembly’s adoption of the Report as annexures **HSF8.1** and **HS8.2** respectively.
- 73.6 In particular, the National Assembly noted that the sole purpose of Mr Malema’s questioning of Justice Matojane was undeniably to cause public embarrassment to him, and to utilise an extra-curial platform for an interrogatory in respect of a judgment in which the EFF was a party. In short that Mr Malema had abused his position on the JSC in order to



leverage an advantage in litigation in which he and his party were a party.

73.7 Mr Malema applied to court for the review of the National Assembly's decision to adopt the report. On 21 May 2025, the application was dismissed by a full bench of the High Court with costs.¹⁴ Almost a year later, the National Assembly has not taken steps to ensure that Mr Malema honours the Report's findings.

73.8 Mr Malema has neither apologised to Justice Matojane, nor has he apologised to the JSC itself.



73.9 What is startling about these events is that the misconduct arises directly in respect of Mr Malema's participation in the JSC, and that the National Assembly had itself approved the imposition of sanctions in respect of this conduct.

73.10 The National Assembly has not taken any steps to question Mr Malema's suitability to remain a member of the JSC.

74 In October 2021, Mr Malema having appeared in the East London (as it was known then) Regional Court on firearm charges, used the term "judicial dictatorship" in reference to retired Chief Justice Zondo (media reporting is annexed marked **HSF9**¹⁵).

¹⁴ Malema v Speaker of the National Assembly N.O and Others (2724/2022) [2025] ZAWCHC 213

¹⁵ Available at <https://www.news24.com/southafrica/news/malema-continues-unsubstantiated-attack-on-judiciary-20210330>.

75 On 21 March 2022, at a Human Rights Day Rally, Mr Malema stated that the judiciary was captured in favour of President Ramaphosa, and focused in particular on the Gauteng Division of the High Court.

75.1 He made the following remarks:

"There are judges who have taken a decision to judge in favour of Cyril Ramaphosa. When you take Cyril Ramaphosa to court, you will never win, let me tell you that. Especially in Pretoria, Gauteng North High Court, you will never win."

75.2 He accused judges of ruling in a "... *racist and factional manner*".



75.3 He then said:

"They want us to believe that is the law. That there is one man who is above the law. That Ramaphosa is always right. We cannot have a law with eyes that sees who is before it. We need a law that is blind, and we need neutral judges. We want to call on captured judges that if they continue to rule in Ramaphosa's favour, they will collapse this country."

75.4 He denied attacking the judiciary (saying those who say he was doing so are "fools"), but then proceeded to say:

"Any judge that rules in a factional manner will be confronted. The EFF is not a threat to the judiciary. What is a threat to the judiciary is the capture of the judiciary. The judiciary must defend itself. Let us guard the independence of our judiciary. We missed an opportunity to have the first black female chief justice."

75.5 (Media reporting is annexed marked **HSF10**.¹⁶)

¹⁶ Available at <https://www.news24.com/SouthAfrica/News/malema-claims-judiciary-captured-in-favour-of-ramaphosa-and-anc-20220321>.

76 On 16 May 2022, Malema alleged that Justice Zondo had entered the political terrain and favoured President Ramaphosa, and contended that Justice Zondo “has no limits and thinks that judges are untouchable and that he has given himself the responsibility to enter the political terrain. What will judges have to do or say with regards to the outcomes of the political conferences of political parties? Judges must know their limits” (media reporting is annexed marked **HSF11**¹⁷).

77 In October 2023, Mr Malema called Magistrate Twanet Olivier (who was presiding over the criminal case where he was charged with unlawfully discharging a firearm) an “*incompetent white magistrate*” (media reporting is annexed marked **HSF12**¹⁸).



78 In February 2024, Mr Malema again accused the judiciary of being “*captured*” and stated that judges are politically driven. He also accused President Ramaphosa of being “*protected by judges*” (media reporting is annexed marked **HSF13**¹⁹).

79 On **27 August 2025**, the Equality Court handed down judgment in litigation that the South African Human Rights Commission had brought against Mr Malema and the EFF.²⁰

¹⁷ Available at <https://www.dailymaverick.co.za/article/2022-05-16-julius-malema-berates-chief-justice-raymond-zondo-demands-disciplinary-action/>

¹⁸ Available at <https://www.timeslive.co.za/news/south-africa/2023-10-24-watch-malema-not-sorry-for-incompetent-white-magistrate-remarks-as-judges-matter-demand-an-apology/>.

¹⁹ Available at <https://www.timeslive.co.za/politics/2024-02-09-watch-ramaphosa-is-protected-by-judges-malema-launches-new-attack-on-judiciary-after-sona-bruise/>

²⁰ South African Human Rights Commission and Another v Malema and Another (EC16/2022 ; 17/2022) [2025] ZAEQC 6

79.1 The Court found that Mr Malema had engaged in hate speech as contemplated by *Promotion of Equality and Prevention of Unfair Discrimination Act, 2000*. In particular, it found that Mr Malema had made statements that “demonstrated a clear intention to incite harm and to promote or propagate hatred”.

79.2 Moreover, the statements were directed against members of a particular demographic grouping and exhorted Mr Malema’s followers to kill or assault members of that group.

79.3 It is clear that members of that demographic group will be candidates for appointment to the judiciary and will be interviewed by Mr Malema. It will have an unacceptably prejudicial effect on those candidates who will be questioned by Mr Malema in circumstances where the judiciary has itself found that he engaged in racist hate speech and threats of violence.

79.4 Although the matter is still subject to a further hearing on the quantum of the relief to be awarded against Mr Malema and the EFF, and may well be subject to an appeal, the fact remains that Mr Malema has been subject to currently binding findings which are public and which are clearly relevant to his suitability to continue as a commissioner.

80 On 1 October 2025, Mr Malema was found guilty in the then-East London Regional Court on five criminal charges, namely unlawful possession of a firearm, unlawful possession of ammunition, discharge of a firearm in a built-up



area, failure to take reasonable precautions to person or property and reckless endangerment to person or property.

80.1 Mr Malema shot a firearm in public during a political rally in 2018.

80.2 The Court found that Mr Malema, while under oath, evaded questions which demanded answers (media reporting is annexed as **HSF14.1**²¹).

80.3 Freedom under Law, Defend our Democracy and CASAC issued a statement that the conviction of Malema on charges relating to unlawful possession of a firearm and discharge of a firearm in public makes him not fit and proper to sit on the JSC (media reporting is annexed marked **HSF14.2**²²).



81 Mr Malema knows that unjustified criticism of the judiciary is dangerous.

81.1 In January 2026, he dismissed a claim by MK Party MP Mr Skosana who proposed summoning and naming “*corrupt judges*” to the Ad Hoc Committee to investigations made by Lt Gen Mkhwanazi.

81.2 Mr Malema said “*There is nothing of value that is going to come to you against judges[...]*”.

81.3 He said further:

“We have interviewed hardened criminals and visited prisons. By now, if anyone had anything against a judge, they would have brought it

²¹ Available at <https://www.businessday.co.za/bd/national/2025-10-02-guilty-julius-malema-could-lose-parliament-seat-if-jailed/>

²² Available at <https://www.timeslive.co.za/news/south-africa/2025-10-03-rights-groups-call-for-malemas-removal-from-judicial-service-commission/> -

forward. It's just posturing to create an impression that we aren't scared of anything when we actually have nothing"

81.4 Mr Malema is then reported as having "*cautioned against tainting the entire judiciary*" and stating that "*parliament has a responsibility to guard the integrity of the judiciary and avoid "sweeping" statements*".

81.5 Mr Skosana retorted that Mr Malema was "*trying to save face with them*" (i.e. the judiciary) because of his then upcoming sentencing hearing. Mr Skosana then pointed out to Mr Malema that "*You are the one who gave us all the ideas and today you are flip-flopping. It was you who told us about corrupt judges. Today you are changing your tune.*"



(Media reporting is annexed marked **HSF15**.²³)

82 On 16 April 2026, Mr Malema was sentenced by Magistrate Olivier in the now-KuGompo Regional Court to an effective five years in prison for the firearm offences.

82.1 On the same day he was granted leave to appeal the sentence, but not the conviction. I understand that he has now approached the Makhanda High Court for leave to appeal his conviction as well.

82.2 While the sentence which was imposed disqualifies Mr Malema from membership of the National Assembly (it being a custodial sentence exceeding 12 months), section 47(1)(e) of the Constitution provides

²³ Available at <https://www.timeslive.co.za/politics/2026-01-08-stop-being-a-coward-malema-challenges-mk-partys-skosana/> -

that disqualification will only take place once all appeals have been exhausted. Accordingly, Mr Malema remains a member of the National Assembly.

82.3 Following his sentencing, Mr Malema addressed supporters outside court and accused Magistrate Olivier of *"incompetence, bias and political motivation."* He is reported as having referred to her as a racist.

82.4 He is quoted as saying, :



82.4.1 *"She's the most incompetent magistrate who read a judgment for three days";* and

82.4.2 that he had been *"tried by a magistrate who doesn't read, who uses emotions, and who speaks politics."*

82.5 He accused Magistrate Olivier as having discussed the merits of the case with the Prosecutor outside of Court.

(Media report by the Sowetan is annexed marked **HSF16.1**²⁴ and by the Citizen is annexed marked **HSF16.2**.²⁵)

82.6 He is also reported to have suggested that the judgment may not have been independently written, saying it was penned by an *"invisible hand"*. Malema added that Olivier should be reported to the Magistrates' Commission.

²⁴ Available at <https://www.sowetan.co.za/news/2026-04-17-malema-attacks-magistrate-and-prosecutor-after-jail-sentence/>

²⁵ Available at <https://www.citizen.co.za/news/eff-julius-malema-reaction-five-year-sentence/>

82.7 Further he is quoted as saying:

"We are done with her [Olivier]. That's why when she said to me, 'you can leave now on free bail', I looked at her and said 'bye bye' because I had seen her ugly face for too long.

"So I will no longer appear before that ugly white face. I'm going to the highest court, where they don't use emotions; they use the law."

82.8 Not only did Mr Malema attack the Magistrate for finding against him, but he did so on a patently racist basis.

83 Mr Malema's criticism of the judiciary is rendered more egregious by the fact that he praises the judiciary when, and only when, it finds in his favour. Most recently, Mr Malema praised the Constitutional Court's judgment in the *Phala Phala* matter²⁶ as a "victory for accountability". (Media reporting by the Sowetan is annexed marked **HSF17**²⁷. This demonstrates again that Mr Malema's support for the judiciary is contingent on its finding in his favour in litigation.



HSF's CORRESPONDENCE WITH THE SPEAKER OF THE NATIONAL ASSEMBLY

84 In light of Mr Malema's continued attacks on the judiciary, on 17 November 2025 the HSF addressed correspondence to the Speaker of the National Assembly. I annex the letter marked **HSF18**.

²⁶ *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others* [2026] ZACC 17

²⁷ <https://www.sowetan.co.za/news/2026-05-08-malema-hails-victory-for-accountability-after-concourts-phala-phala-ruling/>

- 84.1 The HSF called on the National Assembly to decide, in light of the factors set out above, whether Mr Malema 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.
- 84.2 The HSF further recorded that should the National Assembly fail to take such a decision, the HSF intended to launch an application for the judicial review of the National Assembly's conduct.
- 84.3 The HSF further called on the Speaker and Chairperson of the National Council of Provinces to amend the Joint Rules of Parliament to make provision for the regulation and monitoring of the conduct of National Assembly and NCOP-designated commissioners of the JSC and to provide for their recall and replacement should their behaviour make them no longer substantively suitable to be regarded as fit and proper to serve on the JSC.
- 85 On 16 February 2026 the Speaker responded (I annex a copy of her letter as HSF19). In that letter, the Speaker contended the following:
- 85.1 *First*, that any proposal to reconsider and remove Mr Malema's designation to the JSC can only be moved on motion by Chief Whip, and cannot be introduced by the Speaker.
- 85.2 *Second*, that there is no legislative or constitutional framework for the removal of a designee to the JSC, and that the National Assembly is not empowered to 'read-in' unexpressed provisions into the Constitution.



85.3 *Third*, that the recall of a member of the National Assembly from the JSC could curtail their rights and privileges as afforded by section 47 of the Constitution.

85.4 *Fourth*, that the National Assembly considering whether to remove Mr Malema would be premature as “*court processes are underway*”.

86 On 31 March 2026 the HSF replied to the Speaker (the letter is annexed marked **HSF20**). In its letter, the HSF pointed out the following:



87 *First*, that section 178(3) of the Constitution empowers the National Assembly to recall and replace its designees to the JSC.

87.1 A person who is designated does not have the right to retain that position for as long as they remain a member of the National Assembly.

87.2 The power to recall and replace is coupled with a duty: where circumstances from their subsequent conduct that call into question the ability of a designee to fulfil their duties on the JSC, the National Assembly is constitutionally obliged to consider exercising the recall power, and in appropriate circumstances to exercise it. This was a consequence of this Court’s findings in *Hlophe II*, which, was pointed out, was not subject to any extant appeal.

87.3 The Speaker of the National Assembly has the authority and mechanisms available to ensure that matters that the Constitution require to be considered by the National Assembly are brought before it. Any refusal by the Speaker to take steps to ensure that the question

of Mr Malema's continued designation to the JSC is considered by the National Assembly, would be unlawful and reviewable.

88 *Second*, the fact that the National Assembly rules do not explicitly address the recall and replacement of its designees to the JSC cannot and does not absolve the National Assembly from complying with its duties under the Constitution to do so if necessary or appropriate.

89 *Third*, that section 47 of the Constitution does not confer a right on a member to participate on the JSC. At best, it confers the possibility of designation to the JSC by way of section 178(1)(h), this in turn being contingent on, as found in *Hlopho II*, the fit and proper requirement. The import of the judgment in *Hlopho II* is that a person who is eligible to be a member of the National Assembly may be disqualified from being designated to the JSC. Accordingly, there can be no talk of the infringement of section 47 of the Constitution, because the privilege of participating in the JSC is contingent upon at all times being fit and proper to serve on the JSC.

90 *Fourth*, and aside from the comments made by Mr Malema regarding Magistrate Olivier, Mr Malema had consistently made comments against the judiciary, which are relevant to whether he remains suitable to be designated by the National Assembly to the JSC. The National Assembly has a duty to act on the information as it stands, or at the very least consider doing so.

91 The HSF requested the Speaker to place the matter of Mr Malema's continued designation to the JSC before the National Assembly in an appropriate fashion.



92 The HSF recorded that should the Speaker refuse to do so, it would bring review proceedings against such refusal and the failure of the National Assembly to consider Mr Malema's continued designation to the JSC.

93 Finally, the HSF recorded that if it did not received confirmation by 30 April 2026 that the matter will be addressed appropriately by the National Assembly, it would understand this as a refusal and institute an application to the High Court.

94 The Speaker responded in a letter dated 30 April 2026 but received on 7 May 2026. However, the letter does not deal with the substance of the HSF's concerns, and misconceives the issues. In this regard:



94.1 *First*, it is not correct, as the Speaker suggests, that the HSF had demanded the initiation of Mr Malema's *removal* from the JSC. Rather, the HSF had demanded that the National Assembly exercise its constitutional responsibility to *consider the removal* of Mr Malema as a designee of the National Assembly.

94.2 *Second*, the HSF has not called for the NA to duplicate a sanction imposed as a consequence of the recommendation of the Joint Committee on Ethics and Members' Interests arising from the CASAC complaint. Whether Mr Malema should remain a designee of the National Assembly to the JSC is not a sanction at all (and not a sanction that can be imposed) – it is a question of his suitability for the position. It is not only the outcome of the CASAC complaint that is relevant. What is acutely relevant is Mr Malema's conduct – including attacking a judge in a JSC interview.

94.3 *Third*, the letter erroneously opines that it would be improper to “read in” a “fit and proper” qualification in respect of designees to the JSC. There is no “reading-in”. The courts in *HSF v JSC* and *Hlophe II* have already held that those who choose judges must be suitable to do so.

94.4 *Fourth*, the Speaker erroneously states that the only means by which civil society’s concerns with Mr Malema’s conduct could be addressed is through the Parliamentary complaints mechanism. But this Court *Hlophe II* found to the contrary.

94.5 *Fifth*, the HSF does not propose or require that the Speaker take up a partisan position of the question of Mr Malema’s continued suitability to be a member of the JSC. It says that the Speaker should, in the light of the obligations of the NA, place this matter before the NA for its decision.

95 The Speaker has however refused to ensure that the issue of Mr Malema’s continued suitability to be designated to the JSC is brought before the National Assembly.

96 Accordingly, the HSF has no option but to bring this review application.

GROUNDS OF REVIEW

The Speaker’s refusal

97 The Speaker has refused to place before the National Assembly the issue of Mr Malema’s continued designation to the JSC. Her decision to refuse to do so is



administrative action for purposes of the Promotion of Administrative Justice Act 3 of 2000 (**PAJA**) and as an exercise of public power is reviewable in terms of the principle of legality in any event.

98 The HSF accepts that the Speaker may, in the exercise of her powers and obligations, select the most appropriate mechanism for placing this matter before the National Assembly. Her refusal to place the matter before the National Assembly at all is unlawful.

99 First, the Speaker has the authority to place matters before the National Assembly. In terms of Rule 26 of the Rules of the National Assembly, the Speaker is required to "*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.*" In order to fulfil this obligation, the Speaker can place matters before the National Assembly where appropriate. The Speaker's belief to the contrary is premised on an error of law concerning her own authority and powers in law.

100 Second, her contention that only a Chief Whip can place the matter before the National Assembly is wrong. The issue of Mr Malema's continued designation to the JSC is not to be decided by the National Assembly as a *political* act; but rather as a matter of legal obligation under the Constitution to which the National Assembly is bound. The Speaker erred in believing otherwise. For this reason, the Speaker also erred in her suggestion in that civil society's only avenue to raise these concerns is through Parliament's complaints mechanism.



101 Third, the Speaker's argument that it would be premature to consider Mr Malema's designation to the JSC before any appeals in relation to Mr Malema's conviction and sentencing are finalised, misses the point. What is relevant is not the fact that Mr Malema has been convicted and sentenced of a crime. Rather it is Mr Malema's conduct in attacking Magistrate Olivier (and in racial terms) that should be considered by the national Assembly. Whether his conviction and sentence are upheld or overturned on appeal, Mr Malema's attacks on the judiciary and magistracy will still have happened. This also does not address the many other attacks made by Mr Malema – including that the judiciary and the judges of particular courts are biased, racist, factional or political.



102 Fourth, the Speaker does not acknowledge that the National Assembly has an obligation to consider and decide whether Mr Malema remains a fit and proper person to be one of its designees to the JSC. It seems that she denies the existence of this obligation, because she does not say that it will carry out such obligation. The Speaker's refusal is accordingly unlawful and reviewable in terms of section 6(2)(d), (e)(iii) and (l) of PAJA and the principle of legality.

The National Assembly's failure to consider Mr Malema's continued designation to the JSC

103 The conduct of the National Assembly in designating members to the JSC in terms of section 178(1)(h) of the Constitution is administrative action.²⁸

²⁸ *Hlophe II*.

104 The National Assembly's power to replace designated members to the JSC in terms of section 178(3) of the Constitution is also administrative action and reviewable under PAJA. It is a public power and in any event reviewable in terms of the principle of legality.

105 I have explained above that the National Assembly's power to recall replace members designated to the JSC is coupled with a duty to exercise that power in appropriate circumstances. Where circumstances arise that call into question the suitability of a designee to fulfil their duties on the JSC as a result of their subsequent conduct, the National Assembly is constitutionally obliged to consider exercising the recall power, and in appropriate circumstances to exercise it.



106 This arises from the National Assembly's obligation in section 165(4) of the Constitution "*through legislative and other measures*" to "*assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.*"

107 Mr Malema's conduct and his public attacks on members of the judiciary as set out above are plainly relevant to the issue of whether he remains suitable to be designated to the JSC by the National Assembly.

108 Mr Malema's pattern of conduct, culminating in his recent attacks after his conviction and sentencing – requires the National Assembly to fulfil its obligation to consider his continued suitability.

N.F. 38 YF

109 The National Assembly is obliged to consider Mr Malema's suitability to sit on the JSC within a reasonable time (in terms of section 6(2)(g) and (3) of PAJA and the principle of legality) and diligently and without delay (section 237 of the Constitution). It has failed to do so.

109.1 Mr Malema's remarks are well-documented and have been brought to the attention of the National Assembly on more than one occasion.

109.2 The HSF specifically addressed letters to the Speaker calling on her to ensure that the National Assembly consider Mr Malema's continued designation to the JSC in light of his conduct.



109.3 The National Assembly has had more than ample time to consider the issue, but has failed to do so.

RELIEF SOUGHT

110 As against the Speaker, the HSF seeks orders in terms of section 172(1)(a) of the Constitution declaring her refusal invalid and setting it aside. This is the standard relief in judicial review proceedings.

111 As against the National Assembly, the HSF seeks orders in terms of section 172(1)(a) and (b) of the Constitution and section 8(2) of PAJA:

111.1 declaring invalid and setting aside the National Assembly's failure to consider and decide on Mr Malema's continued designation to the JSC;
and

N.F. ³⁹ YT

111.2 directing the National Assembly to consider whether to replace Mr Malema as a designee to the JSC within 20 court days of the order with reference to all relevant circumstances including his conduct set out in this affidavit.

112 The HSF is entitled to such orders as just and equitable relief under section 172(1)(a) and (b) of the Constitution and section 8(2) of PAJA. Further, the HSF is entitled to a mandatory interdict.

112.1 The HSF has a clear right to require the National Assembly to be compelled to comply with its obligation in section 178(3) of the Constitution to consider Mr Malema's continued suitability for the JSC.

112.2 Without a mandatory interdict, the HSF apprehends it will suffer harm on the basis that the National Assembly will not comply with this duty within a reasonable time and diligently and without delay. As I have said, the National Assembly has already admonished Mr Malema for his conduct in JSC hearings attacking Justice Matojane, yet it has not considered whether his continued attacks on the judiciary implicate his suitability to sit on the JSC.

112.3 The HSF has no satisfactory alternative remedy to compel the National Assembly to do so.

113 I record finally that in order to expedite the hearing of this matter, the HSF will proceed with its review under Rule 6 and waives any entitlement to obtain a record of the decision under Rule 53.



N.F. 40 YF

THE LACUNA IN THE JSC ACT

114 Mr Malema's attacks on the judiciary have demonstrated a constitutional lacuna in the JSC Act.

115 As I have explained, in order for the JSC to be able lawfully to consider whether aspirant judges are fit and proper for appointment, its members must themselves have integrity and similar characteristics in order to be able to assess and recommend the appointment of judges. The JSC would not be able to function lawfully in fulfilling its primary mandate, if even one of its members were to lack the integrity required to consider the fitness of prospective judges.



116 The difficulty is that the JSC at present has no code governing the conduct of its members. There is effectively very little control over commissioners of the JSC other than the Criteria and Guidelines used by the JSC when considering candidates for judicial appointment. But that guides the questioning of judicial candidates rather than the *conduct* of commissioners. It is thus inadequate for dealing with commissioners who act in a manner that is inconsistent with their important role.

117 The JSC has no mechanism to sanction commissioners whose conduct brings the JSC into disrepute.

118 Mr Malema's conduct demonstrates this problem acutely. He has attacked judges for years with impunity – including in sittings of the JSC – without any sanction.

N.F. ⁴¹ YT

Requests made to the JSC to adopt a code of conduct

119 On 17 November 2025 the HSF wrote to the JSC. I annex this letter marked **HSF21**.

120 The HSF called on the JSC to publish a Code of Conduct. The JSC has not responded to this letter.

121 This was not the first time that it was proposed to the JSC that it adopt a Code

In this regard I attach:



121.1 A joint submission made by the HSF together with other civil society organisations to the JSC on 22 February 2022 calling for, inter alia, the adoption of a Code of Conduct for Commissioners as **HSF22**.

121.2 submissions made by the Democratic Governance and Rights Unit (the DGRU) of the University of Cape Town and Judges Matter to the JSC on 10 March 2025, which called on the JSC to adopt a Code of Conduct for Commissioners as **HSF23**.

121.3 Similar submissions made by the DGRU and Judges Matter to the JSC on 12 March 2026 as **HSF24**.

122 The JSC has not acted on these proposals.

N.F

42

YT

The lacuna

123 Section 178(6) of the Constitution provides that the JSC may determine its own procedure, but decisions of the Commission must be supported by a majority of its members.

124 The JSC is thus at least arguably able in law to make rules regulating the conduct of its own proceedings, including the acceptable conduct of its members.

125 The problem with the JSC Act is that it does not *oblige* the JSC to adopt a code of conduct.



126 The JSC Act is constitutionally deficient in this regard.

127 Since commissioners of the JSC are obliged by section 165(4) of the Constitution to conduct themselves in a manner that enhances the authority and dignity of the judiciary rather than undermines it, the governing statute of the JSC should require the adoption of a code of conduct to regulate the standard of its members' conduct.

128 This is for the simple reason that without a code of conduct, there is no effective mechanism available to the JSC to regulate the standard of conduct of its members.

129 By contrast, the JSC Act does oblige the adoption of a code of Conduct of Judicial Conduct for members of the judiciary in section 12. The purpose of doing so is to provide standards for judges to adhere to section 12(5), which provides that "*The Code shall serve as the prevailing standard of judicial conduct, which judges*

must adhere to". Had the JSC Act not made provision for a Code of Judicial Code it would for the same reasons be constitutionally deficient.

130 The JSC Act should accordingly oblige the JSC to adopt a code that serves as the standard of conduct that commissioners must adhere to. It should also provide mechanisms by which the JSC can sanction errant commissioners – including requesting a designating body to replace such a member.

131 The Act is constitutionally deficient and invalid for failing to oblige the JSC to adopt a code of conduct for its own commissioners.



REMEDY

132 The HSF seeks an order in terms of section 172(1)(a) of the Constitution declaring the JSC Act constitutionally invalid insofar as the Act does not require the JSC to adopt a code of conduct for its commissioners.

133 In confirmation proceedings in the Constitutional Court, the HSF will seek just and equitable relief in terms of section 172(1)(b).

134 The declaration of invalidity should be suspended for 24 months in order to allow Parliament an opportunity to remedy the constitutional defect.

135 During the suspension period, the HSF submits it would be just and equitable for an interim regime to apply, requiring the adoption of a code of conduct. A regime modelled on section 12 of the JSC Act is appropriate and just and equitable.

135.1 The HSF seeks and order that during the period of suspension, section 6A is deemed to be read-in to the JSC Act as follows:

6A Code of Conduct for Commissioners

- (1) *The Commission must compile a Code of Conduct for Commissioners within two months.*
- (2) *The Code of Conduct for Commissioners must at minimum—*
 - (a) *address the conduct required of Commissioners both during proceedings of the JSC and generally; and*
 - (b) *provide sanctions for acting in a manner that violates the Code, including requesting a designating or nominating body to replace a commissioner.*



135.2 Should Parliament fail to cure the constitutional defect within 24 months from the date of the order or within an extended period of suspension, the interim reading-in order should become final.

SPECIAL ALLOCATION AND EXPEDITED HEARING

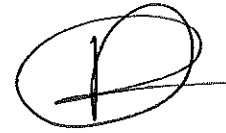
136 The issues raised in this application are of significant public importance and require an expedited determination.

137 For these reasons, the HSF records that when this application is launched it will address correspondence to the Judge President of this Court and request a special allocation and expedited hearing of the matter.

N.F. 45 Y/T

CONCLUSION

138 The HSF accordingly seeks orders in terms of the notice of motion.

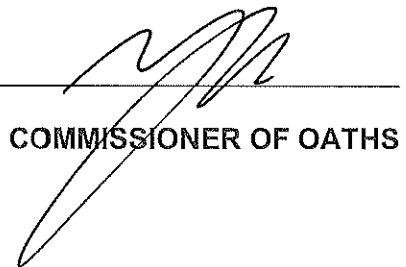


NASEEMA FAKIR

I certify that the deponent has acknowledged that she knows and understands the contents of this declaration and informed me that she does not have any objection to taking the oath and that she considers it to be binding on her conscience and that the deponent uttered the following words "I swear that the contents of this declaration are true, so help me God". I certify further that the provisions of Regulation R1258 of the 21st July 1972 (as amended) have been complied with.



Signed and sworn to before me at Westcliff on this the 14th day of May 2026.



COMMISSIONER OF OATHS

YANN NGAMENI
Practicing Attorney
45 Jan Smuts Avenue
Johannesburg 2193
Commissioner of Oaths
Tel: 011 486 0242

YT

COURT ONLINE COVER PAGE

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

CASE NO: **2026-109516**

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 01

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BY:

**Registrar of The High Court,
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Constitutional Court
Private Bag X1
Constitution Hill
Braamfontein
Johannesburg
2017



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**REPUBLIC OF SOUTH AFRICA
JUDICIAL SERVICE COMMISSION**

**SUMMARY AND EXPLANATION OF THE CRITERIA AND GUIDELINES
USED BY THE JUDICIAL SERVICE COMMISSION
WHEN CONSIDERING CANDIDATES FOR JUDICIAL APPOINTMENT**



- 1 At its special sitting held in Johannesburg on 4 April 2022, the Judicial Service Commission (JSC) considered and reviewed:
 - 1.1 the guidelines for questioning candidates for judicial appointment to the Constitutional Court adopted in 1994; and
 - 1.2 the criteria for judicial selection adopted in 2010.

The JSC's decision and approach

- 2 The JSC resolved to review and update the guidelines and publish its understanding of the criteria for judicial selection.
- 3 The JSC's purpose is to enhance the public's understanding of the JSC's selection of judicial officers and to ensure openness and transparency.
- 4 The interpretation articulated in this document is not exhaustive or definitive. Nor does it set a list of pre-determined questions. The factors to be taken into account

do not constitute a closed list or restrict questioning, provided that all questions must be relevant to the criteria. The weight to be attached to individual factors may differ depending on the circumstances.

The Constitutional Criteria

5 Section 174 of the Constitution provides as follows:

(1) *Any appropriately qualified woman or man who is a fit and proper person may be appointed as a judicial officer. Any person to be appointed to the Constitutional Court must also be a South African citizen.*



(2) *The need for the judiciary to reflect broadly the racial and gender composition of South Africa must be considered when judicial officers are appointed.*

6 Section 165(2) of the Constitution provides as follows:

The courts are independent and subject only to the Constitution.

7 These criteria are captured as follows:

7.1 is the candidate an appropriately qualified person?

7.2 is the candidate a fit and proper person?

7.3 would the candidate's appointment help to reflect the racial and gender composition of South Africa?

7.4 would the candidate be independent?

8 The constitutional requirements are framed in broad and general terms. The factors set out below explain the requirements.

Appropriately qualified

9 This concerns the candidate's academic and professional qualifications, technical competence, skill and experience. It is not a reference to academic qualifications only, but also covers legal knowledge and experience.

10 It is desirable for applicants to be assessed on their own merits to determine whether they meet the "appropriately qualified" requirement.

11 The JSC will consider the candidate's judicial track record and good judgement.

Generally, it is desirable for candidates to have acted in the court to which they seek appointment, but this must not be elevated to an essential requirement.

Regard will be had to the candidate's ability to run a court room, a working knowledge of court procedure and forensic skill.

12 The particular court and its level within the judicial hierarchy should be factors influencing what makes a candidate appropriately qualified for appointment. This would include that:

12.1 candidates for specialist courts would be expected to have particular experience and skill in the relevant area; and

12.2 in addition to other qualities, those applying for leadership positions in the judiciary should have vision, leadership qualities, good interpersonal skills and have demonstrated maturity of judgement.



Fit and proper

- 13 This concerns a holistic assessment of a candidate's suitability for appointment to the bench, with reference to a broad and cumulative reading of multiple factors, which will include integrity, knowledge, scholarship, experience, dignity, humility, judgement, wisdom, independence, character, courage, forensic skill, capacity for articulation, diligence, energy and industry. Character includes considerations such as whether a candidate is honest, truthful, trustworthy and whether they keep their word.
- 14 Consideration will be given to whether the proposed appointee is a competent and experienced person, including whether they are technically competent and have the capacity to give expression to the values of the Constitution.
- 15 Judges must interpret and enforce the Constitution in such a way as to support its fundamental values of democracy, the rule of law and the protection of fundamental human rights in accordance with sections 7(2) and 39(2). Judges must be able to discern and articulate the principles which underlie the Constitution. For example, they must understand the importance of a commitment to the realization of socio-economic rights, especially for poor people, and access to justice.
- 16 Candidates must be capable of applying or distinguishing previous decisions of other courts, and they must be able to give expression to the moral convictions of an open and democratic society based on freedom and equality. Judges must be able to explain cogently and concisely why they rejected any plausible



argument. They must have the ability to explain their decisions clearly and succinctly to all those involved.

- 17 All this requires considerable forensic and intellectual ability, an appreciation of the practical workings of court procedure, a thorough and general knowledge of law and an appreciation of the relevant ethical duties and rules designed to protect the integrity of the legal process.
- 18 The candidate should have a good judicial temperament. This includes such factors as fair-mindedness, humility, impartiality, courtesy, patience, respect, fairness, sensitivity to social context, commitment to public service and the equal administration of justice.
- 19 Consideration will be given to whether the candidate is a person with the necessary energy and motivation, diligence, stamina, industry, work ethic and productivity, particularly in respect of the delivery of judgments without undue delay.



Reflection of the racial and gender composition of South Africa

- 20 It is a constitutional imperative that race and gender must be taken into account in the selection of judges to achieve representativity and diversity.
- 21 The constitutional instruction must be understood as reflecting that the Courts, to do justice, must have the capacity to understand and relate to the experiences of all South Africans. The concern is with the effectiveness of the Court as an instrument of justice. The constitutional instruction is based on the conviction that the Court must be constituted from a broad enough spectrum of South African

society to be able to understand the experience of all South Africans and empathise with their needs. The ability to understand the experience of a race or a gender and empathise with its needs is generally present to a much greater degree in those who have lived that experience than in those who have merely studied it.

22 The “*need to constitute a court which is ... representative in respect of race and gender*” cannot be understood to rigidly or mechanically require that each court

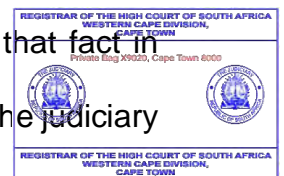
represents the races and genders in direct proportion to their share of the national population. It is recognised that a balance must be struck: whilst a particular court

may not represent the races and genders in direct proportion to their share of the national population, the racial and gender composition of the judiciary remains an important factor. Diversity is a quality without which the Court is unlikely to be able to do justice to all the citizens of this country, but it is not an independent requirement, superimposed upon the constitutional requirement of competence. Properly understood, diversity is a component of competence – the Court will not be competent to do justice unless, as a collegial whole, it can relate fully to the experience of all who seek its protection. It is for this reason that, if the Court does not meet the standard set by the constitutional instruction, it will lack the confidence of the nation, and consequently lack legitimacy.

23 The constitutional instruction suggests a general concern that judges should be sensitive to the experience and needs of all who supplicate for justice before them. A capacity for empathy and an appreciation of the needs of the community are therefore relevant considerations in the selection of judges.



- 24 In evaluating a candidate's professional experience and potential, the JSC may take into consideration that opportunities for advancement in the profession for black persons and women were limited by institutional, historical, systemic and other barriers. The reality of race-based and gender-based bias, which hinder worthy candidates from obtaining experience and competency in certain areas of practice, should not result in candidates being unfairly disqualified. Where a candidate who will not enhance racial or gender representativity is better qualified in an important respect, the JSC should give due consideration to that fact in weighing all relevant factors. These may include the overall needs of the judiciary at the relevant time, the performance and needs of the relevant court, discrimination that still pervades legal practice and the extent to which the candidate may have been historically prejudiced.
- 25 A candidate's commitment and contribution to transformation will be considered. In addition, the candidate's commitment and participation to community-based and professional structures will be considered.
- 26 The message that a particular appointment may convey to the community at large will also be considered.



Independence

- 27 Judges should make their own decisions independently and be possessed of courage, fairness and good judgement.
- 28 Judicial independence means that the judge is required to make up his or her own mind on an issue, independently of pressure or coercion from some other

person or body, and independently of loyalty or affiliation to some other person or body.

29 The judge must have the courage and the integrity to be able to resist pressure, which may be external, such as political, commercial or personal, or internal, such as a desire for popularity and even the pressure of a direct threat. A judge should not be diverted from the judgment which he or she believes is required by the evidence and the law.

30 Since membership of a secret society or a close political affiliation or loyalty may have a bearing on a candidate's capacity to be an independent judge, a candidate may be questioned about such a membership, affiliation or loyalty.



31 This does not mean that the candidate has to be free of personal convictions, political or other, that might be relevant to a case. But the candidate must have the capacity to put her or his own convictions at a sufficient distance – to view those convictions with sufficient detachment – to be able to evaluate the arguments and the evidence in the case with an open mind. Openness to persuasion is an indispensable quality in a judge.

32 It is clear that a judge cannot be relied upon to bring these qualities to bear unless she or he is a person of courage and integrity. A person of integrity is someone who is faithful to his or her principles and oath of office. None of this means that the character of a candidate for appointment to the Court has to be free of all lapses or blemishes; but a personal history of hypocrisy, dishonesty, opportunism or expediency will disqualify a candidate from being appointed to a judicial office.

Guidelines regarding the JSC's approach to the interviews

33 Questions put by commissioners to a candidate must be relevant to the criteria. It is the duty of the chair of the JSC to enforce this guideline. In doing so, the chair will enjoy a discretion. After hearing the commissioners, the chair's ruling on the permissibility of a question will be final.

34 A candidate may not be asked a question which cannot be answered without giving an undertaking or a commitment about how the candidate would answer that question if it arose for decision before the Court. Questioning of this kind is not compatible with a judge's duty to approach issues entrusted to them for adjudication independently and with an open mind, as judges should not commit themselves to an answer before hearing argument. A candidate must decide impartially and so can offer no forecasts, or hints, that may indicate a disregard for the specifics of the particular case.



35 The object of the selection process is to discover the candidates who are best qualified for the Court and that judges of the highest calibre possible are appointed. The search is therefore primarily for positive qualities, not disqualifications.

36 This does not mean that the JSC can ignore serious disqualifying allegations. In regard to such allegations, and because they may affect a candidate's reputation or dignity or otherwise intrude into the candidate's privacy, and/or the reputation or independence of the judiciary, the following guidelines will be applied:

36.1 the allegation must be of such a nature that, if true, could potentially render the candidate not a "*fit and proper*" person;

- 36.2 unless a sufficient substantiation for the allegation exists, the matter should not be raised with the candidate during the interview;
- 36.3 prior to any questions being put to the candidate, the candidate must be given an adequate opportunity to consider and address the allegation;
- 36.4 the JSC will receive input from the Objection Committee.



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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

Annexure 02

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

21 Jun 2019

Share



EFF's Julius Malema attacks 'captured' judiciary after land case postponed

Ethan Van Diemen

Comments



Judgment in the **land occupation** case against EFF leader Julius Malema was reserved by the Bloemfontein Magistrate's Court on Friday.

The State and defence agreed to a postponement in anticipation of the outcome of a related High Court challenge Malema has lodged.



Addressing supporters outside the court in Bloemfontein, Malema said: "We might be imprisoned, we might go to jail, we might be subjected to fines. Every time such rulings are made against us, you must know that it is not a ruling against the leadership, it's a ruling against the struggle for the land."

"You must know that when you are EFF, you are the enemy of the Rothschilds, you are the enemy of the Ruperts, you are the enemy of the establishment. The establishment is white monopoly capital, it's the army, it's the police, it's the courts, every institution that existed 300 years ago, that's what an establishment means,"

continued.

language of politicians as a judge and want to be respected. Chief Justice [Mogoeng Mogoeng] came to pray for us there in Parliament. We want to make a call to Chief Justice [Mogoeng Mogoeng], please pray for judiciary."

A section of the judgment referred to by Malema (Image: Supplied)

"We cannot have judges that seek to impress politicians. Did you ever ask yourself a question: 'What would happen to this country if the judiciary is captured?' Then we are gone. It is the end of this country," said Malema.



"The judiciary is about to be captured, I'm warning you now and you'll know, in the past five years, I've never misled you."

"There was a judge called Judge Nugent who had a meeting with Pravin Gordhan before Gordhan appeared in that Nugent Commission. The judge did not disclose that he met a politician before that politician came into the commission.

"Why are the judges meeting politicians?" asked Malema.

"South Africa be warned, something is happening to the judiciary, something wrong is happening to the judiciary."

He warned South Africa that "something is happening to the judiciary".

Economic Freedom Fighters ✓
@EFFSouthAfrica · Follow

CIC @Julius_S_Malema has arrived for the #LandExpropriation court hearing in Bloemfontien.

9:13 AM · Jun 21, 2019

♥ Reply ↻ Copy link

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crime, by occupying any vacant land they came across. Malema is challenging the constitutionality of the Riotous Act in the Gauteng High Court in Pretoria.

The State and the defence agreed that the matter should be postponed until November 8, as Malema may appeal the case before the High Court, all the way to the Constitutional Court.



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Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 03

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BY:

**Registrar of The High Court,
Western Cape Division, Cape
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09 Aug 2019

Malema hits out at SA's 'old and traumatized' judges in Women's Day speech

Kaveel Singh

Comments



EFF leader Julius Malema has called for education to be free so young girls can become confident judges who stand up to those in power.

He was speaking during a Women's Day event in the Northern Cape on Friday when he made the comments.

"Education must be free of charge so a girl child can be educated and become a confident judge tomorrow so we get rid of incompetent judges who are threatened by politicians that appear before them."

He said the current stock of judges were "traumatized old people".

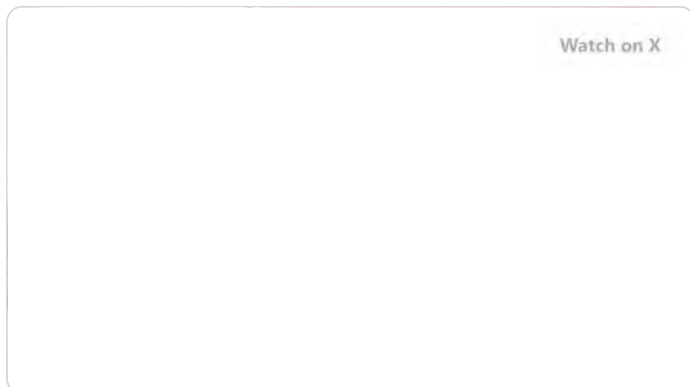


"We want women judges that are not scared of male politicians and that are not threatened by male white Afrikaner lawyers before them. We want the judges that are going to say the judiciary must be independent and not be influenced by who is the President."

@EFFSOUTHAFRICA · FOLLOW

#EFFWomensDayCelebration

CIC @Julius_S_Malema says education must be free of charge, so that the girl child can be educated and become a confident judge. So that we get rid of judges who are incompetent and threatened by politicians who appear before them.



6:08 PM · Aug 9, 2019



489



Reply



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Malema said that if judges didn't properly do their jobs, he would take up arms.

"If judges judge according to who appears before them, they must know we will be left with no options but to take up arms because there is no neutrality in SA. The judges can save democracy of SA by not being biased. A bias judiciary will force us into the bush, and we don't want to go into the bush."

Malema said that he also wanted sanitary pads given to all women for free.

"We want sanitary pads given to women free of charge particularly in poor communities. Some say pads must go to girls in schools only. That is not correct, there are poor people not in school without sanitary pads. They too must get them free of charge."

He said the packaging of the product should also be dignified.

"Because they are free must not be given in a transparent package. They too must be packaged properly It must be dignified. Packaging in a cheaper way is disrespectful."

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

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Annexure 04

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**Registrar of The High Court,
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16 Aug 2019

Advocates' body slams EFF's Julius Malema for his 'attack' on SA's judges

Alex Mitchley

Comments



The General Council of the Bar (GCB) has condemned personal attacks that EFF leader Julius Malema made against the judiciary during his address on Women's Day.

News24 previously reported that Malema had said that "education must be free of charge so a girl child can be educated and become a confident judge tomorrow, so we get rid of incompetent judges who are threatened by politicians that appear before them".

He also said the current stock of judges were **"traumatised old people"**.

"We want women judges that are not scared of male politicians and that are not threatened by male white Afrikaner lawyers before them. We want the judges that are going to say the judiciary must be independent and not be influenced by who is the president.



"If judges judge according to who appears before them, they must know we will be left with no options but to take up arms, because there is no neutrality in SA. The judges can save democracy of SA by not being biased. A biased judiciary will force us into the bush, and we don't want to go into the bush," he said.

Malema's comments followed just days after two judgments were handed down by women judges in matters where the EFF was an unsuccessful party, the GCB said.

'Veiled attack of a personal nature'

The GCB said it respected the right to freedom of expression, including the right to criticise judicial decisions where justified.

comes under unwarranted attack," GCB chairperson Craig-Watt Pringle SC said in a statement.

"The GCB does not seek by means of this statement to debate the correctness or otherwise of the two judgments referred to above, or to attempt to stifle debate in that regard.

"We do, however, wish to express our concern that, instead of offering a reasoned critique of the judgments, Mr Malema launched a veiled attack of a personal nature on the individual judges who delivered those judgments, by implication referring to them as being incompetent, lacking in appropriate confidence, independence, and being politically motivated."

The GCB said it was unfortunate that Malema's inappropriate criticisms - which were directed not at the correctness of the judgments, but at the perceived personal characteristics of the judges who delivered them - evidently sought to instil fear in the judiciary by making unfounded allegations of favour and prejudice.

"Attacks of this nature undermine the independence of the judiciary, which is not only the very value that Mr Malema purports to rely upon, but one from which he and the Economic Freedom Fighters have themselves benefitted on a number of occasions over the years."



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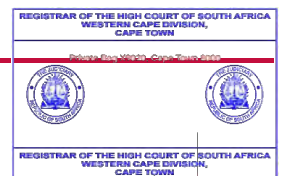
Annexure 05

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Town**



POLITICS

Malema takes aim at the judiciary in fiery post-Sona speech

EFF leader Julius Malema has accused certain judges of receiving bribes from white businesses, while warning of an uprising against the judiciary if judges conspire with politicians to deal with opponents.

February 16, 2021 at 8:44 pm



Andisiwe Makinana

Sunday Times political editor





Former president Jacob Zuma and EFF leader Julius Malema at Zuma's home in Nkandla, KZN.
(Twitter/@EFFSouthAfrica)



EFF leader Julius Malema has accused certain judges of receiving bribes from white businesses, while warning of an uprising against the judiciary if judges conspire with politicians to deal with opponents.

Malema, fresh from having tea with former president Jacob Zuma in Nkandla, was participating in the state of the nation debate in parliament where he delivered a fiery speech in which he criticised President Cyril Ramaphosa and repeatedly referred to him as incompetent, incapacitated and unreliable.

Malema warned Ramaphosa that if the president does not genuinely support the expropriation of land without compensation, he would be kicked out of office and not complete his first term.

“We cannot continue to bury our heads in the sand against growing and now believable allegations that some prominent members of the judiciary are in the payroll of the white capitalist establishment,” said Malema about judges.

He said they could not ignore allegations that some judges received bribes through a State Security Agency project called “Project Justice” as well as from the CR17 campaign donations which, he said, by all standards and measures amounted to huge corruption, money-laundering and racketeering.

Former president Jacob Zuma expressed a similar sentiment about the Ramaphosaa campaign funding in a letter after his Zondo commission no-show on Monday.



Malema said on Tuesday: “The judiciary must know that they are not above the constitution. They went to school to become judges, there is nothing so special that gives them powers to think they can amend this constitution and take the rights of people away.”

Malema said some judges contradict themselves in their judgments because they think they are untouchable.

“If they continue to think they are the law and not the interpreters of the law, then the people will rise against such few judges who have made themselves the law and are conspiring with politicians to deal with the opponents of the current establishment,” he said.

Former safety and security minister Sydney Mufamadi told the Zondo commission of inquiry last month of Project Justice, which allegedly involved recruiting and handling sources in the judiciary to influence the outcome of cases against Zuma.



Mufamadi chaired a high-level review panel on the state security agency in 2018. He told Zondo that information provided to the panel indicated that amounts of between R1.2m and R4.5m were routinely taken from SSA and provided to former state security minister David Mahlobo whom, it is said, was responsible for handling these sources.



On Tuesday, Malema claimed that there was an uninterrupted continuity of state capture under Ramaphosa's tenure, “which looks like all along you have been learning from the best”.

He charged that at the rate the allegations were going, there may be a need to establish another commission of inquiry to investigate huge corruption under Ramaphosa's leadership, adding that there may be a need to conduct closer scrutiny of the judiciary.

Under Ramaphosa's watch, corruption was on the rise, he said, citing the auditor-general's reports on government departments and on the special audit of Covid-19 funding.

Malema accused Ramaphosa of replacing the Guptas, who wielded power under Zuma, with “a very powerful” white capitalist capture by white businesses, especially those who played a central role “in buying the conference of the ruling party in 2017”.

“We want to state categorically that any leader of our country who owes loyalty to colonial settlers and white state capturers is defining himself as an enemy of the people. We will isolate and ultimately defeat all puppets of the white capitalist establishment,” he said.

Malema said it was difficult to trust Ramaphosa's insistence on the Johnson & Johnson vaccine as genuine, saying the company has subcontracted some of

own Covid-19 vaccine.

Malema's attack on the judiciary comes a day after Zuma lambasted the judiciary, saying many of them had “long left their constitutional station to join political battles”. He also fired a broadside at his successor saying he was helped by judges to hide “what on the face of it seem to be bribes obtained to win an internal ANC election”.

Acting minister in the presidency Khumbudzo Ntshavheni questioned Malema's latest stance on the judiciary.

“We all know when you start making noise against the president and the judiciary to an extent that you stop short of calling for an uprising against the judiciary, we wonder what is it that you are afraid of,” she said.



Ntshavheni referred to the firebrand leader as an empty vessel that makes the loudest noise but added that South Africans were no longer fooled by his noise.

She questioned Malema's interest and role in ANC's factional battles, saying he should leave these to ANC members and pointed out that he only supported ANC presidents once they leave office.

“When it was Mbeki, he was not good enough, you went to president Zuma; when it was president Zuma, you went to Mbeki, now it's Ramaphosa you go back to President Zuma. You said you will never support president Zuma but you are the one supporting president Zuma.”

Ntshavheni said while they, as ANC members, supported Zuma as a former president of the party and state, “the rule of law will apply with no fear and no favour even to you, Malema”.

TimesLIVE

COURT ONLINE COVER PAGE

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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema, Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

Annexure 06

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

DAILY MAVERICK

SOUTH AFRICA

This article is more than 5 years old

JUDICIAL SERVICE COMMISSION

Parliament asked to act over Malema’s role in judicial interviews, given his disparaging comments about judges



The EFF leader’s criticism of the judiciary calls into question his role representing the National Assembly at the Judicial Service Commission judges’ interviews, says the Council for the Advancement of the South African Constitution. And the council is asking Parliament to take action.



By Marianne Merten

13 Apr 2021

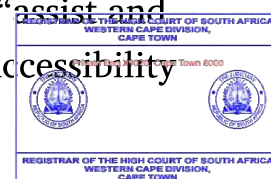


EFF leader Julius Malema is one of six MPs, three from opposition parties, who serve on the Judicial Service Commission (JSC) representing Parliament – not a political party. Photo Thulani Mbele

Holding elected public representatives accountable for their politically motivated statements may well be dismissed in South Africa's political noise, but it speaks directly to conduct that must be expected from those straddling elected and political office.

In terms of Section 178 of the Constitution, EFF leader Julius Malema is one of six MPs, three from opposition parties, who serve on the Judicial Service Commission (JSC) representing Parliament – not a political party.

Section 165 stipulates all organs of state, including Parliament, must “assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts”.



For this reason, the Council for the Advancement of the South African Constitution (CASAC) has asked National Assembly Speaker Thandi Modise what actions Parliament is taking over Malema's “unwarranted” and “unbecoming” comments about judges. The letter, dated 31 March and seen by *Daily Maverick*, was sent well before the start of the week-long judges' interviews by the JSC from Monday.

“Do Mr Malema's views represent those of the National Assembly? If not, what action will the National Assembly take to hold Mr Malema accountable for these statements, particularly as one of the National Assembly's representatives to the JSC?”

CASAC's letter specifically refers to the most recent of Malema's sharp slating of judges, and the State Capture Commission chaired by Deputy Chief Justice Raymond Zondo during the 30 March [televised media briefing](#) on the recent meeting of its highest decision-making structure between elective congresses, the EFF central command council.

Malema said at that briefing that “the rule of law in South Africa is applied selectively” and that the State Capture inquiry was not holding to account the “Rupert stooges” and the Oppenheimers – the radical economic transformation shorthand for white monopoly capital – but was representative of “a certain faction of society”. Zondo was “not our god”, and his actions would be reviewed.

CASAC wanted Modise's undertaking that the National Assembly would act on this ahead of the JSC interviews.

“These statements constitute an unwarranted attack on the integrity of Deputy Chief Justice Raymond Zondo and the judiciary as a whole. It is unbecoming of any member of the National Assembly, let alone one of its representatives on the JSC, to make such public comments that deliberately seek to undermine the independence and integrity of the judicial arm of the state,” wrote CASAC Executive Secretary Lawson Naidoo, who also raised the criminal charges against Malema, including assault and incitement to violence.

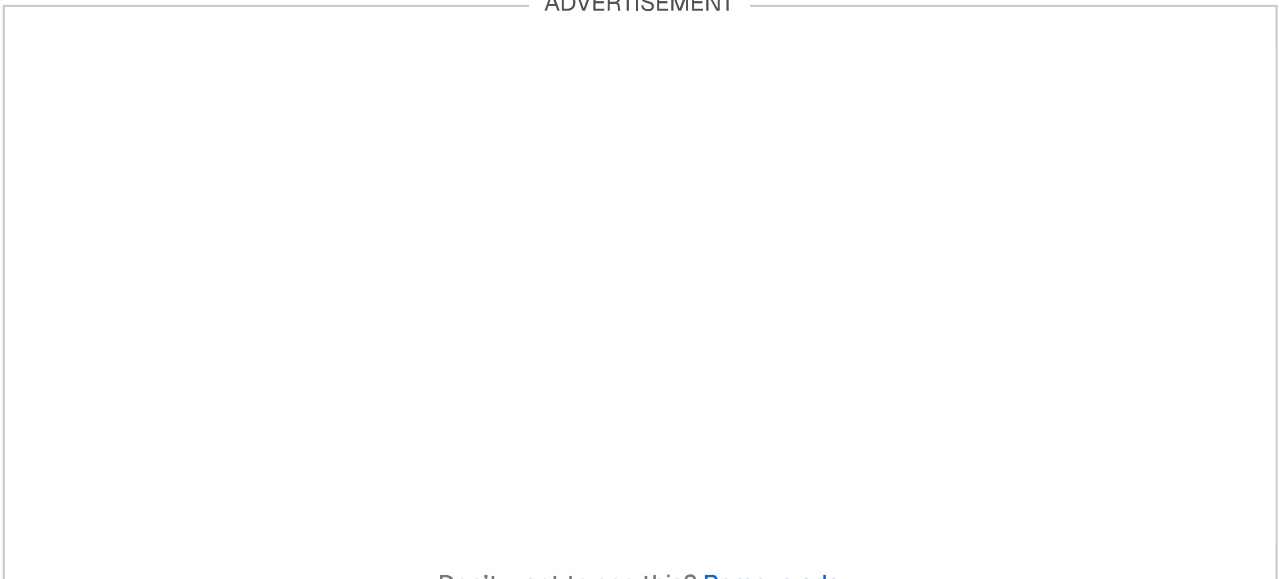
“The utterances of Mr Malema clearly undermine these constitutional principles and, if left unchallenged, will undermine the judiciary in the eyes of the public.”

Modise responded on Monday as Malema took his seat at the JSC interviews from Monday.

“The National Assembly does not hold the same position in respect of the judiciary that Mr JS Malema seemingly holds,” said the Speaker’s letter seen by *Daily Maverick*.



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CASAC should submit a complaint in terms of the parliamentary code of conduct to the Registrar of Members’ Interests, if the council wished to take the matter further, it read.

The JSC replied with a “no comment” when contacted on Tuesday. Parliament spokesperson Moloto Mothapo said he could not add to the official letter on the matter.

EFF national spokesperson Vuyani Pambo did not respond to two telephone calls, a voicemail and an SMS on Tuesday. The EFF is on public record with its refusal to engage *Daily Maverick*, which also was denied access to its 2019 elective People’s Assembly.

Strictly speaking, the Judicial Service Commission Act does not set out the criteria for Parliament selecting its JSC members – six MPs and four delegates from the National Council of Provinces. Traditionally, political parties put forward their nominations, and political structures at the national legislatures resolve who will serve on the JSC. The names are then approved in the House. Malema was elected to the JSC in June 2014.

And so the focus falls back on Parliament – and its internal arrangement. The Constitution, in Section 57, states that the National Assembly may “determine and control its internal arrangements, proceedings and procedures”. Courts have upheld this constitutional responsibility, even when parliamentary rules have fallen short of expected standards or laws were found to be unconstitutional. Judges have identified the shortcomings, and then asked Parliament to fix the defects, often within a stipulated deadline of a year or two when it comes to legislation.



CASAC’s Naidoo told *Daily Maverick* on Tuesday the council would respond to Modise’s letter, saying it was crucial that Parliament consider this matter of JSC representation at its appropriate structures.

“A failure of Parliament to do so would constitute a dereliction of its responsibilities,” said Naidoo. DM

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IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 07

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**Registrar of The High Court,
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JUDICIARY IN CRISIS ANALYSIS

When Indecency & Hatred came to town: It was Judicial Service Commission that brought politics, not the judges

Members of the Judicial Service Commission have sometimes used the judge selection process to fight their own battles in the past. But in the Constitutional Court interviews which happened this week, the process felt shockingly politicised — most notably in the grilling of Judge Dhaya Pillay by Julius Malema and worrying conduct by Chief Justice Mogoeng Mogoeng.



By Rebecca Davis

📅 15 Apr 2021



From left: Former president Jacob Zuma. (Photo: EPA-EFE / Kim Ludbrook) | Chief Justice Mogoeng Mogoeng. (Photo: Media 24 / Deaan Vivier) | Public Enterprises Minister Pravin Gordhan. (Photo: Gallo Images / Sunday Times / Esa Alexander) | Judge Dhaya Pillay. (Photo: ...)

DIVE DEEPER

The bumper session of judge interviews being undertaken by the Judicial Service Commission (JSC) at the moment is playing out against a fraught backdrop.

They are taking place in the context of the circulation of a recording of ANC Deputy Secretary-General Jessie Duarte complaining that when ANC matters are brought before Gauteng Judge President Dunstan Mlambo, the party always loses — and it has to go to Judge John Hlophe's court in Cape Town to win.

The JSC interviews are taking place in the context of the ongoing controversy surrounding Judge Hlophe, who has been found guilty of gross misconduct by the Judicial Conduct Committee, and who recently dismissed the corruption case against ANC MP Bongani Bongo in a highly questionable manner.



<https://www.dailymaverick.co.za/article/2021-02-28-hlophes-bongo-ruling-a-hand-grenade-tossed-into-south-africas-political-chaos/>

They are taking place in the context of former minister Sydney Mufamadi's testimony to the Zondo Commission that during the Zuma era, the State Security Agency set aside millions to buy off judges hearing matters involving former president Jacob Zuma.

And they are taking place in the context of an imbroglio revolving around Chief Justice Mogoeng Mogoeng's public criticism of South Africa's relationship with Israel: comments for which he has been ordered to apologise by the Judicial Conduct Committee and thus far refuses to comply.

Little wonder, then, that there appeared to be tension in the air at the interviews to fill two vacancies on the Constitutional Court this week, with questions heavy with subtext.

"Is it your view that judges should only speak through their judgments?" Justice Minister Ronald Lamola asked Judge Fayeeza Kathree-Setiloane, in what was hard to read as anything other than a reference to the Mogoeng matter.

The Chief Justice himself, addressing Judge Rammaka Mathopo, solicited the candidate's views on why "some of us have things written [in the media] about us as judges almost all the time, even lies", while others are undisturbed by media scrutiny.



Perhaps most cryptic was commissioner Julius Malema's question to Judge Kathree-Setiloane: "Can the Constitutional Court take away a fundamental right of an individual, such as the right to remain silent?"

"No," replied Judge Kathree-Setiloane, clearly bemused by the question.

She added, with a slight laugh: "I don't believe the Constitutional Court would do that."

Malema did not elaborate, and the question hung in the air in a gnomic fashion. Until, that is, one read [Zuma's letter to the Constitutional Court](#) this week regarding his refusal to appear before it — and realised that the right to remain silent was precisely the argument marshalled by Zuma to justify his non-appearance.

In the letter, Zuma's lawyers criticised the apex court for violating the former president's right to remain silent under Section 35(3)(h) of the Constitution.



In other words, Malema was using the JSC interviews to air Zuma's defence.

And he wasn't the only JSC commissioner engaged in this particular political project. ANC MP China Dodovu put it to Judge Dhaya Pillay that South Africa risked falling to a "judicial dictatorship" — another word-for-word crib from Zuma's letter.

Zuma wrote: "I am disappointed to witness the degradation of our collective commitment to remain vigilant against any form of dictatorship, including judicial dictatorship".

It was in the bruising interview of Judge Pillay that politics came to the fore in the most startling manner. Judge Pillay was required early on in her grilling to explain that she had presided over two Zuma-related matters: the defamation case brought against Zuma by former Minister Derek Hanekom, and a hearing for his corruption trial in February 2020 at which Zuma was a no-show.

On the latter occasion, Judge Pillay famously issued a warrant of arrest for Zuma as a result of irregularities in the sick note he presented.

She explained to the JSC: "The normal thing a judge does when a litigant fails to appear is to issue a warrant, and a judge has discretion whether to stay the warrant. And that's exactly what I did."

ANC MP Archibold Nyambi promptly accused Judge Pillay of a lack of "empathy" in how she handled Zuma's purported medical issues, causing the judge to explain that the sick note had to be questioned because of "alterations" in it.

“It’s what I would do with any litigant,” the judge said.

Attorney Mvuso Notyesi turned to another matter, one straight from the ledger of Twitter conspiracy theories: was Judge Pillay a “prepaid judge”, one “whose name is on the CR documents?” (a reference to fake news about payments made by the Cyril Ramaphosa election campaign).

Judge Pillay replied that the only way to put such rumours to bed would be to set up a forum, institute some kind of inquiry, and “put up the evidence”.

All this, however, was merely the curtain-raiser for the real bout, which was Malema vs Pillay.

From the outset of his questioning, Malema appeared animated by righteous fury towards the judge, and he was allowed by Chief Justice Mogoeng to continue hammering her for far longer than should have been permissible — given both the time constraints of the commission and basic decency.



Malema’s first avenue was regarding the fact that Judge Pillay holds some shares in South African banks, yet has ruled on various bank-related matters.

“The banks have become a big problem in this country,” growled Malema, staring daggers at the judge.

“Banks win cases against us and judges have shares in the banks.”

Judge Pillay directed Malema to the register of judges’ assets, which she said would show that “many judges have investments in many institutions”, and informed him in any case that she had a reputation for “lambasting” the banks in court.

Malema’s next attempt: Judge Pillay’s relationship with Minister Pravin Gordhan. The judge had previously explained that they had a long-standing friendship,

dating back to their days as political activists in Durban.

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“The fact that [Gordhan] has been in government has never interfered with my work. He and I recognise boundaries,” she said.

Malema was not mollified. Seemingly thrumming with fury, he charged: “You are a friend of a politician called Pravin Gordhan who is alleged to have captured the judiciary!”

Judge Pillay remained unruffled, calling the claims against Gordhan merely untested allegations.

“I’ve made judgments against Treasury, against SARS... it’s never been a problem,” she said.

Malema would go on, bewilderingly, to accuse Judge Pillay of also having too close a relationship with President Zuma to rule fairly on his cases. He also ~~hit out at the~~ judge for having quoted former ANC president Oliver Tambo in the Hanekom v Zuma judgment — a decision Pillay had already explained.



She had told the JSC that she quoted Tambo due to her recognition that the source of the conflict between Hanekom and Zuma was a “problem that I was never going to be able to reach”.

Said Pillay: “I thought that if these protagonists won’t appreciate my judgment, then at least they must appreciate the utterances of their own leader. It’s something I do when I sense parties could benefit from some other input.”

Malema’s response: “I am going to argue in a closed session that you are nothing but a political activist. You are no judge, and you deserve no high office.”

Rather than censure Malema for this grotesque disrespect towards a serving judge, Chief Justice Mogoeng would shortly jump in afterwards with his own grilling regarding Judge Pillay’s relationship with Minister Gordhan — a relationship she had by this time discussed *ad nauseam* and, notably, at the expense of most other relevant topics, such as her jurisprudential philosophy.

Mogoeng, as has been well publicised, then delivered his own anecdote about Gordhan allegedly leaning on him in 2016 with regards to Dhaya’s judicial prospects — [a claim Gordhan has strenuously disputed](#).

As many have noted, it is odd that Mogoeng has waited five years to air an event that ostensibly disturbed him so greatly. But the timing was superb for the EFF — which promptly announced its intentions to lay charges against Gordhan in the party’s ongoing feud with the minister.

And, to nobody’s surprise, Judge Pillay would fail to make the Constitutional Court shortlist announced after JSC deliberations the following day.

It would not be surprising if the interview sent shivers down the spines of other members of the judiciary who will be called on, in future, to preside over matters involving current politicians. Under these circumstances, who would want to be the judge who finally sends Zuma to jail, or who rules against Malema and the EFF in some significant matter?



That is likely the whole point.

Early in her interview, before it had descended into a spectacle of political intimidation, Judge Pillay had addressed the question of why relatively few women make themselves available to the JSC to be interviewed.

“The risk of being accused of things that don’t matter”, the judge explained; the safety concerns for family.

Said Judge Pillay: “There are trouble-makers, detractors from our democracy, and we should stand firm if the judiciary is to remain a bulwark against a constitutional crisis.” DM

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IN THE HIGH COURT OF SOUTH AFRICA
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CASE NO: 2026-109516

In the matter between:

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and

Speaker of the National Assembly, Julius Sello Malema, Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

Annexure 08

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ATC211201: Report of the Joint Committee on Ethics and Members' Interests on the Complaint Against Honourable J. S. Malema, Mp

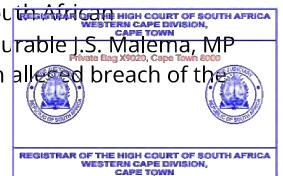
Joint Committee on Ethics and Members' Interest

Report of the Joint Committee on Ethics and Members' Interests on the Complaint Against Honourable J. S. Malema, Mp

The Joint Committee on Ethics and Members' Interests ("the Committee") having considered the complaint against Hon. Julius Malema, MP, reports its finding and its recommendation on penalty, in terms of item 10.7.8.1 of the Code of Ethical Conduct and Disclosure of Members; Interests ("the Code"), as follows.

INTRODUCTION

Mr. P. Naidoo (known as Lawson Naidoo), the Executive Secretary to the Council for the Advancement of the South African Constitution ("CASAC") ("the Complainant") directed a complaint to the Committee concerning conduct by Honourable J. S. Malema, MP ("the Member"). The Office of the Registrar of Members' Interests received the complaint on 19 May 2021 for an alleged breach of the Code on Ethical Conduct and Members' Interests ("the Code").



SUMMARY OF THE COMPLAINT

THE COMPLAINT CONTAINS THREE PARTS

PART 1

THE ZONDO COMMISSION

The allegation is that the Members' political party held a press conference on or about 30 March 2021 and the Member said the following:

"The rule of law in South Africa is applied selectively, and sections of the judiciary are being co-opted into this nonsensical direction.

While we respect the Commission of Inquiry into State Capture, we should state here that the direction that the Zondo Commission has assumed is aimed at satisfying certain factional agendas and programme. (sic)

We do not associate with people who have stolen government money and resources for their own benefit, and we do not associate with any faction in any political party.

We, however correctly observe that the Zondo Commission is now assuming a factional agenda and programme aimed at protecting the white capitalist establishment. Zondo is not our god; he is a human being. We are not going to be scared of a judicial dictatorship. We are not going to keep quiet because he is a judge."

PART 2 AND 3

THE INTERVIEW OF JUDGES AT THE JUDICIAL SERVICES COMMISSION

The Complainant states that the Members' utterances at the Judicial Service Commission (JSC) interviews of judges makes him unsuitable to represent the National Assembly (NA) on the JSC. In particular the Complainant refers to the interview of two judges, that is, Judge Pillay and Judge Matojane.

Judge Matojane was questioned about the judgment in which the EFF was ordered to pay damages in the amount of R500 000 (five hundred thousand rands) to Mr. T. Manuel.

SUMMARY OF RESPONSE BY THE MEMBER

The Member was given an opportunity to respond and responded as follows:

“He’s talking rubbish. That’s my official response.”

COMMITTEE DELIBERATIONS

PART 1

THE ZONDO COMMISSION

The Committee considered the fact that the Member made utterances about the Zondo Commission and starts by saying, “We have we respect the Commission of Inquiry”, this shows that the utterances made during the press conference was within the political scope of the Member and his party commenting on the work of the Commission. All political parties express differing views on various matters.

The Committee was of the view that the sentiment expressed by the Member fell within his constitutional protection of freedom of expression. Accordingly, the Committee found that the Member did not breach the Code.

THE INTERVIEW OF JUDGES AT THE JUDICIAL SERVICES COMMISSION

PART 2: INTERVIEW OF JUDGE PILLAY

The Committee noted that the comments made by the Member toward Judge Pillay was done in the context of the line of questioning. After questioning Judge Pillay on various matters such as her alleged relationship with Mr. Hanekom and Mr. Gordhan and a quotation in a judgment which omitted a reference to the African National Congress, the Member uttered words along the lines of, I put it to you that you are nothing more than a political activist. To this Judge Pillay replied and said, no. The Committee was of the view that this line of questioning was fair and within the mandate of the Member of the National Assembly on the Judicial Services Commission. Accordingly, the Committee found that the Member did not breach the Code.

PART 3: INTERVIEW OF JUDGE MATOJANE

The Committee noted that the Member entered a question to Judge Matojane that related to an award of R500 000 against the EFF in favour of Mr. Manuel in a case in which the Supreme Court of Appeal ordered oral evidence to be led.

The Committee held the view that the Member engaged in a matter that concerned him and his political party directly. The matter was before a court of law. The Committee further held the view that the Member placed himself in a position of conflict in respect of the comments that he made toward Judge Matojane as he represents the National Assembly on the Judicial Services Commission and should not have used the platform for his personal interests.

The Committee found that the Member breached the Code. This is in terms of Item 10.1.1.3 read with item 4.1 (4.1.3 and 4.1.4) of the Code which states:



4.1 Members must –

4.1.3 act on all occasions in accordance with the public trust placed in them;

4.1.4 discharge their obligations, in terms of the Constitution, to Parliament and the public at large, by placing the public interest above their own interest;"

FINDING

The Committee found that the Member breached item 10.1.1.3 of the Code read with item 4.1 (i.e. items 4.1.3 and 1.1.4).

SANCTION

The Member was afforded an opportunity to address written representations to the Committee on sanction. A summary of the written representations is set out below. The Member states that-

1. he cannot be sanctioned by the Committee in terms of the Code.
2. he asked the question in the context of his right to freedom of speech as a Member of Parliament.
3. the Constitutional Court holds that freedom of speech is at the heart of our democracy.
4. the Committee when deciding on sanction should take into account the fact that by imposing a sanction it could potentially criminalise and outlaw certain kinds of speech.
5. the Committee consideration of the *sub-judice* rule (that the matter was before a court of law) was misdirected. The Supreme Court of Appeal decision in the Midi Television case is quoted to indicate that the *sub-judice* rule is only operative when there is real prejudice and that the *sub-judice* rule cannot be used to limit freedom of expression.
6. from the above mentioned point, the Complainant should have showed that the line of questioning by the Member would lead to demonstrable and substantial prejudice.
7. he stopped the line of questioning and therefore could not become guilty of breaching the *sub-judice* rule.
8. as the SCA has overturned the decision of Judge Matojane, the Member did not ask the questions to advance his own personal agenda.
9. he asked the question in his capacity as a Member of the NA on the JSC about a decision of the SCA.
10. he was allowed to ask a question about a previous judgment of a judge which the SCA overturned.
11. section 58 of the Constitution guarantees the Member's right to freedom of speech as a representative of the NA.
12. he has constitutionally protected rights which the Joint Committee failed to uphold.



COMMITTEE CONSIDERATION ON REPRESENTATION ON SANCTION/ PENALTY

The Committee noted that its reference to the matter being "before a court of law" was perhaps misconstrued by the Member. The reference was not directed at the sub-juice rule. The reference was made in the context of the fact that the Member was a litigant in the matter and the matter was still active. The Committee considered this in the context of items 4.1.3 and 4.1.4 of the Code of Ethical Conduct and Disclosure of Members' Interests ("the Code").

The Committee does not agree that the question to Judge Matojane falls within the protection of freedom of speech. Also, that the question cannot be protected under the constitutional mandate of the Member in his role as a representative of the NA on the JSC. The Member serves on the JSC as a representative of the NA and should not have entered a question that relates to a case which concerns him personally. He serves on the JSC to further the interest of the public and not his private interest.

COMMITTEE RECOMMENDATION ON SANCTION/ PENALTY

The Code determines what penalty must be applied.

Item 10.7.7.2 of the Code states:

"in the event of the Committee finding that that a Member is guilty of contravening clauses 10.1.13 ... of this Code, the Committee shall not impose any of the above mentioned sanction, but shall recommend any greater sanction it deems appropriate to the House, and the House shall decide the appropriate sanction to be imposed after consideration of the recommendation of the Committee.

The Joint Committee recommends to the House that the following penalty be imposed-

- That the Member enter an apology in the House by specifically apologising to Judge Matojane, and the Judicial Services Commission for his question to Judge Motojane during the interview process that related to the quantum of the R500 000 damages.

REPORT TO BE CONSIDERD

BEKIZWE NKOSI

LYDIA MOSHODI

CO-CHAIRPERSONS OF THE JOINT COMMITTEE ON ETHICS AND MEMBERS' INTERESTS



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IN THE HIGH COURT OF SOUTH AFRICA
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Annexure 08

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BY:

**Registrar of The High Court,
Western Cape Division, Cape
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UNREVISED HANSARD

NATIONAL ASSEMBLY

TUESDAY, 7 DECEMBER 2021

Page: 217

The SPEAKER: Order! Order! No matter how unhappy you are, please take your seat. Take your seat, hon member! I think I want to make an appeal to all of us that we be patient with one another and that we be tolerant. I'm really pleading for tolerance.

Now, hon members, a division having been called – of course the bells have been rung – I have determined that, in accordance with the Rules, a manual voting procedure will be used for this division. Firstly, in order to establish a quorum, I will request the Table to confirm that we have the requisite number of members physically present in the Chamber and on the virtual platform to take this decision. Party Whips will then be given an opportunity to confirm the number of their members present and indicate if they vote for or against the question. A member who wishes to abstain or vote against the party vote may do so by informing the Speaker.



Order! I am informed that we have the requisite quorum. We will now proceed. The question before the House is:

Consideration of report of Joint Committee on Ethics and Members' Interests on complaint against hon J S Malema. Voting will now commence. The doors to the Chamber will be locked and members will not be allowed to enter the virtual platform

NATIONAL ASSEMBLY

TUESDAY, 7 DECEMBER 2021

Page: 218

until voting is concluded. Whips, could you confirm the number of your members present in the Chamber and on the virtual platform, and indicate if they vote for or against the question?

VOTING – TAKE IN FROM MINUTES

Motion agreed to.



Report accordingly adopted.

The CHIEF WHIP OF THE OPPOSITION: Madam Speaker, I know that you are about to adjourn the House but I wonder if I may be so bold as to ask you to please ask the National Assembly Table to acquire a legal opinion from Legal Services, as we have been told repeatedly during the course of today's ... the last section of hearings ... not hearings but items, that these particular issues are going to be taken on legal review by the EFF. Now, the EFF has fully taken part in the debates that have happened in this House, they have made declarations themselves and they have voted. Therefore, because they have been full participants in what has happened in the House, it is my opinion that they no longer have legal standing on which to then question the legality ...

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Annexure 09

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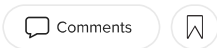
ELECTRONICALLY SIGNED
BY:

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

30 Mar 2021

Malema continues unsubstantiated attack on judiciary

Jan Gerber



EFF leader Julius Malema continued his unsubstantiated attacks on the judiciary and NPA.

Like former president Jacob Zuma and the so-called RET grouping in the ANC, he claims there are selective prosecutions.

He complained about the treatment former EFF chairperson Dali Mpofu received at the Zondo commission after telling a fellow advocate to "shut up".

EFF leader Julius Malema has continued his **unsubstantiated attack on the judiciary**, the Zondo commission and National Director of Public Prosecutions Shamila Batohi.

Malema echoed a term used by corruption-accused former president Jacob Zuma - "**judicial dictatorship**" - and repeated the sentiments of the so-called RET grouping in the ANC that prosecutions were selective. He, however, denied that the EFF was part of "any faction in any political party".

On Tuesday, a day after **he appeared in the East London Regional Court on firearms-related charges**, Malema briefed the media on the outcomes of the EFF's central command team meeting and plenum over the weekend.

"White supremacists are gaining too much confidence under this administration. Under the current administration, important state institutions and processes are being used for factional purposes," Malema claimed.

"The rule of law in South Africa is applied selectively, and sections of the judiciary are being co-opted into this nonsensical direction.

"While we still respect the commission of inquiry into state capture, we should state here that the direction that the Zondo commission has assumed is aimed at satisfying certain factional agendas and programme.

"We do not and will not associate with people who have stolen government money and resources for their own benefit and we do not associate with any

"We, however, correctly observe that the Zondo commission is now assuming a factional agenda and programme aimed at protecting the white capitalist establishment."

Asked if he still wanted Zuma to appear before the commission, Malema first spent some time complaining about former EFF chairperson Dali Mpofu's admonishment by Deputy Chief Justice Raymond Zondo after Mpofu told another advocate to "shut up", claiming Mpofu was reacting to racism.

Without providing evidence to support his claims, he said the commission and Zondo were factional and that Zondo "worships" Public Enterprises Minister Pravin Gordhan and "whiteness".

However, he said Zuma must still go to the commission.

"When Zondo takes a wrong decision, we can review."

He said the EFF fought to establish the commission, but it wasn't what they had envisaged.

They envisaged a commission that wouldn't only hold "Gupta-stooges" accountable.

"We envisaged a commission that would hold Rupert accountable," he said.

"Zondo is not our god; he is a human being."

"We are not going to be scared of a judicial dictatorship. We are not going to keep quiet because he is a judge."

He said the EFF's critics were on the "payroll of white capital".

He said the corruption-accused ANC secretary-general Ace Magashule had been asked to step aside because the "white establishment says Magashule is a problem".

Without substantiating, he claimed that Batohi "works" with Gordhan and that "certain people are targeted".

He also said:

There is no space here in the EFF for crooks.

Malema's accusations against the judiciary and Batohi follow similar recent statements, most notably in the [debate on Ramaphosa's State of the Nation Address](#).

Malema also called on Ramaphosa to roll out a vaccine programme and to look further than Pfizer and Johnson and Johnson, and at Russian, Chinese and Cuban vaccines.

Furthermore, the EFF reiterated its call to postpone the coming local government elections, but also stated that they were ready to govern every municipality.



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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 10

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**Registrar of The High Court,
Western Cape Division, Cape
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21 Mar 2022

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Malema claims judiciary captured in favour of Ramaphosa and ANC

Zintle Mahlati

 Comments 



EFF leader Julius Malema claims the judiciary is captured in favour of President Cyril Ramaphosa and the ANC.

Malema says no person can win a case against Ramaphosa that is heard at the Gauteng High Court in Pretoria.

The EFF leader also said the country had missed an opportunity to witness the first black woman chief justice.

EFF leader Julius Malema has continued his unsubstantiated criticism of the judiciary, claiming some of the country's judges were captured in favour of President Cyril Ramaphosa and a faction of the ANC.

Malema spoke on Monday at the EFF's Human Rights Day rally in Sharpeville in Gauteng.

The EFF leader is no stranger to criticising and airing his party's beliefs about the judiciary favouring certain people over others.

During his speech, he upped the political ante, saying the Gauteng High Court was of particular concern because Ramaphosa won every case heard in the division.

Malema said:

There are judges who have taken a decision to judge in favour of Cyril Ramaphosa. When you take Cyril Ramaphosa to court, you will never win, let me tell you that. Especially in Pretoria, Gauteng North High Court, you will never win.

He accused the country's judges of ruling in a, "... racist and factional manner", based on the rulings issued.

"They want us to believe that is the law. That there is one man who is above the law. That Ramaphosa is always right. We cannot have a law with eyes that sees who is before it. We need a law that is blind, and we need neutral judges. We want to call on captured judges that if they continue to rule in Ramaphosa's favour, they will collapse this country," Malema told a crowd of EFF supporters.



READ | High Court finds no argument of interest of justice to unseal the CR17 bank statements

The Gauteng High Court in Pretoria has heard several cases involving the president.

Last year, the court dismissed the EFF's application to unseal CR17 campaign bank statements.

The same court also set aside **Public Protector Busisiwe Mkhwebane's report into the CR17 campaign.**

Malema previously used his seat on the Judicial Service Commission to question candidates vying for judicial positions about the High Court rulings linked to the CR17 campaign case, and other political cases.

The EFF did not support the appointment of Raymond Zondo as the chief justice of the country, saying Supreme Court of Appeal President Mandisa Maya was the best candidate for the role.

Malema repeated his party's unhappiness about Zondo's appointment by Ramaphosa, saying the country had missed an opportunity to witness the first black woman chief justice.

Malema said:

Chief Justice Zondo, we do not congratulate him. We want to warn him that if he is going to be an

attacking the judiciary. I am not. I want an independent judiciary. The judges are not the Constitution and must subject themselves to the Constitution.

14/5/2026-2:36:54 PM

He continued: "Any judge that rules in a factional manner will be confronted. The EFF is not a threat to the judiciary. What is a threat to the judiciary is the capture of the judiciary. The judiciary must defend itself. Let us guard the independence of our judiciary. We missed an opportunity to have the first black female chief justice," he said.



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Annexure 11

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DAILY MAVERICK

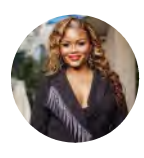
SOUTH AFRICA

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JUDICIARY & POLITICS

Julius Malema berates Chief Justice Raymond Zondo, demands disciplinary action

The leader of the EFF, Julius Malema, has said it was inappropriate for Chief Justice Raymond Zondo to get involved in political matters, adding that the judge's comments about the ANC were an endorsement of party leader Cyril Ramaphosa.



By Queenin Masuabi

16 May 2022



From left: EFF leader Julius Malema. (Photo: Gallo Images / Laird Forbes) | Chief Justice Raymond Zondo. (Photo: Gallo Images / OJ Koloti)

DIVE DEEPER

EFF leader Julius Malema has lambasted Chief Justice Raymond Zondo and called for the Judicial Service Commission (JSC) to “discipline” him for getting involved in political matters.

Speaking at a media briefing at the party’s headquarters on Monday following the party's 15th central command meeting, Malema said it was justified for senior ANC member Tony Yengeni to have written a complaint to the JSC, appealing for Zondo to be probed for an alleged breach of the Code of Judicial Conduct in connection with comments made in the fourth part of the Zondo Commission report.

Malema believes Zondo is a factional judge who supports the election of ANC president Cyril Ramaphosa for a second term as party leader.

“We support Tony Yengeni fully... the conduct committee of the JSC must make sure that Zondo is disciplined; the same thing they did with the chief justice when he descended into the terrain of politics — Mogoeng Mogoeng. It will not be the first time.



“He [Zondo] has no limits and thinks that judges are untouchable and that he has given himself the responsibility to enter the political terrain. What will judges have to do or say with regards to the outcomes of the political conferences of political parties? Judges must know their limits.

“Zondo sees it necessary to say that Ramaphosa’s election in the ANC rescued us from where we were. He effectively said if you do not elect Ramaphosa this December, we are going to be in trouble,” Malema said.

In the fourth report of Zondo’s Judicial Commission of Inquiry into State Capture, which was released last month, Zondo implied that more damage would have been done to SA if Ramaphosa had not been elected to lead the party at its elective conference in December 2017.

“Had it not been for the fact that at the end of 2017, the ANC would have an elective conference where Mr Ramaphosa, who was already Deputy President of the ANC and the country, would stand as a candidate to take over from Mr Zuma, more damage could have been done to the National Treasury under Mr (Malusi) Gigaba than may have been done,” the report reads.

<https://www.dailymaverick.co.za/article/2022-05-16-jacob-zuma-yesterdays-man-of-power-politics/>

Yengeni is of the belief that Zondo's report will assist Ramaphosa's campaign ahead of the party's elective conference in December. He said the conclusion by the chief justice is "troubling in many respects".

"First and foremost, I am not aware which witness(es) presented the testimony based on which this political finding is made. Even if such testimony was presented, such a finding is unjustified if such testimony was never tested by way of cross-examination.



"It is therefore inappropriate for a judicial officer to make such a subjective finding without real evidence," according to Yengeni's complaint.

Yengeni is a staunch supporter of suspended ANC secretary-general Ace Magashule and former party president Jacob Zuma. Last year, he, along with uMkhonto we Sizwe Military Veterans Association member Carl Niehaus and Magashule were said to have displayed inappropriate behaviour at one of Zuma's court appearances.

The party considered taking disciplinary action against the duo for saying that some ANC leaders were using state resources to lay criminal charges against their political opponents. This was shortly after Magashule was suspended for his alleged involvement in the botched multi-million Rand asbestos project. Magashule faces corruption charges.

State-Owned Enterprises

Meanwhile, Malema condemned the privatisation of South African Airways (SAA) and labelled it a “dangerous” and “evidently unsustainable path”. The red berets intend doing everything in their power to reverse the sale of SAA, but Malema did not explain exactly how they would go about this.

“It is evident that all state-owned companies will first be made to not function well, and thereafter given for free to the white capitalist establishment. There is absolutely no rationality in selling off an airline for R51 to people who are linked to and controlled by the white capitalist establishment,” he said.

The Takatso Consortium was expected to invest R3-billion in the airline as operating capital once it acquired a 51% stake in the national carrier. However, National Treasury withdrew support for the sale of SAA.

Appearing recently before Parliament’s Standing Committee on Public Accounts, Public Enterprises Minister Pravin Gordhan said the sale of the majority stake in SAA to Takatso Consortium had not yet been finalised.



“The current load shedding and crises in Eskom are purposefully created to justify the subsequent disposal of Eskom to the greedy white capitalist class. South Africa’s energy policy and direction are being directed by both domestic and global capitalist interests.

“What is evident now is that there is no believable plan for a just transition that will secure the work and wellbeing of communities and workers that depend on coal for their livelihoods,” claimed Malema. DM

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SOUTH AFRICA

WATCH | Malema not sorry for ‘incompetent white magistrate’ remarks as Judges Matter demand an apology

EFF leader Julius Malema says he will not apologise for labelling magistrate Twanet Olivier an 'incompetent white magistrate' after he lost a bid to have his case struck off the roll in East London last week.



October 24, 2023 at 4:24 pm



EFF leader Julius Malema says he will not apologise for labelling magistrate Twanet Olivier an 'incompetent white magistrate' after he lost a bid to have his case struck off the roll in East London last week. (Alaister Russell/The Sunday Times) 10/11/2026 2:37:37 PM

EFF leader Julius Malema says he will not apologise for labelling magistrate Twanet Olivier an “incompetent white magistrate” after he lost a bid to have his case struck off the roll in East London last week.

Malema appeared before Olivier with bodyguard Adriaan Snyman on charges of discharging a firearm during the EFF’s fifth birthday celebration at Mdantsane’s Sisa Dukashe Stadium in 2018.

After his court appearance Malema called Olivier incompetent, saying her ruling was not her own conviction.

“A magistrate comes to court with papers all over the place, she cannot read her own notes, and her judgment is so disorganised. She comes in court and tells a police officer to fetch the judgment in her office because she forgot it. What type of nonsense is this that we have been subjected to for the past five years of an incompetent white magistrate? She is incompetent,” Malema said.

The red berets’ leader, a member of the judicial services commission (JSC), was criticised by the Judges Matter organisation and justice ministry for “attacking” Olivier. Both the ministry and the organisation said Malema’s claims of “corruption” and incompetence against Olivier without substantiation were irresponsible.



“Left unchallenged, Mr Malema’s comments will send a chilling message to other judicial officers that they should not dare issue judgments against powerful figures who command a large audience. We call on Mr Malema to

immediately retract and apologise for his unfortunate comments,” said Judges Matters researcher Mbekezeli Benjamin.

14/5/2026-2:37:37 PM

But Malema is standing by his remarks.

“There is nothing wrong I said about her and I will not apologise. I will never stop talking about judges because we must never make judges God. They too are individuals, that is why their judgments are appealed and can be reversed ’cause they are human beings and can make mistakes,” he said.

Economic Freedom Fighters 

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 **Must Watch** 

CIC [@Julius_S_Malema](#) addressing members of the media at the Israeli Embassy in Pretoria, after the EFF Picket in solidarity with the people of Palestine.

Whether you like me or not, as long as the EFF has got a seat in Parliament, I'll be a member of the [Show more](#)





Justice ministry spokesperson Chrispin Phiri described Malema's comments on Olivier as a “vitriolic attack”.

“Whilst it is permissible to criticise and debate the reasoning of judicial officers' decisions, attacking and directing sensational conspiracy theories at judicial officers is not correct by anyone, let alone a member of the [JSC],” Phiri said.

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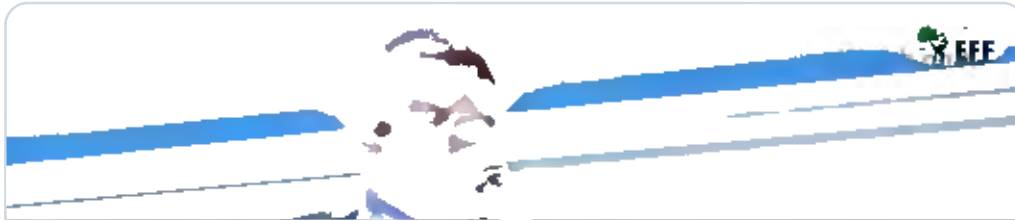
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◆ Must Watch ◆

CIC @Julius_S_Malema addressing fighters outside the East London Magistrates Court, after the disorganised Magistrate denied the application to dismiss the alleged firearm discharge case.

-You are persecuting me whether you release Adriaan or not, the reality is [Show more](#)



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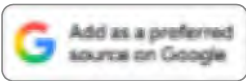
POLITICS

WATCH | Ramaphosa ‘protected by judges’: Malema launches new attack on judiciary after Sona bruise

Missing out on the state of the nation address did not sit well with EFF leader Julius Malema after the Western Cape High Court set aside the party's application for his suspension from parliament to be lifted.



February 09, 2024 at 2:24 pm



EFF leader Julius Malema is again unhappy with judges after missing out on Sona this week. 14/5/2026 13:02 PM
photo. (EFF/X)

Missing out on the state of the nation address (Sona) did not sit well with EFF leader Julius Malema after the Western Cape High Court set aside the party's application for his suspension from parliament to be lifted.

On Thursday the court rejected the EFF's appeal, saying the party failed to identify constitutional rights which needed to be protected or irreparable harm the MPs would suffer should they not attend Sona. The suspended MPs included Malema, deputy leader [Floyd Shivambu](#), Mbuyiseni Ndlozi, Sinawo Tambo, Vuyani Pambo and secretary-general Marshall Dlamini.

Angered by the judgment, Malema again accused the judiciary of being "captured".

"We will appeal it to the Constitutional Court because we must not allow that precedent where elected MPs can be removed through undemocratic methods supported by a captured judiciary. It started like that in Zimbabwe where MPs are rough-tackled, violated, journalists are arrested and the judges are agreeing with that nonsense," he said.

Malema believed there was nothing untoward about his remarks regarding the judiciary.



"Judges are not God. They must be criticised when they are wrong. How do you say, 'You must not call for point of order,' and you regulate speech in parliament?"

"We are going to challenge the judges and we are going to show them they are politically driven. They have descended into the political arena, therefore they

are no longer judges, they are politicians and they will be treated as such.”

14/5/2026-2:38:02 PM

In the recent judgment the court did not comment on the merits of the EFF's arguments.

“For the purposes of this judgment, it is not necessary for us to comment on the substantive merits of the attack which the applicants have launched, or their prospects of success,” the judgment read.

“That is something for the court to deal with in part b of the application. We are simply required to determine whether the applicants have made a proper case for the interim relief which they seek on the premise there may possibly be merit in one or more of the grounds of complaint which have been raised.”

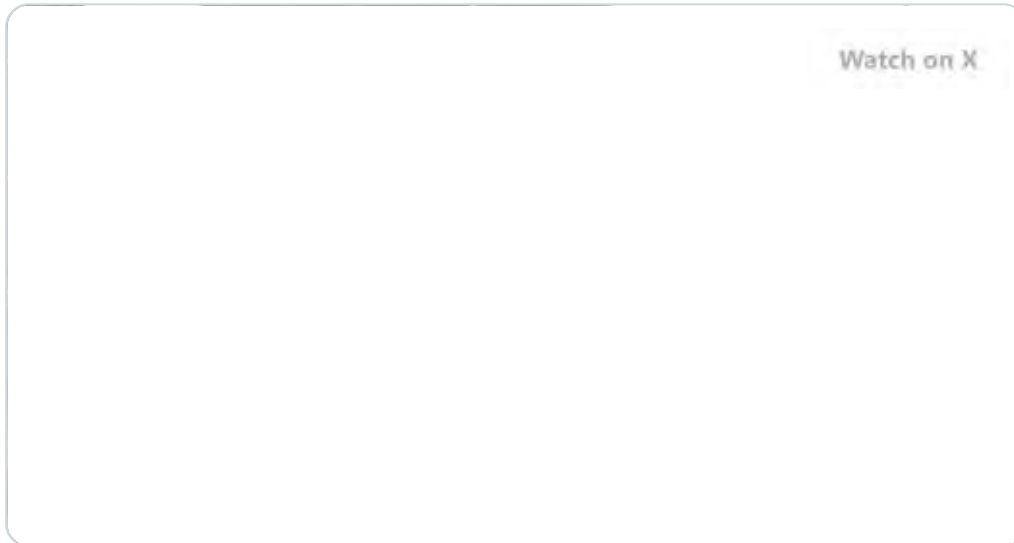


The red berets' leader, without evidence, accused judges of protecting President Cyril Ramaphosa. “They do not want us in parliament because they are a group of cowards. There is no leader who is a coward like President Ramaphosa, who is protected by judges. He is hiding behind the red dresses of the judges because he knows politically he will not be able to defeat us,” he said.

Economic Freedom Fighters ✓@EFFSouthAfrica · [Follow](#)◆ **Must Watch** ◆

CIC [@Julius_S_Malema](#) speaking to SABC News at DUT, Indumiso Campus ahead of the [#EFFManifestoLaunch](#).

They don't want us in Parliament today because they're a group of cowards, there's no leader who is a cowards like President Ramaphosa who is being protected by [Show more](#)



7:32 PM · Feb 8, 2024



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This was not the first time Malema criticised judges. In October last year he refused to apologise for labelling magistrate [Twanet Olivier](#) an “incompetent white magistrate” after he lost a bid to have his case struck off the roll in East London.

Malema appeared before Olivier with bodyguard Adriaan Snyman on charges of discharging a firearm during the EFF's fifth birthday celebration at Mdantsane's Sisa Dukashe Stadium in 2018.

Malema, a member of the judicial service commission (JSC), was criticised by the organisation Judges Matter and justice ministry for “attacking” Olivier. Both the ministry and the organisation said Malema's claims of “corruption” and incompetence against Olivier, without substantiation, were irresponsible.

In December chief justice [Raymond Zondo](#) defended the judiciary against allegations of “capture”, saying he has for the past four years called for evidence, but none has come to light.

14/5/2026-2:38:02 PM



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NEWS

Guilty Julius Malema could lose parliament seat if jailed

Claiming racism, the EFF leader has vowed to take his appeal to the Constitutional Court

October 02, 2025 at 9:00 am



Picture: MARK ANDREWS © DAILY DISPATCH

Should EFF leader Julius Malema — who has been found guilty of discharging a rifle during a rally in the Eastern Cape — be sentenced to more than a year's imprisonment without an option of a fine, he will be removed as an MP.



Section 47 of the constitution bars individuals sentenced to prison for longer than 12 months without the option of a fine from being MPs.

Malema was found guilty in the East London magistrate's court on Wednesday and is expected to be sentenced in January. However, he said he

section 13 of the Firearms Control Act, it is an offence to discharge a firearm in a public place or built-up area, or in a manner likely to endanger people or property. This offence carries the possibility of a jail sentence of up to 15 years, though there's no mandatory minimum.” 14/5/2026-2:38:21 PM

She said the court had the discretion to consider factors such as first-time offending, risk to the public and evidence of remorse, and may impose a suspended jail sentence under section 297 of the Criminal Procedure Act. “Importantly, section 47(1)(e) of the constitution provides that an MP is disqualified if convicted of an offence and sentenced to more than 12 months in jail without the option of a fine.”



Maganoe said this meant if Malema receives such a sentence, and all appeals are exhausted, he could lose his parliamentary seat for five years after completing the sentence. “The sentencing will determine whether the court imposes a jail term or suspends it. Until then, he remains an MP, but the legal and political consequences are significant.”

Malema told a crowd outside court he was determined to fight the verdict.

Magistrate Twanet Olivier ruled that the defence failed to disprove the state's case beyond a reasonable doubt. Malema was convicted after video evidence showed him discharging a rifle during an EFF rally. However, his security guard, Adriaan Snyman, was not found guilty on all charges.

The pair faced allegations of contravening the Firearms Control Act, including the unlawful possession of a firearm and ammunition.

were not looking for accused number two. They were just playing games and today they came out openly,” he said. 14/5/2026-2:38:21 PM

“As a revolutionary, going to prison or death is a badge of honour. We cannot be scared of prison. We cannot be scared to die for the revolution. So, whatever they want to do, they must know we will never retreat from our ideas.”



Malema said EFF members should not be discouraged by the guilty verdict. “We are coming on January 23 for sentencing. And after sentencing, we will immediately put an appeal so that we can go to the higher court because we think the judgment is faulty.”

In her judgment, Olivier said the viral video was not needed to enable the court to arrive at its finding. The defence also used the footage to indicate certain factors they wanted to be placed on record. This was accepted by the court as real evidence.

Two videos recorded by Gear House were also part of the evidence. Olivier said the Gear House footage was not as clear as the viral video but ruled it relevant and admissible.

She described the state witnesses as reliable and truthful. Ballistics expert Col Mandisi Mgwadleka was “a brilliant witness” who had left no stone unturned. “He dotted every ‘i’ and crossed every ‘t’,” Olivier said. Compared with this, the defence’s expert ballistic evidence was “mediocre”, she said.



Malema said the strategy has always been “you must try to charge Malema with everything”. 14/5/2026-2:38:21 PM

The judgment, he said, was racist, “to appease the AfriForum, to appease the Oval Office of Donald Trump, to appease all the white supremacists of SA who want to undermine the dignity and the strength of black people”.

Malema also questioned why Snyman was acquitted, though the courts had stated that he was the one who gave him the firearm.

“Now they are releasing him, which means he didn’t give me the firearm. Why are you not releasing me when you released a person who allegedly gave me the firearm? By releasing accused number two, the whole case should have collapsed. But the racist was looking for me. That’s why they could not collapse the case,” he said.

Malema also referenced the Madlanga commission of inquiry and how SA needs rescuing by the EFF based on what has been revealed there. “You can see what is happening in the commission there; SA has been sold to criminals and criminal cartels, and this country must be rescued.”



With Ziyanda Zweni Mandilakhe Kwababana

SowetanLIVE

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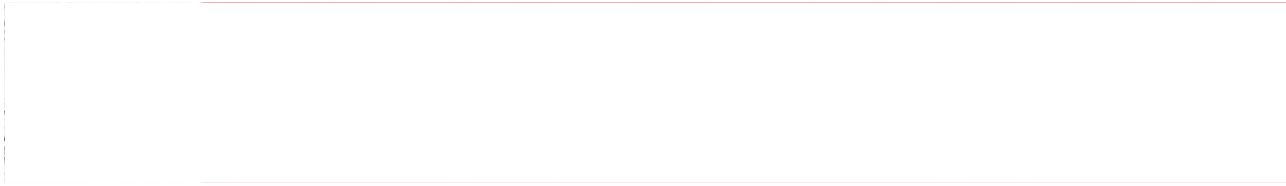
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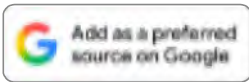
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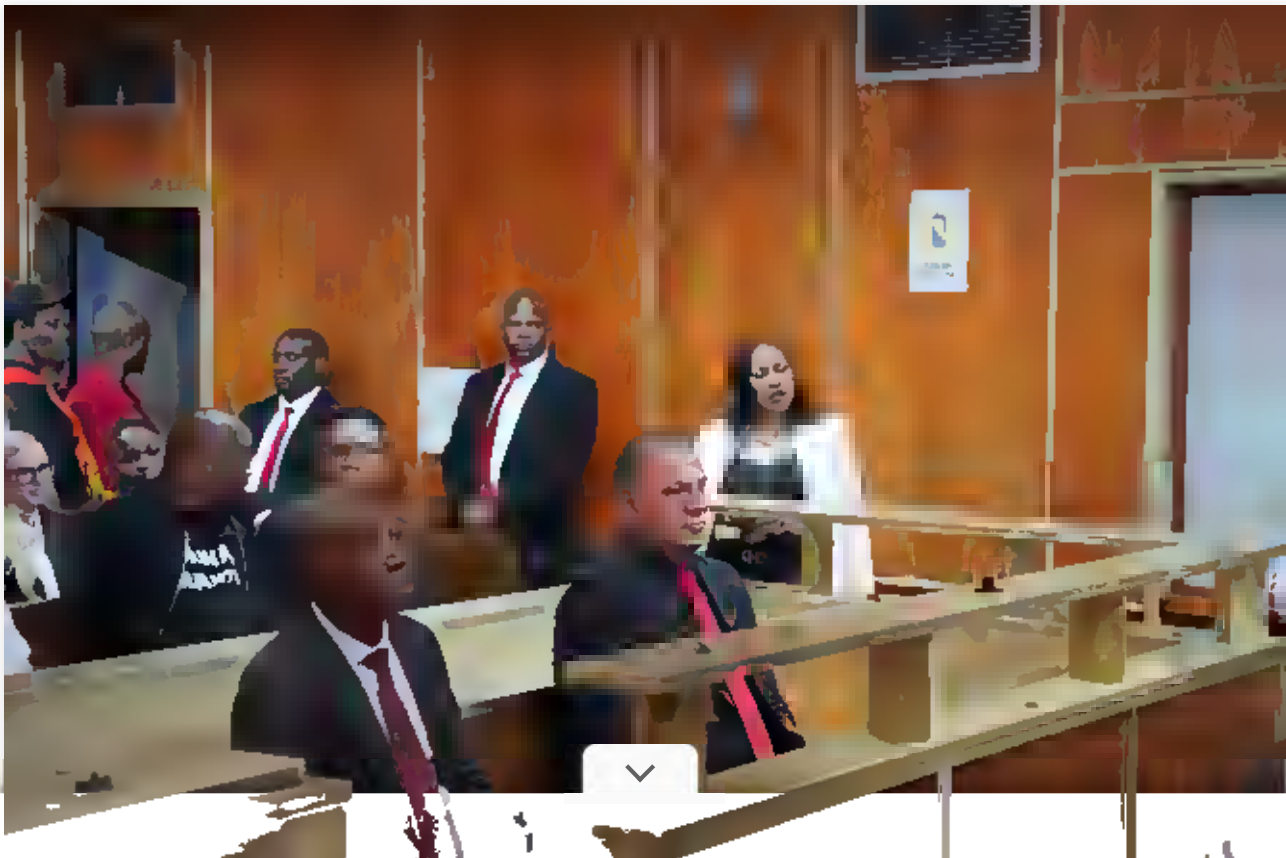
SOUTH AFRICA

Rights groups call for Malema's removal from Judicial Service Commission

October 03, 2025 at 9:46 pm



Khodani Mpilo



A number of civil society organisations have called for Julius Malema to be removed from the Judicial Service Commission (JSC), saying his recent criminal conviction and history of legal transgressions make him unfit to serve on the body responsible for selecting judges.

In a joint statement on Friday, Freedom Under Law, Defend our Democracy and the Council for the Advancement of the South African Constitution said the conviction this week of the EFF leader on charges relating to the unlawful possession and discharge of a firearm in public “demonstrates that he is not a fit and proper person” to sit on the JSC.

The groups highlighted that this was not Malema’s first run-in with the law this year.

In August, the Equality Court ruled that some of his statements amounted to hate speech, while in May, the high court upheld parliament’s finding that Malema had breached its code of ethics for using a JSC interview in 2021 for personal political interests.

“Though it has also been reported that Mr Malema is planning appeals against both the firearms conviction and the hate speech ruling, these are nonetheless serious findings made by our high courts that Mr Malema has acted not only unlawfully, but criminally,” the organisations said.



They warned that Malema’s continued presence on the JSC threatened the credibility of the institution and the judiciary itself.

“It would undermine public confidence in the JSC, the process of selecting judges and indeed the credibility of the entire judiciary for an individual who is subject to ongoing legal proceedings of this nature and has made statements attacking the judiciary to be involved in the judicial selection process,” the statement reads.

The groups took particular issue with comments made by Malema and his party after his conviction on Tuesday where the EFF described the case as part of a “political persecution” and accused the judiciary of being aligned with “racist organisations”.

Malema himself implied that the magistrate who convicted him was racist.



“The unsubstantiated description of the judiciary as a racist organisation and the scurrilous racial attack by Mr Malema against the magistrate undermines the judiciary. It is inappropriate for the leader of a political party which has expressed these views to be involved in the selection of judges,” the organisations said.

They called on Malema to step down as a member of the JSC.

“Should he decline to do so, we call on the National Assembly to take steps to remove him as a member of the JSC.”

Sentencing proceedings in Malema’s firearms case are scheduled to begin in January.

COURT ONLINE COVER PAGE

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

CASE NO: **2026-109516**

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema, Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

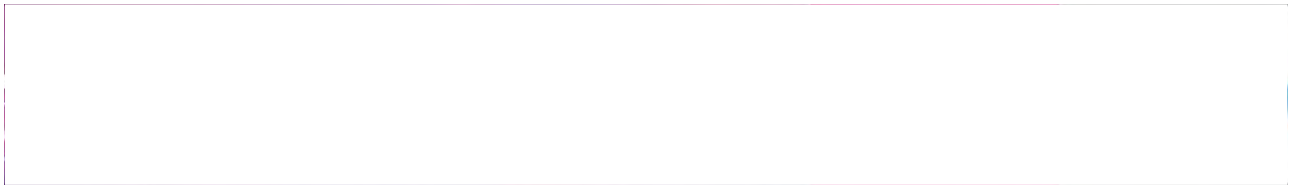
Annexure 15

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POLITICS

'Stop being a coward': Malema challenges MK Party's Skosana

January 08, 2026 at 10:33 am



Innocentia Nkadameng

Journalist



EFF leader Julius Malema has dismissed the suggestion to summon judges to appear before parliament's ad hoc committee investigating allegations of corruption in the criminal justice system. File photo. (Thapelo Morebudi) 14/5/2026-2:39:02 PM

Members of parliament's ad hoc committee investigating allegations of corruption in the criminal justice system clashed during their first meeting of the year over the proposed summoning of "corrupt" judges.

The committee convened on Wednesday to discuss operational matters, including witness consultations, a draft programme for the resumption of hearings and a public participation report for recommendations.

MK Party MP David Skosana told the committee that judges accused of wrongdoing should be called to the hot seat and be investigated, even if the claims are merely allegations without supporting evidence.

"We are dealing with allegations. Even if there's no evidence we have to probe them," Skosana said. "Every witness that has appeared before the committee was facing allegations. The same should apply if there is an allegation against a judge. Let's not change the terms of reference."

He said accusations of judicial corruption have persisted for years. "We have an opportunity to address the allegations made against judges. The judges have names. Let's name them."



That suggestion was dismissed by EFF leader Julius Malema, who argued such allegations lacked substance. He challenged Skosana to name specific

Malema is trying to save face with them. You are the one who gave us all the ideas and today you are flip-flopping. It was you who told us about corrupt judges. Today you are changing your tune

— David Skosana, MK Party MP

“There is nothing of value that is going to come to you against judges, and talk is cheap,” Malema said. “We have interviewed hardened criminals and visited prisons. By now, if anyone had anything against a judge, they would have brought it forward. It’s just posturing to create an impression that we aren’t scared of anything when we actually have nothing.”

Malema cautioned against tainting the entire judiciary. He pointed out that when the committee dealt with SA Police Service members, it summoned individuals rather than referring to the police as a collective group. He emphasised parliament has a responsibility to guard the integrity of the judiciary and avoid “sweeping” statements.



“I am not very far from what Skosana is saying, but I can tell him he’s got nothing on any judge,” Malema said. “Stop being a coward. Tell us which judge did the wrong thing.”

Malema clarified that his personal grievances were limited to the Constitutional Court’s handling of the [Phala Phala](#) matter, rather than the judiciary as a whole.

As the debate intensified, Malema continued to press Skosana for names.

In response, Skosana accused Malema of protecting the judiciary because the EFF leader is due in court on January 23. Malema is facing pre-sentencing after being found [guilty of unlawfully discharging a firearm](#) at a 2018 party rally. 14/5/2026-2:39:02 PM

“Malema is trying to save face with them,” Skosana claimed. “You are the one who gave us all the ideas and today you are flip-flopping. It was you who told us about corrupt judges. Today you are changing your tune.”

Committee chairperson Soviet Lekganyane intervened, saying the committee would formally consider the allegations when it meets next week. Oral hearings of witnesses are scheduled to resume on January 14.

“If there is any information or allegations you are aware of, we request you bring them to the meeting,” Lekganyane said. “The committee will consider the allegations and decide whether there is a need to invite the respective witnesses.”



TimesLIVE

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Annexure 16 and More

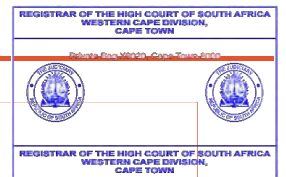
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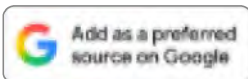


NEWS **PREMIUM**

WATCH | Malema attacks magistrate and prosecutor after jail sentence

Officials accused of misconduct and perjury as EFF leader also plans to appeal

April 17, 2026 at 10:12 am



Ziyanda Zweni

Court Reporter





Asanda Nini

14/5/2026-2:39:26 PM



Mbali Tanana



EFF leader Julius Malema has escalated his fight to beyond the courtroom as he is now gunning for the magistrate and prosecutor who convicted him.

In a blistering attack after his sentencing, Malema accused KuGompo City magistrate Twanet Olivier of judicial misconduct and suggested that he planned to report her to the Magistrates Commission while also calling for state prosecutor Joel Cesar to face a perjury charge.

The move marks a sharp escalation in the political and legal fallout from Malema's conviction for discharging a firearm in public, with the EFF leader now directly challenging the conduct of the officials who handled his case.

The National Prosecuting Authority (NPA) said that if Malema believed he had been denied a fair trial, the proper forum to raise those complaints was

Tyali said the state remained confident in both the conviction and the sentence.

“We feel strongly, as the NPA, that we proved that he is guilty, which is why the court found him guilty. We feel the sentence is also fair,” he said.



Malema, addressing supporters outside court, launched a personal and sustained attack on Olivier, accusing her of incompetence, bias and political motivation.

He referred to her as a racist and suggested she could be aligned to lobby group AfriForum.

“She’s the most incompetent magistrate who read a judgment for three days. It has never been done,” Malema said.



“We are tried by a magistrate who doesn’t read, who uses emotions, and who speaks politics.” 14/5/2026-2:39:26 PM

Malema said he intended pursuing a complaint with the Magistrates Commission over what he described as judicial misconduct.

He also accused Cesar of improper conduct and said a perjury case should be opened against him.

Malema claims that Cesar knew in advance that co-accused Adriaan Snyman would be acquitted and allegedly told him to collect his firearm before judgment was delivered.

“How did the prosecutor know that accused number two is not going to be found guilty?” Malema asked.

“That is the misconduct of a prosecutor.”



He further alleged that Olivier and Cesar had discussed the merits of the judgment outside court before it was handed down, describing this as evidence of an improper relationship between the bench and the prosecution.

“So clearly, you’ve got a special relationship with the prosecutor as a magistrate, and that is misconduct on its own,” he said.

Olivier sentenced Malema to five years’ direct imprisonment for unlawful possession of a firearm, with all other counts running concurrently.

They included two years for unlawful possession of ammunition and a R20,000 fine or six months’ imprisonment for unlawfully discharging the firearm and reckless endangerment.

He was also declared unfit to possess a firearm.

Malema’s charges date back to 2018, when he discharged a firearm at a rally in Sisa Dukashe Stadium in Mdantsane, where his party was holding its birthday celebrations.

Malema remains out on warning



Gardee dismissed any suggestion that the case was over.

14/5/2026-2:39:26 PM

“Chill. Those who were going to cork up their champagne: you can drop your glasses and stop; there is nothing to celebrate — our president is still going to be with us,” Gardee said.



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‘I’ve seen her ugly white face for too long’: Malema celebrates despite 5 year sentence



By **Molefe Seeletsa**

Journalist


16 April 2026 | 03:25 pm

The EFF leader accused the magistrate of bias.



EFF leader Julius Malema appears at East London Regional Court for sentencing proceedings in KuGompo City, Eastern Cape on 16 April 2026. Picture: Gallo Images/Randell Roskruge



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Reactions to the conviction and sentencing of EFF president Julius Malema over the public discharge of a firearm have been divided, with prominent figures offering contrasting responses.

Malema was previously found **guilty** of unlawful possession of a firearm, unlawful possession of ammunition, unlawful discharge of a firearm, failure to take reasonable precautions to avoid danger to a person or property, and reckless endangerment to a person or property. 14/5/2026 3:39:47 PM

He was on Thursday, 16 April 2026, **sentenced to five years** in prison for the first offence, two years for the second count, and ordered to pay a R20 000 fine or six months' imprisonment for the remaining three charges.

Although his appeal against conviction was dismissed, **Malema was successful** in challenging the sentence.

As a result, he will remain out on warning while legal proceedings continue.

READ MORE [Musa Khawula ordered to apologise to Malema or face jail time](#)

The case originates from a viral video recorded in July 2018, which showed Malema firing what appeared to be a rifle during the EFF's fifth anniversary celebrations at the Sisa Dukashe Stadium in Mdantsane.



AfriForum welcomes Julius Malema sentencing

Lobby group AfriForum, which brought the complaint, welcomed the outcome.

According to CEO Kallie Kriel, Malema and the EFF “acted with impunity” during the 2018 celebrations.

He also contended that the ruling rubberstamped the importance of legal consequences for public officials.

“This judgment reinforces the principles of accountability and equality before the law. Although it took eight years for justice to prevail, this outcome demonstrates that persistence matters,” Kriel said in a **post** on X, formerly Twitter.

RELATED ARTICLES

ConCourt judgment on Phala Phala parliament process due this Friday

Convicted robber gets new shot at reducing 30-year jail term after SCA ruling



He added: “This ruling should serve as a warning to politicians and others who contravene the law: they will be held accountable.”

Cape Town Mayor and DA leader Geordin Hill-Lewis also welcomed the sentencing, stating that it reinforced the importance of legal compliance and public safety.

“No one is above the law! Bringing law and order to South Africa must be our top priority. Gun violence is out of control in SA, so any illegal firearms crime should be taken extremely seriously.

“I welcome the sentencing of Julius Malema. This is how we must restore faith in our criminal justice system,” Hill-Lewis **said** on Thursday.



‘Prison is tougher on families’

Build One South Africa (Bosa) leader Mmusi Maimane also added his voice.

READ MORE Polokwane political shake-up as ANC, EFF leaders defect to ActionSA ahead of elections

“We must never rush to celebrate another man’s downfall,” Maimane said.

Sport, Arts and Culture Minister Gayton McKenzie expressed sympathy for Malema and his family.

“I will not be giving any comment regarding the sentencing of Mr Malema except to pray for him and his family.

“Prison is tougher on families. I don’t celebrate when tragedy befalls people, even my enemies. Thanks.”


Meanwhile, South African Federation of Trade Unions (Safu) General Secretary Zwelinzima Vavi said the outcome left him in “profound shock”.

READ MORE Malema uses Workers’ Day to address struggle with courts

“As someone who has reflected deeply on past mistakes, I remain firmly committed to the principle that all must be equal before the law.


“But that principle must be applied consistently, and without exception, otherwise it loses its meaning.”




“Having listened carefully to the proceedings over the past two days, I am concerned that this standard has not been upheld,” Vavi said.

Zwelinzima Vavi 
@Zwelinzima1 · [Follow](#)

The sentencing of Julius Malema to five years' imprisonment without the option of a fine has left me, like many others, in profound shock.

As someone who has reflected deeply on past mistakes, I remain firmly committed to the principle that all must be equal before the law. But [Show more](#)

12:22 PM · Apr 16, 2026 

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[Read 620 replies](#)



Malema reacts

Addressing EFF supporters outside the East London Regional Court in KuGompo City, Eastern Cape, Malema expressed his appreciation for their continued support.

“Today was not an easy day, but at the end, the fighters emerged victorious,” he said.

The EFF leader sharply criticised Magistrate Twanet Olivier’s comments regarding the financial cost of the trial to taxpayers during the delivery of her ruling.

He went further to allege that she had not properly engaged with the legal arguments presented in court.

“She just entered the court without knowing what was contained in the heads of arguments.”

Malema also claimed that the magistrate’s remarks went beyond legal reasoning and reflected political or emotional considerations.


“She goes around fundraising reasons why we must go to prison.”

Allegations of bias and misconduct

The EFF leader escalated his criticism, accusing the magistrate of bias.

He further suggested that the judgment may not have been independently written, saying it was penned by an “invisible hand”. 14/5/2026 2:39:47 PM

Malema added that Olivier should be reported to the Magistrate’s Commission.

He also criticised state prosecutor Joel Cesar, whom he described as “arrogant” and said suffers from “short man syndrome”. 

Watch Malema’s address below:



Malema confirmed that he intends to challenge both his conviction and sentence, indicating that the matter would be taken to higher courts if necessary, including the Constitutional Court (ConCourt).

‘We are done with her [Olivier]. That’s why when she said to me, ‘you can leave now on free bail’, I looked at her and said ‘bye bye’ because I had seen her ugly face for too long.

“So I will no longer appear before that ugly white face. I’m going to the highest court, where they don’t use emotions; they use the law.”

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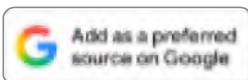


NEWS

Malema hails 'victory for accountability' after ConCourt's Phala Phala ruling

He criticised ANC MPs who shielded President Cyril Ramaphosa from possible impeachment

May 08, 2026 at 12:25 pm



Sisanda Mbolekwa





EFF leader Julius Malema addressing supporters who gathered in large numbers at Wonderkop to commemorate Workers' Day, April 30. (Thapelo Morebudi)

EFF leader Julius Malema walked out of the Constitutional Court in Braamfontein a very happy man after the EFF's victory as handed down by Chief Justice Mandisa Maya, in the party's bid to refer the Phala Phala matter back to parliament.

Malema said he would order the chief whip of his party to write to the speaker of the National Assembly immediately to get the process started as soon as possible.

“The chief whip of the EFF should have written by now to the speaker to establish the impeachment process immediately. We cannot wait any longer; we have been waiting for too long already. The impeachment process must kick in with immediate effect, and that's what we demand.”

The red beret leader said the impeachment committee would most likely mimic the ad hoc committee in terms of its composition.





However, he stated that the impeachment process had investigative powers unlike the ad hoc committee.

“The president has got to come, sit there and account. He can’t send any minister. Among other things, we are going to demand that the impeachment committee go to Phala Phala. We want to see where those people opened a hole for access, how they did it, how they sneaked in and stole the money, and even how the money came in.”



were using those institutions to protect an individual and not the constitution of the country.”

Malema said it will be interesting to observe the hand of several political parties in this impeachment process. “The DA was with us, saying, let’s impeach. Now that they are eating bananas and apples, let’s see if they will be able to talk now, with a full mouth.”



He lashed out at the ANC MPs who used their numerical strength to sway the vote and shield President Cyril Ramaphosa from possible impeachment.

“People use their majority to become unreasonable. That’s why we say that every decision must meet the rationality test. When you’ve got clowns in the majority, what do you do? That’s what they call themselves. You have a situation where people refuse to think and people refuse to reason,” Malema said.

“The same occurred when we were debating VAT. They wanted to take a vote because that’s what they are used to, and when they were taken through the law, they refused to listen to the law and interpret what the law says, and the court had to remind them again on these matters.”

Malema said it was a panel that stated that there was prima facie evidence, and criticised those who attempted to use their majority to “suppress corruption.”

He added that Nkosazana Dlamini Zuma was part of those vindicated today.

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Your reference **Our reference**
PBO3107



17 November 2025

The Speaker of the National Assembly
Parliament of South Africa

By email: speaker@parliament.gov.za /
info@parliament.gov.za /
zngoma@parliament.gov.za

and

The Chairperson of the National Council of Provinces
Parliament of South Africa

By email: lijyane@parliament.gov.za /
mphindela@parliament.gov.za

Dear Madam Speaker and Chairperson,

Helen Suzman Foundation: concerns over the conduct of JSC designee Mr Julius Sello Malema, MP

Introduction

- 1 We act on behalf of the Helen Suzman Foundation (the **HSF**).
- 2 The HSF is an independent and not-for-profit research institute in South Africa, dedicated to promoting democratic values, human rights, and the rule of law in South Africa. It advocates for policies that translate the aspirations of the South African Constitution into reality for all citizens, emphasizing good governance, transparency, and accountability.
- 3 The National Assembly of Parliament (the **NA**) is a key constitutional institution.
- 4 The HSF is aware that a number of civil society organisations have recently issued a statement contending that one of the current NA designees to the Judicial Service Committee (**JSC**), Mr Julius Sello Malema, is unsuitable for continued membership of the JSC.¹ The organisations call on Mr Malema to step down as a member of the JSC, or failing which that the NA takes steps to remove him as a member of the JSC.
- 5 The HSF supports this call. As we set out below, the HSF demands that the NA take appropriate action in this regard.
- 6 The HSF submits further that it is incumbent upon the NA to publish rules regulating the suitability of its designees to the JSC.
- 7 In this correspondence we set out the basis for our client’s demands and contentions.

¹ The statement has been jointly published by Freedom Under Law, Council for the Advancement of the South African Constitution and Defend Our Democracy and may be accessed here: <https://freedomunderlaw.org/2025/10/06/statement-on-the-implications-of-julius-malemas-criminal-conviction-3-october-2025/>

17 November 2025

The importance of the JSC

- 8 In *Helen Suzman Foundation v Judicial Service Commission*² (**HSF v JSC**), the Constitutional Court emphasised the importance of members of the JSC being suitably qualified for the positions held by them. It held:

*“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.”*³

- 9 In *Democratic Alliance v Hlophe and Others*⁴ (**Hlophe II**), the Western Cape Division of the High Court held that when making designations to the JSC, the persons, bodies or institutions referred to in section 178(1) of the Constitution are required to ensure that the persons designated are “fit and proper” for the position. Thus,

*“Requiring 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’, must mean more than simply requiring that designees for appointment to the JSC meet the basic eligibility criterion of being ‘MPs’ or advocates or attorneys. It means that, to fulfil its constitutional mandate of appointing judges who will uphold the legitimacy of the judiciary and the spirit and tenets of the Constitution, the designating body (the NA) must ensure that the process for the designation and appointment of those responsible for selecting judges is subject to stringent standards. Most importantly, the NA, as the designating authority, must, in exercising its discretion, designate from among the nominees’ individuals who are not only formally eligible but who are also substantively suited for appointment to the JSC. The judiciary’s legitimacy depends heavily on public trust and respect. Once public trust in the judiciary is eroded, democratic foundations are broken and chaos is bound to descend.”*⁵ (emphasis added)

- 10 Further the Court held that,

*“[d]esignating a person who is not fit and proper to serve on the JSC undermines the constitutional imperative set out in section 165(4) of the Constitution. Such a designation not only erodes public confidence in the independence, impartiality, and dignity of the judiciary but also compromises the integrity and credibility of the JSC itself. Any act that diminishes public respect for the judiciary constitutes an affront to the foundational values of our constitutional democracy.”*⁶

- 11 In *Hlophe v Judicial Service Commission and Others*⁷ (**Hlophe I**) the Gauteng Division of High Court held that “[w]hen choosing judges, the JSC acts as the selection panel of the nation.”⁸ Further that section 178 is itself predicated upon the recognition that the JSC must enjoy credibility.⁹

- 12 These holdings are consistent with the principles codified in the Lilongwe Principles.¹⁰

- 13 What all of this means is that the commissioners of the JSC must be fit and proper persons to sit in judgment of candidates for judicial appointment. If the public loses confidence in their ability to act ethically, appropriately, impartially and with integrity, then the public loses confidence in the JSC and the decisions that it makes.

² [2018] ZACC 8

³ Para 37

⁴ [2025] ZAWCHC 234

⁵ Para 70, quoting the preceding passage from *HSF v JSC*. Emphasis added.

⁶ Para 71. Emphasis added. See also *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) paras 27 and 103.

⁷ [2022] ZAGPJHC 276

⁸ Para 48

⁹ Para 47

¹⁰ Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers, 2018

17 November 2025

- 14 The HSF submits that these principles apply not only to the designations made to the JSC, but inform the ongoing obligation on the institution making the designation to monitor and assess the suitability of its designees throughout their tenure, and to recall them if – through their subsequent conduct – they fail to be fit and proper.

Mr Malema's impugned conduct

- 15 The HSF expresses no views as to the legitimate political opinions expressed by Mr Malema and his party the Economic Freedom Fighters (the **EFF**). The HSF equally respects the structure of the constitutional dispensation which allows for politicians from a wide range of backgrounds to be designated to the JSC. This is not however the issue.

- 16 Mr Malema has frequently acted in a manner that is inconsistent with his role as commissioner of the JSC and has demonstrated that he is not fit and proper to remain as a designee of the JSC.

17 Parliament Joint Ethics Committee Report

- 17.1 On 7 December 2021, the NA adopted a report titled "*Report of Joint Committee on Ethics and Members Interests on Complaint against Honourable JS Malema, MP*" (the **Report**). The Report found that Mr Malema had violated the Code of Ethical Conduct and Disclosure of Members Interests for Assembly and Permanent Council Members (the **Code**). The finding concerned a complaint that had been made by a civil society organisation (CASAC) that on 15 April 2021, Mr Malema had participated in a JSC meeting in which he had questioned Judge Matojane (who was applying for a position in the SCA) regarding an order that Justice Matojane had made in which Mr Malema was the defendant. The Report specifically found that Mr Malema, while sitting as a commissioner of the JSC, had not placed the public interest above his own narrow personal interests, and should not have used the JSC as a platform for those interests.



- 17.2 On 22 November 2021, the Ethics Committee recommended a sanction, requiring that Mr Malema make an apology to Justice Matojane and the JSC in a sitting of the NA. The Ethics Committee report and recommendations served before the NA on 7 December 2021 and were adopted. Mr Malema applied for the review of the NA's decision to adopt the report and, on 21 May 2025, this review was dismissed by a full bench of the High Court with costs.¹¹ It is now five months later, and the NA has not taken steps to ensure that Mr Malema honours the Report's findings.

18 The hate speech matter

- 18.1 On 27 August 2025, the Equality Court handed down judgment in litigation that the South African Human Rights Commission had brought against Mr Malema and the EFF.¹² The Court found that Mr Malema had engaged in hate speech as contemplated by *Promotion of Equality and Prevention of Unfair Discrimination Act*, 2000. In particular, it was found that Mr Malema had made statements that "*demonstrated a clear intention to incite harm and to promote or propagate hatred*".

- 18.2 Notably, Mr Malema had called on his supporters to 'kill' those who they perceived to be racist.¹³

19 The firearm matter

- 19.1 On 1 October 2025, Mr Malema was found guilty in the East London Magistrates' Court of five criminal charges, namely unlawful possession of a firearm, unlawful possession of ammunition, discharge of a firearm in a built-up area, failure to take reasonable precautions to person or property and reckless endangerment to person or property. The Court found that Mr Malema, whilst under oath, evaded questions which demanded answers.

- 19.2 Whilst sentencing remains to take place, Mr Malema stands to face imprisonment of up to 15 years. This would disqualify him from membership of the NA in the event that he is sentenced to more than 12 months imprisonment without the option of a fine.

¹¹ *Malema v Speaker of the National Assembly N.O and Others* (2724/2022) [2025] ZAWCHC 213

¹² *South African Human Rights Commission and Another v Malema and Another* (EC16/2022 ; 17/2022) [2025] ZAEQC 6

¹³ *South African Human Rights Commission and Another v Malema and Another* (EC16/2022 ; 17/2022) [2025] ZAEQC 6 at para 18.

17 November 2025



- 19.3 In 2023, during the course of the hearing, Mr Malema is on record having made public comments against the presiding Magistrate in the matter in which he accused her of corruption and incompetence without any substantiation.¹⁴ This conduct at the time was framed as an attack on the Judiciary in a press release by Judges' Matter.¹⁵ Even if Mr Malema is to succeed ultimately in an appeal process, it is this behaviour of attacking a presiding officer that speaks to the unsuitability of his continued membership of the JSC given the findings in *Hlophe* above.
- 19.4 In the *Legalbrief* of 17 October 2025, it is further reported that the Association of Regional Magistrates of Southern Africa (**ARMSA**) raised serious concerns about the public remarks made by Mr Malema against the Magistrate that presided over his trial. It is noted that ARMSA views these remarks as a direct attack on the independence and integrity of the judiciary. ARMSA further found it alarming that Mr Malema continues to serve on the JSC.

The constitutional and statutory framework

- 20 The JSC is constituted in terms of section 178 of the Constitution. Of relevance here is section 178(1)(h) which requires the NA to designate six persons to the JSC, at least three of whom must be members of opposition parties. Mr Malema was initially designated to the JSC in June 2014 and has served on the JSC since that date.
- 21 The National Assembly Rules do not regulate how the designation of the NA members is to be regulated. The Joint Rules of Parliament are similarly silent as to the designation of not only NA members, but also how National Council of Provinces' (**NCOP**) members are to be regulated.¹⁶
- 22 However, in *Hlophe II*, the Western Cape High Court confirmed that the NA is required to exercise an independent discretion when making designations and may not defer to the 'nominations' made by opposition parties. Moreover, in exercising this discretion, the NA must have regard to all relevant considerations, particularly whether any member of the NA who is proposed as a designee to the JSC is fit and proper.
- 23 The HSF is of the view that Parliament must adopt rules, which: (1) regulate and monitor the conduct of NA and NCOP-designated commissioners of the JSC; and (2) to provide for their recall and replacement should their behaviour make them no longer substantively suitable to be regarded as fit and proper to serve on the JSC.
- 24 Given the High Court's ruling in *Hlophe II*, reliance can no longer purely be placed on the Code to deal with members' conduct. The Code is only invoked if there is a complaint lodged and does not speak to the Constitutional role of Parliament under section 165(4) of the Constitution. Failing that however, the Courts may be approached to challenge the failure to remove commissioners who demonstrate that they are not fit and proper and who, through their conduct, erode the public's trust in the JSC.

Mr Malema is not suitable to act on the JSC

- 25 The HSF is of the view that Mr Malema is no longer substantively suited to serve as a member of the JSC. His conduct, as outlined in paragraphs 15 to 19, illustrates that he has acted in a manner that diminishes public respect for the judiciary and constitutes an affront to the foundational values of our constitutional democracy.
- 26 Therefore, the HSF submits that Mr Malema is not suitable to continue serving as a member of the JSC and should be removed or recalled at either instance.

Remedy sought by the HSF

- 27 In *Hlophe II*, the High Court found that the conduct of the NA in designating Dr Hlophe, an impeached former judge, to the JSC constituted 'administrative action' for the purposes of the *Promotion of Administrative Justice Act*, 2000 (**PAJA**) and subject to its principles, as well as the principle of legality.

¹⁴ <https://iol.co.za/news/crime-and-courts/2023-10-26-i-said-what-i-said-malema-stands-behind-his-verbal-bashing-of-magistrate-in-firearm-discharge-case/> ; <https://www.youtube.com/watch?v=rb9Cljg7Pzw>

¹⁵ <https://www.judgesmatter.co.za/opinions/media-statement-judges-matter-condemns-julius-malemas-comments-against-magistrate-twanet-olivier/#:~:text=Comments%20calling%20magistrate%20corrup>

¹⁶ Section 178(1)(j) of the Constitution makes provision of the appointment to the JSC of four permanent delegates of the National Council of Provinces.

17 November 2025



- 27.1 Section 6(2)(g) of PAJA provides that a court may review administrative action where the action concerns the failure to take a decision.
- 27.2 Section 6(2) of PAJA generally requires the NA to make decisions that are lawful, rational and reasonable.
- 28 The constitutional principle of legality imposes the same substantive requirements on the NA.
- 29 The HSF accordingly calls on the NA to decide, in light of the factors enumerated above, whether Mr Malema is suitable to remain a commissioner of the JSC and if not, to take steps to ensure his removal as a designee of the NA to the JSC. Should the NA fail to take such a decision, the HSF intends to launch, without further notice, an application for the judicial review of the NA's conduct in accordance with section 6(g) of PAJA and the principle of legality. Moreover, the HSF reserves its right to contest any decision made by the NA regarding Mr Malema's continued membership of the JSC.
- 27 The HSF further calls on the Speaker and Chairperson to amend the Joint Rules of Parliament to make provision for the regulation and monitoring of the conduct of NA and NCOP-designated commissioners of the JSC and to provide for their recall and replacement should their behaviour make them no longer substantively suitable to be regarded as fit and proper to serve on the JSC.
- 30 In terms of section 6(3)(iii) of PAJA and the principle of legality, the NA and NCOP are required to take a decision on these matters without unreasonable delay. Accordingly, the HSF requests that it receives your considered response by no later than 12 December 2025.



Yours faithfully



Jason Whyte
Director
Norton Rose Fulbright South Africa Inc

COURT ONLINE COVER PAGE

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

CASE NO: **2026-109516**

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 16 and More

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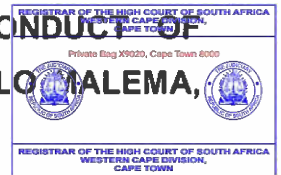


Mr Jason Whyte

Director: Norton Rose Fulbright South Africa Inc
9th Floor 117 on Strand
117 Strand Street
Cape Town 8001

Delivered per email: jason.whyte@nortonrosefulbright.com

**RE: HELEN SUZMAN FOUNDATION: CONCERNS OVER THE CONDUCT OF
JUDICIAL SERVICE COMMISSION (JSC) DESIGNEE MR JULIUS SELLO MALEMA,
MP**



Dear Mr Whyte,

Your correspondence, dated 17 November 2025, on the above subject, bears reference.

In your letter, it is stated that *“Mr Malema has frequently acted in a manner that is inconsistent with his role as commissioner of the JSC and has demonstrated that he is not fit and proper to remain as a designee of the JSC”* and that the Helen Suzman Foundation (“HSF”) holds the view that Mr Malema is no longer substantively suited to serve as a member of the JSC.

Accordingly, the HSF calls on the National Assembly to decide whether Mr Malema 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.

It appears the main concern regarding recent court judgments against Mr Malema relates to the matter in which Mr Malema was found guilty of firearm related charges by the East London Magistrates’ Court on 1 October 2025. The matter was postponed to 23 January 2026 for sentencing. It is at present not clear whether the sentence will have an impact on Mr Malema’s National Assembly membership in terms of section 47 of the Constitution of the Republic of South Africa, 1996 (“the Constitution”). It must also be noted that Mr Malema and the Economic Freedom Fighters have indicated their intention to appeal his convictions¹ in the firearm, as well as the hate speech matters.²

¹ <https://www.dailymaverick.co.za/article/2025-10-01-julius-malema-firearm-guilty-prison/>

² <https://mq.co.za/politics/2025-08-28-eff-to-appeal-equality-court-hate-speech-ruling-against-malema/>

As for the National Assembly representation on the JSC, section 178(1)(h) of the Constitution provides for the designation by the National Assembly from among its members six persons to serve in the JSC. Section 178(3) of the Constitution provides that these members serve on the JSC until they are replaced by those who nominated or designated them.

While section 178(3) of the Constitution does provide for the replacement of the members designated to serve in the JSC, there is no definition of the grounds on which such members may or must be removed or replaced. Similarly, the Rules of the National Assembly provide no mechanism for the removal of members designated by the National Assembly to serve as members of the JSC. It then stands that such must be done by way of a motion to remove and replace, as designation to the JSC is done by way of motion proceedings in the House. Such motions stand to be moved by the Chief Whip, and not the Speaker of the National Assembly, as the latter Office is neutral and a-political in the execution of its functions in the management of the procedures of the House. For that reason, the Constitution and the Rules of the National Assembly only on limited occasions envision the Speaker of the National Assembly from partaking in House proceedings as the outcome of such amounts to political decisions taken by democratically elected officials as public representatives.



There is presently no legislative framework that governs the removal of a member based on the circumstances raised in your letter. I have noted your reference to *Democratic Alliance v Hlophe and Others*³ matter, in which the Western Cape High Court 'read' into section 178(1)(h) of the Constitution the 'fit and proper' or 'fit for purpose' criteria when it interpreted the scope of the constitutional provision in considering application to review and set aside Dr John Hlophe's designation to the JSC as a representative of the National Assembly. The decision of the National Assembly in so designating Dr Hlophe was ultimately found to be unreasonable and irrational based on the fact he was as a judge recently impeached for gross misconduct in terms of s 177 of the Constitution and therefore uniquely unsuitable to have a voice in the appointment of other legal practitioners to hold the office of judge.

The Legislature is obligated to respect the letter of the law in terms of the wording of the Constitution and cannot 'read' in or impose on the provisions of the Constitution its own qualification as meaning if that does not clearly reflect from the text – the Legislature's constitutional mandate is to effect changes it would require necessary by way of amendment, not by way of interpretation to extend. It is for this reason that I, as the Speaker of the National Assembly, accordingly, filed a notice to abide by the decision of the Court in the matter of *Democratic Alliance v Hlophe and Others*⁴ to obtain guidance on the reading of the provision in as far as it related to Dr Hlophe's unique circumstances.

For that same reasoning now, it is not for the National Assembly to impose on section 178(1)(h), read with section 178(3), of the Constitution qualifications and reasoning that extend or limit the scope of those provisions as expressly reflected in the wording of the text to include a meaning that would automatically result in the House considering recalling Mr Malema as an elected representative in terms of our

³ [2025] ZAWCHC 234, at para 103.

⁴ [2025] ZAWCHC 234, at para 103.

participatory democracy, as he currently qualifies for membership of the National Assembly in terms of section 47 of the Constitution.

As further mentioned in the paragraph quoted in your letter with reference to the Constitutional Court matter of *Helen Suzman Foundation v Judicial Service Commission*:⁵

“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.”

While the High Court may have used its judicial discretion in the *Democratic Alliance v Hlophe and Others*⁶ to read section 178(1)(h) of the Constitution to effectively declare Dr Hlophe not (based on the factual realities) fit to fill a position as National Assembly designation on the JSC, the Court did not provide the National Assembly with any clear guidance or test as to how to determine rationality in terms of JSC designation in future. In fact, the High Court in considering the matter made it clear that the “*circumstances surrounding this particular nomination were, therefore, unique and exceptional*”.⁷ It must also be noted that Dr Hlophe has made known his intention to appeal this judgment in the Supreme Court of Appeal⁸ —so it appears that we have not yet the full advantage of the Judiciary’s guidance on this and related matters and how the National Assembly is supposed to assess rationality in matters other than that relating to Dr Hlophe and his unique set of facts.

Absent such judicial certainty as to the test for and scope of the constitutional application of section 178 (beyond the scope of the unique set of facts relating to Dr Hlophe), any possible adoption of rules setting out criteria that disqualify or prevent specific members of the National Assembly from qualifying for designation to the JSC could result in an unjustified limitation of the exercise of the elected mandate of those who qualify for membership to the National Assembly within the set parameters of section 47 of the Constitution.

Although we note with appreciation your proposal regarding the possible amendment of the Rules of the National Assembly and/or Joint Rules to address instances where a duly elected member of the National Assembly is to be regarded as no longer ‘fit and proper’ to serve on the JSC as designate, such would arguably result in such an unjustified limitation: Any limitation of the section 47 membership parameters (as expressly set out in the Constitution) to include additional ‘fit and proper’ criteria as possible exclusion in the performance of potential functions associated with full membership to the National Assembly would require a constitutional amendment to that effect.

⁵ [2018] ZACC 8 at par 37.

⁶ [2025] ZAWCHC 234, at par 103.

⁷ [2025] ZAWCHC 234, at par 46.

⁸ <https://www.timeslive.co.za/politics/2025-06-03-hlophe-to-appeal-court-judgment-regarding-designation-to-the-jsc/>

At this point, it is prudent to point out that Adv Glynnis Breytenbach, MP in *Government Gazette* No 53099 (1 August 2025) announced her intention in terms of s 73(2) of the Constitution to introduce the Constitution Twenty- Second Amendment Bill, 2025 with the intent "to amend sections 47, 106 and 158 of the Constitution to provide that a former judge or person appointed in terms of Chapter 9 who was previously removed from office by the President in terms of the Constitution on the ground of either gross misconduct or misconduct, as the case may be, is not eligible to become a member of Parliament, a provincial legislature, or a Municipal Council." During the processing of such a bill, it would be open to your foundation to participate in the call for public comment if you wish to share any views as to how you think the qualifications proposed can be strengthened or broadened. For this purpose, I would urge you to follow the process of this Bill.

Even if there was a constitutionally justifiable legislative or rules based framework within which to recall Mr Malema from the JSC (as based on your view of him no longer being fit for purpose for the position of National Assembly delegate to that forum), as mentioned above, a motion to recall Mr Malema is not for the Speaker of the National Assembly to call and such a motion may even be regarded as premature given that court processes are still underway.



Regarding the Report of the Joint Committee on Ethics and Members' Interests on the complaint against Mr Malema, it is common cause that the application launched by Mr Malema to review and set aside the report and the adoption thereof by the National Assembly, was dismissed by the Western Cape High Court on 21 May 2025. The National Assembly has noted the recent developments in this matter and, having regard to no further pending litigation pertaining to that report, has taken steps to ensure that the recommendations of the Joint Committee on Ethics and Members' Interests are implemented by the first term of 2026.

If at any point, the HSF is of the view that there are further ethics 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.

Thank you for bringing your concerns to our attention.

Sincerely,


A T Didiza, MP

Speaker of the National Assembly

Date: 16/02/2026

COURT ONLINE COVER PAGE

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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 16 and More

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31 March 2026

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Your reference:

Our reference: PBO3107

Dear Madam Speaker



Helen Suzman Foundation: concerns over the conduct of JSC designee Mr Julius Sello Malema, MP

Introduction

- 1 Our client is the Helen Suzman Foundation (**HSF**).
- 2 We refer to our letter dated 17 November 2025 and your response dated 16 February 2026, for which we thank you.
- 3 The letters concern Mr Malema's continued membership of the Judicial Service Commission as a member of the National Assembly designated by it, as well as the National Assembly Rules and Joint Rules of Parliament
- 4 In our letter the HSF called on the National Assembly to consider whether Mr Malema remains suitable to be designated to the JSC in light of his conduct that diminishes public respect for the Judiciary. HSF also asserted that the National Assembly Rules and Joint Rules of Parliament should be amended to provide for the regulation and monitoring of the conduct of National Assembly and NCOP-designated members of the JSC and to provide for their recall and replacement.
- 5 In your response you express four views on these matters:
 - 5.1 First, that any proposal to reconsider and remove Mr Malema's designation to the JSC must be moved on motion by the Chief Whip, and cannot be introduced by the Speaker (as a neutral office-bearer).
 - 5.2 Second, that there is no legislative or constitutional framework for the removal of a designee to the JSC, and that the National Assembly is not empowered to 'read in' unexpressed provisions into the Constitution.
 - 5.3 Third, that the recall of a member of the National Assembly from the JSC could curtail their rights and privileges as afforded by section 47 of the Constitution
 - 5.4 Fourth, that the National Assembly considering whether to remove Mr Malema would be premature as "*court processes are underway*".
- 6 The purpose this letter is to respond to these views.

First: The initiation of the reconsideration process

- 7 In *Democratic Alliance v Hlophe and Others*¹ (**Hlophe II**), the Western Cape Division of the High Court made it clear that the decision to designate a member of the National Assembly to the JSC in terms of section 178(1)(h) of the Constitution is not a decision of a political party, and that the decision to designate is to be made by the National Assembly as a single, unified body, recognised as such by section 46 of the Constitution. The Court further found that when making designations, the National Assembly is obliged to consider whether a candidate is fit and proper to serve on the JSC based on all available evidence. All bodies responsible for nominating or designating members to the JSC bear the same obligation. The Speaker abided the Court's decision in that matter.
- 8 Section 178(3) of the Constitution implicitly empowers the National Assembly to recall and replace its designees to the JSC. A person who is designated does not have the right to retain that position for as long as they remain a member of the National Assembly. The power to recall and replace is coupled with a duty: where circumstances arise that call into question the ability of a designee to fulfill their duties on the JSC through their subsequent conduct, the National Assembly is constitutionally obliged to consider exercising the recall power, and in appropriate circumstances to exercise it. This arises from the National Assembly's obligation in section 165(4) of the Constitution, as explained in *Hlophe II*, to "assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts."
- 9 On page 3 of your letter, you state that Dr Hlophe indicated an intention to appeal the judgment and suggest that there is accordingly no final "guidance" from the judiciary on these issues. You also assert there is no "judicial certainty as to the test for and scope of the constitutional application of section 178." We respectfully submit that these contentions are incorrect:
- 9.1 First, the judgment is of a Full Bench of the High Court, and as a matter of law it is binding on the National Assembly. The judgment reflects the legal position under the Constitution, unless it is overturned on appeal, whether or not an appeal is pending.²
- 9.2 Second, there is in fact no application for leave to appeal or appeal pending. The position is as follows:
- (1) Dr Hlophe and the MK Party asked the High Court for leave to appeal against the judgment. This was refused by the High Court.
 - (2) Dr Hlophe thereafter, in December 2025, purported to file an application for leave to appeal with the Supreme Court of Appeal. He was however late in making application, and the Registrar of the Supreme Court of Appeal refused to accept the application without a condonation application
 - (3) Dr Hlophe has taken no further steps – he has not sought condonation.
 - (4) The MK Party has not sought to file any application to the Supreme Court of Appeal for leave to appeal.
 - (5) The upshot is that there is no pending application for leave to appeal or appeal.
- 10 Your view that only the Chief Whips can introduce a motion to recall and replace Mr Malema in the National Assembly is with respect incorrect.
- 11 HSF does not request that the issue of Mr Malema's continued designation on the JSC be decided by the National Assembly as a *political act*; but rather as a matter of legal obligation under the Constitution to which the National Assembly is bound.
- 12 As the Speaker of the National Assembly you have the authority and mechanisms available to ensure that matters which the Constitution requires be considered by the National Assembly are brought before it.

¹ [2025] ZAWCHC 234

² *Release Mandela Campaign v State President* 1988 (1) SA 201 (N) at 213A-B, *Zuma v Downer and Another* 2024 (2) SA 356 (SCA) at para 15.

- 13 Any refusal by you to take steps to ensure that the issue of Mr Malema's continued designation to the JSC is considered by the National Assembly, would be unlawful and reviewable.

Second: Legislative and constitutional framework allows for and requires recall of designees

- 14 You contend that there is no legislative or rules-based framework within which to recall Mr Malema from the JSC.
- 15 Above, we have already explained why the National Assembly has a duty to consider Mr Malema's continued designation to the JSC.
- 16 The fact that the National Assembly rules do not explicitly address the recall and replacement of its designees to the JSC cannot and does not absolve the Assembly from complying with its duties under the Constitution to do so if necessary or appropriate. For instance, the National Assembly Rules do not expressly address the designation of its members to the JSC. It would be absurd to contend that the National Assembly therefore need not do so. This is because it is dealt with in terms of the Rules governing motions as the Speaker said in her affidavit in the *Hlophe* litigation (see paragraph 35)

Third: Section 47 rights and privileges

- 17 Section 47 of the Constitution prescribes nothing more than the conditions under which a person can become a member of the NA as well as the circumstances under which such membership of the National Assembly can be lost.
- 18 Section 47 does not confer a right on a member to participate on the JSC.
- 19 At best, it confers the possibility of designation to the JSC by way of section 178(1)(h), this in turn being contingent on, as found in *Hlophe II*, the fit and proper requirement. The import of the judgment in *Hlophe II* is that a person who is otherwise eligible to be a member of the National Assembly may be disqualified from being designated to the JSC.
- 20 Accordingly, there can be no talk of the infringement of section 47 of the Constitution simply because the *privilege* of participating on the JSC is contingent upon at all times being fit and proper to serve on the JSC.
- 21 This same argument was unsuccessfully advanced by Dr Hlophe and the MK Party in *Hlophe II*.



Fourth: The National Assembly has a duty to act

- 22 You also contend that it might be premature for the National Assembly to recall Mr Malema as he intends appealing certain judgments against him.
- 23 This contention is with respect wrong. Mr Malema's conduct set out in our 17 November 2025 letter, and his further conduct set out herein, is inconsistent with his role as a Commissioner of the JSC. For example:
- 23.1 On 21 March 2022 at an EFF Human Rights Day rally, Mr Malema stated that the judiciary was captured in favour of President Ramaphosa, and that judges of the Gauteng High Court rules in a factional manner. We attach, marked "A", a *News 24* article dated 21 March 2022 recording these comments.
- 23.2 On 16 May 2022, Mr Malema supported a complaint lodged against Justice Zondo and demanded disciplinary action, accusing the then Chief Justice of believing that he was "untouchable", a "factional judge" and becoming involved in "political matters". We attach, marked "B", a *Daily Maverick* article dated 16 May 2022 recording these comments.
- 23.3 In February 2024, Mr Malema accused the judiciary of being "captured", "undemocratic" and of being politically driven. This followed the Western Cape High Court dismissing the EFF's application to have Mr Malema's suspension from Parliament lifted. We attach, marked "C", a *Times Live* article dated 9 February 2024 recording these comments.

- 23.4 In January 2026, Mr Malema implied that so-called “corrupt judges” would receive protection from the State when the MK Party MP Skosana proposed summoning such judges to the ad hoc Committee investigating allegations made by Lieutenant general Mkhwanazi. Mr Malema’s response confirms the inappropriateness of his other remarks, which as far as we are aware he has never retracted. We attach, marked D, a *Times Live* article dated 8 January 2026 recording these comments.
- 24 The aforesaid comments are made against the judiciary with a worrying inconsistency and underpin the HSF’s view that Mr Malema’s conduct is inconsistent with his role as a Commissioner of the JSC.
- 25 As for his recent criminal trial: he publicly accused the Magistrate of corruption and incompetence without any substantiation. Whether he is successful or not in an appeal against his conviction, that will not and cannot undo such conduct, and neither can it affect the consequences of that conduct.
- 26 The National Assembly has a duty to act on the information as it stands, or at the very least consider doing so.

Conclusion

- 27 The HSF accordingly requests you place the matter of Mr Malema’s continued designation to the JSC before the National Assembly in an appropriate fashion.
- 28 Should you refuse to do so, the HSF will bring review proceedings in respect of such refusal and the failure of the National Assembly to consider Mr Malema’s continued designation to the JSC.
- 29 Should we not receive confirmation by 30 April 2026 that the matter will be addressed appropriately by the National Assembly, we shall understand this as a refusal and institute an application to the High Court.
- 30 Our client notes the undertaking by the National Assembly to implement the recommendations of the Joint Committee on Ethics and members’ Interests in the first term of 2026, and looks forward to the finalisation of this process.
- 31 Our client’s rights otherwise remain fully reserved.



Yours faithfully

Chuma Bubu, Associate
Jason Whyte, Director
Deneys



21 Mar 2022

Share



Malema claims judiciary captured in favour of Ramaphosa and ANC

Zintle Mahlati

EFF leader Julius Malema claims the judiciary is captured in favour of President Cyril Ramaphosa and the ANC.

Malema says no person can win a case against Ramaphosa that is heard at the Gauteng High Court in Pretoria.

The EFF leader also said the country had missed an opportunity to witness the first black woman chief justice.

EFF leader Julius Malema has continued his unsubstantiated criticism of the judiciary, claiming some of the country's judges were captured in favour of President Cyril Ramaphosa and a faction of the ANC.

Malema spoke on Monday at the EFF's Human Rights Day rally in Sharpeville in Gauteng.

The EFF leader is no stranger to criticising and airing his party's beliefs about the judiciary favouring certain people over others.

During his speech, he upped the political ante, saying the Gauteng High Court was of particular concern because Ramaphosa won every case heard in the division.

ADVERTISEMENT



Malema said:

There are judges who have taken a decision to judge in favour of Cyril Ramaphosa. When you take Cyril Ramaphosa to court, you will never win, let me tell you that. Especially in Pretoria, Gauteng North High Court, you will never win.



He accused the country's judges of ruling in a, "... racist and factional manner", based on the rulings issued.

"They want us to believe that is the law. That there is one man who is above the law. That Ramaphosa is always right. We cannot have a law with eyes that sees who is before it. We need a law that is blind, and we need neutral judges. We want to call on captured judges that if they continue to rule in Ramaphosa's favour, they will collapse this country," Malema told a crowd of EFF supporters.

READ | High Court finds no argument of interest of justice to unseal the CR17 bank statements

The Gauteng High Court in Pretoria has heard several cases involving the president.

Last year, the court dismissed the EFF's application to unseal CR17 campaign bank statements.

The same court also set aside **Public Protector Busisiwe Mkhwebane's report into the CR17 campaign.**

~~Confidential~~

The EFF did not support the appointment of Raymond Zondo as the chief justice of the country, saying Supreme Court of Appeal President Mandisa Maya was the best candidate for the role.

Malema repeated his party's unhappiness about Zondo's appointment by Ramaphosa, saying the country had missed an opportunity to witness the first black woman chief justice.

Malema said:

Chief Justice Zondo, we do not congratulate him. We want to warn him that if he is going to be an objective chief justice, he must exercise the law and make sure it is blind. Fools are going to say I am attacking the judiciary. I am not. I want an independent judiciary. The judges are not the Constitution and must subject themselves to the Constitution.

He continued: "Any judge that rules in a factional manner will be confronted. The EFF is not a threat to the judiciary. What is a threat to the judiciary is the capture of the judiciary. The judiciary must defend itself. Let us guard the independence of our judiciary. We missed an opportunity to have the first black female chief justice," he said.





DAILY MAVERICK

SOUTH AFRICA

This article is **more than 3 years old**

JUDICIARY & POLITICS

Julius Malema berates Chief Justice Raymond Zondo, demands disciplinary action

The leader of the EFF, Julius Malema, has said it was inappropriate for Chief Justice Raymond Zondo to get involved in political matters, adding that the judge's comments about the ANC were an endorsement of party leader Cyril Ramaphosa.



By Queenin Masuabi

16 May 2022



From left: EFF leader Julius Malema. (Photo: Gallo Images / Laird Forbes) | Chief Justice Raymond Zondo. (Photo: Gallo Images / OJ Koloti)

DIVE DEEPER





in political matters.

Speaking at a media briefing at the party’s headquarters on Monday following the party's 15th central command meeting, Malema said it was justified for senior ANC member Tony Yengeni to have written a complaint to the JSC, appealing for Zondo to be probed for an alleged breach of the Code of Judicial Conduct in connection with comments made in the fourth part of the Zondo Commission report.

Malema believes Zondo is a factional judge who supports the election of ANC president Cyril Ramaphosa for a second term as party leader.



“We support Tony Yengeni fully... the conduct committee of the JSC must make sure that Zondo is disciplined; the same thing they did with the chief justice when he descended into the terrain of politics — Mogoeng Mogoeng. It will not be for the first time.

“He [Zondo] has no limits and thinks that judges are untouchable and that he has given himself the responsibility to enter the political terrain. What will judges have to do or say with regards to the outcomes of the political conferences of political parties? Judges must know their limits.

“Zondo sees it necessary to say that Ramaphosa’s election in the ANC rescued us from where we were. He effectively said if you do not elect Ramaphosa this



which was released last month, Zondo implied that more damage would have been done to SA if Ramaphosa had not been elected to lead the party at its elective conference in December 2017.

“Had it not been for the fact that at the end of 2017, the ANC would have an elective conference where Mr Ramaphosa, who was already Deputy President of the ANC and the country, would stand as a candidate to take over from Mr Zuma, more damage could have been done to the National Treasury under Mr (Malusi) Gigaba than may have been done,” the report reads.

<https://www.dailymaverick.co.za/article/2022-05-16-jacob-zuma-yesterday-again-of-power-politics/>



Yengeni is of the belief that Zondo’s report will assist Ramaphosa’s campaign ahead of the party’s elective conference in December. He said the conclusion by the chief justice is “troubling in many respects”.

“First and foremost, I am not aware which witness(es) presented the testimony based on which this political finding is made. Even if such testimony was presented, such a finding is unjustified if such testimony was never tested by way of cross-examination.

“It is therefore inappropriate for a judicial officer to make such a subjective finding without real evidence,” according to Yengeni’s complaint.

Yengeni is a staunch supporter of suspended ANC secretary-general Ace Magashule and former party president Jacob Zuma. Last year, he, along with uMkhonto we Sizwe Military Veterans Association member Carl Niehaus and Magashule were said to have displayed inappropriate behaviour at one of Zuma’s court appearances.

The party considered taking disciplinary action against the duo for saying that some ANC leaders were using state resources to lay criminal charges against their political opponents. This was shortly after Magashule was suspended for his alleged involvement in the botched multi-million Rand asbestos project. Magashule faces corruption charges.



and labelled it a “dangerous” and “evidently unsustainable path”. The red berets intend doing everything in their power to reverse the sale of SAA, but Malema did not explain exactly how they would go about this.

“It is evident that all state-owned companies will first be made to not function well, and thereafter given for free to the white capitalist establishment. There is absolutely no rationality in selling off an airline for R51 to people who are linked to and controlled by the white capitalist establishment,” he said.

The Takatso Consortium was expected to invest R3-billion in the airline as operating capital once it acquired a 51% stake in the national carrier. However, National Treasury withdrew support for the sale of SAA.

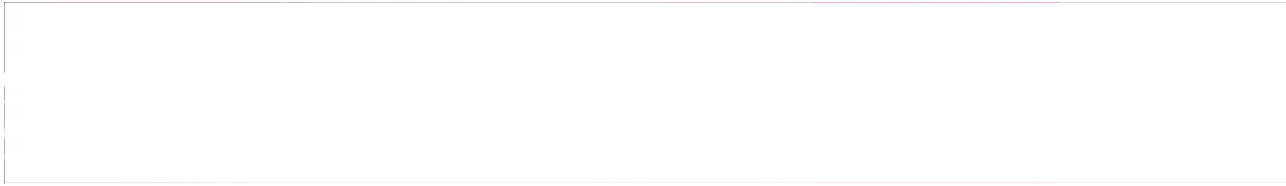


Appearing recently before Parliament’s Standing Committee on Public Accounts, Public Enterprises Minister Pravin Gordhan said the sale of the majority stake in SAA to Takatso Consortium had not yet been finalised.

“The current load shedding and crises in Eskom are purposefully created to justify the subsequent disposal of Eskom to the greedy white capitalist class. South Africa’s energy policy and direction are being directed by both domestic and global capitalist interests.

“What is evident now is that there is no believable plan for a just transition that will secure the work and wellbeing of communities and workers that depend on coal for their livelihoods,” claimed Malema. DM

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POLITICS

WATCH | Ramaphosa 'protected by judges': Malema launches new attack on judiciary after Sona bruise

Missing out on the state of the nation address did not sit well with leader Julius Malema after the Western Cape High Court set aside the party's application for his suspension from parliament to be lifted.



February 09, 2024 at 2:24 pm



Missing out on the state of the nation address (Sona) did not sit well with EFF leader Julius Malema after the Western Cape High Court set aside the party's

Times LIVE



identity constitutional rights which needed to be protected or irreparable harm the MPs would suffer should they not attend Sona. The suspended MPs included Malema, deputy leader [Floyd Shivambu](#), Mbuyiseni Ndlozi, Sinawo Tambo, Vuyani Pambo and secretary-general Marshall Dlamini.

Angered by the judgment, Malema again accused the judiciary of being “captured”.

“We will appeal it to the Constitutional Court because we must not allow that precedent where elected MPs can be removed through undemocratic methods supported by a captured judiciary. It started like that in Zimbabwe where MPs are rough-tackled, violated, journalists are arrested and the judges are agreeing with that nonsense,” he said.

Malema believed there was nothing untoward about his remarks regarding the judiciary.



“Judges are not God. They must be criticised when they are wrong. How do you say, ‘You must not call for point of order,’ and you regulate speech in parliament?”



In the recent judgment the court did not comment on the merits of the EFF's arguments.

“For the purposes of this judgment, it is not necessary for us to comment on the substantive merits of the attack which the applicants have launched, or their prospects of success,” the judgment read.

“That is something for the court to deal with in part b of the application. We are simply required to determine whether the applicants have made a proper case for the interim relief which they seek on the premise there may possibly be merit in one or more of the grounds of complaint which have been raised.”

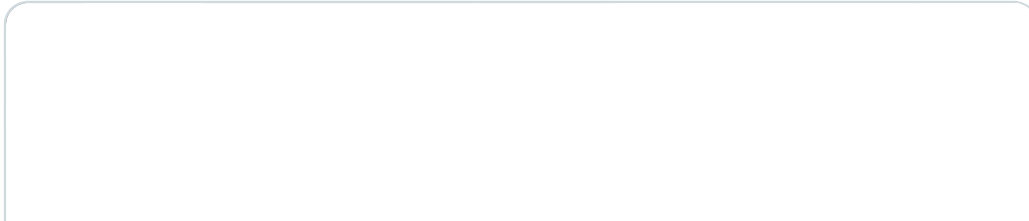


The red berets' leader, without evidence, accused judges of protecting President Cyril Ramaphosa. “They do not want us in parliament because they are a group of cowards. There is no leader who is a coward like President Ramaphosa, who is protected by judges. He is hiding behind the red dresses of the judges because he knows politically he will not be able to defeat us,” he said.



CIC [@Julius_S_Malema](#) speaking to SABC News at DUT, Indumiso Campus ahead of the [#EFFManifestoLaunch](#).

They don't want us in Parliament today because they're a group of cowards, there's no leader who is a cowards like President Ramaphosa who is being protected by [Show more](#)



This was not the first time Malema criticised judges. In October last year he refused to apologise for labelling magistrate [Twanet Olivier](#) an “incompetent white magistrate” after he lost a bid to have his case struck off the roll in East London.

Malema appeared before Olivier with bodyguard Adriaan Snyman on charges of discharging a firearm during the EFF's fifth birthday celebration at Mdantsane's Sisa Dukashe Stadium in 2018.

Malema, a member of the judicial service commission (JSC), was criticised by the organisation Judges Matter and justice ministry for “attacking” Olivier. Both the ministry and the organisation said Malema's claims of “corruption” and incompetence against Olivier, without substantiation, were irresponsible.

In December chief justice [Raymond Zondo](#) defended the judiciary against allegations of “capture”, saying he has for the past four years called for evidence, but none has come to light.

TimesLIVE

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

CASE NO: 2026-109516

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema, Judicial Service Commission, Minister of Justice and Constitutional Development, All Parties Represented in the National Assembly Defendant / Respondent

Annexure 16 and More

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BY:

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

17 November 2025

Chairperson of the Judicial Service Commission

Chief Justice MML Maya

By email: JSC@judiciary.org.za /

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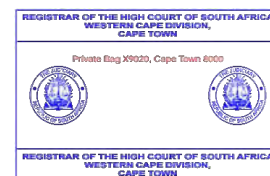
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Your reference

Our reference
PBO3107



Dear Honourable Chief Justice Maya,

Helen Suzman Foundation: Code of ethics and conduct for the Judicial Service Commission

1 Introduction

- 1.1 We act on behalf of the Helen Suzman Foundation (the **HSF**) and write to you in your capacity as the Chairperson of the Judicial Service Commission (the **JSC**).
- 1.2 The HSF is an independent and not-for-profit research institute in South Africa, dedicated to promoting democratic values, human rights, and the rule of law in South Africa. It advocates for policies that translate the aspirations of the South African Constitution into reality for all citizens, emphasizing good governance, transparency, and accountability.
- 1.3 The HSF considers the JSC to be a key constitutional institution. The JSC has undertaken significant reforms in recent years.
- 1.4 In 2023, the JSC adopted new criteria and guidelines for interviews. These focus on the legal ability of aspirant judges. The new criteria also give the Chief Justice powers to intervene and stop irrelevant or disparaging questions. Significantly, the guidelines oblige commissioners to respect the dignity of candidates during interviews.
- 1.5 The HSF lauds this and other developments which had a noticeably positive impact on the recent JSC sittings.
- 1.6 The HSF believes that further reforms should be considered – specifically that a Code of Ethics and Conduct be adopted by the JSC for its members.
- 1.7 For example, the JSC is aware that a number of civil society organisations have issued a statement contending that a current NA designee to the JSC, Mr Julius Sello Malema, is unsuitable for continued membership of the JSC.¹ The organisations call on Mr Malema to step down as a member of the JSC, failing which that the NA takes steps to remove him as a member of the JSC.

¹ The statement has been jointly published by Freedom Under Law, Council for the Advancement of the South African Constitution and Defend Our Democracy and may be accessed here: <https://freedomunderlaw.org/2025/10/06/statement-on-the-implications-of-julius-malemas-criminal-conviction-3-october-2025/>

Letter to JSC 17.11.2025 (clean)(3709718.1)

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17 November 2025



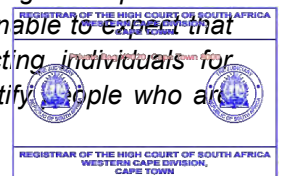
1.8 The HSF supports this call but further submits that it is incumbent upon the JSC to adopt a Code of Ethics and Conduct for its members regulating the suitability of designees to the JSC and incorporating a mechanism for the removal of members who are no longer fit and proper to serve. It believes that having such a mechanism in place will enhance the standing of the JSC and its essential role in appointing the judiciary.

1.9 In this correspondence we set out the basis for our client's contention.

2 The importance of the JSC

2.1 In *Helen Suzman Foundation v Judicial Service Commission* [2018] ZACC 8 (**HSF v JSC**), the Constitutional Court emphasised the importance of JSC commissioners being suitably qualified for the positions held by them. It said,

"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."



2.2 In *Democratic Alliance v Hlophe and Others* [2025] ZAWCHC 234 (**Hlophe II**), the High Court found that when making designations to the JSC, the persons, bodies or institutions referred to in section 178(1) of the Constitution are required to ensure that the persons designated are 'fit and proper' for the position. Thus,

*"Requiring 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", must mean more than simply requiring that designees for appointment to the JSC meet the basic eligibility criterion of being MPs or advocates or attorneys. It means that, to fulfil its constitutional mandate of appointing judges who will uphold the legitimacy of the judiciary and the spirit and tenets of the Constitution, the designating body (the NA) must ensure that the process for the designation and appointment of those responsible for selecting judges is subject to stringent standards. Most importantly, the NA, as the designating authority, must, in exercising its discretion, designate from among the nominees' individuals who are not only formally eligible but who are also substantively suited for appointment to the JSC. The judiciary's legitimacy depends heavily on public trust and respect. Once public trust in the judiciary is eroded, democratic foundations are broken and chaos is bound to descend."*²

2.3 Further that,

*"[d]esignating a person who is not fit and proper to serve on the JSC undermines the constitutional imperative set out in section 165(4) of the Constitution. Such a designation not only erodes public confidence in the independence, impartiality, and dignity of the judiciary but also compromises the integrity and credibility of the JSC itself. Any act that diminishes public respect for the judiciary constitutes an affront to the foundational values of our constitutional democracy."*³

2.4 In *Hlophe v Judicial Service Commission and Others* [2022] ZAGPJHC 276 (**Hlophe I**) the High Court explained that "[w]hen choosing judges, the JSC acts as the selection panel of the nation."⁴ Further that section 178 is itself predicated upon the recognition that the JSC must enjoy credibility.⁵

² Para 70, quoting the preceding passage from *HSF v JSC*. Emphasis added.

³ Para 71. Emphasis added. See also *Secretary, Judicial Commission of Inquiry into allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) paras 27 and 103.

⁴ Para 48

⁵ Para 47

17 November 2025



2.5 These views have been codified in the Lilongwe Principles.⁶

3 Need for a Code of Ethics and Conduct for members of the JSC

3.1 The HSF respectfully submits that this means that the commissioners of the JSC must be fit and proper persons to sit in judgment of candidates for judicial appointment. If the public loses confidence in their ability to act ethically, appropriately, impartially and with integrity, then the public loses confidence in the JSC and the decisions that it makes.

3.2 The JSC has the powers and functions assigned to it in the Constitution and national legislation⁷ and may determine its own procedure, but decisions of the Commission must be supported by a majority of its members.⁸

3.3 The JSC is regulated by the *Judicial Services Commission Act, 1994* (the **JSC Act**) as well as the Regulations thereto and the Procedure of the Commission. Neither the JSC Act, nor the Regulations nor the Procedure explicitly provide for the JSC to censure commissioners where they have acted in a manner to render them unsuitable for membership to the Commission. Given the Courts ruling in *Hlophe II*, HSF contends that it can no longer be left solely to the institutions that nominated members to serve on the JSC to invoke Codes of Conduct applicable to their nominees to address behaviour unbecoming of a member of the JSC.

3.4 Rather, the JSC, in determining its own procedure, must act in a manner that protects its statute. The HSF submits that it must adopt a Code of Ethics and Conduct to guide Commissioners on the limits of acceptable conduct and the consequences (sanctions) for acting in a manner that violates the Code. As we have said, this will further enhance the standing of the JSC and support reforms it has already undertaken.

3.5 HSF therefore calls on the JSC to adopt a Code of Ethics and Conduct as outlined above.

3.6 The HSF requests that it receives your response to its call by no later than 12 December 2025.

Yours faithfully



Jason Whyte, Director
Norton Rose Fulbright South Africa Inc

⁶ Lilongwe Principles and Guidelines on the Selection and Appointment of Judicial Officers, 2018

⁷ Section 178(4) of the Constitution

⁸ Section 178(6) of the Constitution

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

CASE NO: **2026-109516**

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Plaintiff / Applicant / Appellant

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Annexure 16 and More

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BY:

**Registrar of The High Court,
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The Judicial Service Commission
Office of the Chief Justice
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2017

By email: Chiloane@concourt.org.za

22 February 2022

Dear Commissioners,

You will know that the recent Judicial Service Commission (JSC) interviews of candidates for the position of Chief Justice left the public at large and especially those of us concerned for the administration of justice disturbed. Those proceedings departed in the most fundamental of ways from generally accepted notions of fairness and justice.



Far from assisting and protecting the courts to ensure their independence, impartiality, dignity, accessibility and effectiveness, as the JSC is constitutionally enjoined to do, these most recent interviews can only have diminished public confidence in the administration of justice.

Compounding this state of affairs is that the February 2022 interviews represent only the most recent instance of the JSC interview process that, far from safeguarding the integrity of judicial appointment, allows such process to be impugned. The April 2021 interviews for judicial appointment to the Constitutional Court were the most recent subject of legal challenge.

It is against this backdrop and in view of the urgent need to restore public confidence in the processes by which judicial appointments are made, that we take this unprecedented step of approaching the JSC and asking that no further interviews for judicial appointment to any court be considered until the following are published:

- a) a code of conduct for commissioners and the chair of JSC interview processes; and
- b) explicit criteria as to what constitutes “appropriately qualified” and “fit and proper” so as to guide assessment of the eligibility and suitability of candidates for judicial appointment.

These criteria need to reflect engagement with the constitutional imperative that the judiciary reflect broadly the racial and gender composition of South Africa within the wider context of securing a transformed, diverse and representative judiciary.

While ours is an extraordinary approach, the request we put to the JSC is not. For years now, leaders of the judiciary, the organised legal profession, academics, civil society, even the JSC itself, have identified the urgent need for such specified criteria for judicial appointment and stipulated conduct obligations on the part of the members of the JSC.

We note also that several of the candidates being considered for Chief Justice have indicated their support for the development of criteria ahead of the scheduled April round of interviews and that the JSC spokesperson has publicly confirmed that there will be a workshop intended to develop criteria before the next interviews.

For these reasons we imagine that there will be no difficulty in the JSC giving us the undertaking for which we ask: that no further interviews for judicial appointment will proceed without such criteria and without a code of conduct for the JSC being finalised. We ask that this undertaking be provided to us by no later than 8 March. In so doing the JSC will provide critical reassurance to the public that they will no longer be required to bear witness to compromised interview processes and will allow for confidence in the appointment process to be restored.

Yours sincerely,

The Ahmed Kathrada Foundation

Corruption Watch

Council for the Advancement of the South African Constitution (CASAC)

Defend Our Democracy Campaign

Freedom Under Law

The Helen Suzman Foundation

Lawyers for Human Rights

The Legal Resources Centre

The Nelson Mandela Foundation



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SUBMISSION FOR THE JSC INTERVIEWS APRIL 2025



10 March 2025



UNIVERSITY OF CAPE TOWN
IYUNIVESITHI YASEKAPA • UNIVERSITEIT VAN KAAPSTAD

DGRU SUBMISSION FOR THE JSC APRIL 2025 INTERVIEWS

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DGRU SUBMISSION FOR THE JSC APRIL 2025 INTERVIEWS

A. Introduction

1. The Democratic Governance and Rights Unit (“**DGRU**”) is an applied research unit based in the Department of Public Law, at the University of Cape Town. DGRU’s vision is of a socially just Africa, where equality and constitutional democracy are upheld by progressive and accountable legal systems, enforced by independent and transformative judiciaries, anchored by a strong rule of law.
2. The DGRU has established itself as one of Africa’s leading research centres in the area of judicial governance. The mission of the DGRU is to advance social justice, constitutional democracy, and the rule of law across Africa by:
 - a. conducting applied and comparative research;
 - b. supporting the development of an independent, accountable and progressive judiciary;
 - c. promoting gender equality and diversity in the judiciary and in the legal profession; providing free access to law; and
 - d. enabling scholarship, advocacy and online access to legal information.
3. **Judges Matter** is a project of the DGRU with a dedicated focus on monitoring judiciary in South Africa. Through applied research and advocacy, Judges Matter monitors the appointment of judges, their discipline for misconduct, and how the judiciary is governed and administered. More information is available on www.judgesmatter.co.za
4. The DGRU has regularly made submissions to the Judicial Service Commission since we first began monitoring the judicial appointments process in 2009 (see [here](#)). Most of these submissions have also included our analysis of the key issues affecting the judiciary. They also include research reports analysing candidates’ judicial track records. However, in order to reduce the size and improve accessibility, this submission does not include the profiles of the candidates as was done previously. However, profiles of the candidates will be uploaded onto our Judges Matter website: <https://www.judgesmatter.co.za/jsc-interviews/jsc-candidates-april-2025/>



5. All our submissions since 2015 have focused on the importance of the JSC developing more detailed criteria for the selection of judges, plus a questioning guideline to assist commissioners in the interview process. We commend the JSC's April 2023 decision to adopt revised criteria and question guidelines for judicial appointments, which we believe improve the process of appointing judges in South Africa. It will strengthen judicial independence in the process.
6. In this submission will comment on the improvements observed since the JSC adopted revised criteria in April 2023, its implementation in the interviews since then, including the areas that still need to be strengthened in these new criteria.

The submission will also address the following issues:

- a. The need to develop a code of conduct for commissioners
- b. the failure to advertise vacancies on several courts
- c. the need for the JSC to recognise its strategic 'HR function'
- d. problems with the JSC dealing with judicial misconduct.



B. The positive impact of new criteria and recommendations for improvement

7. Following a year-long revision led by the JSC's Rules Committee, the JSC's adopted new criteria for judicial appointment¹ in April 2023. In the five JSC sessions since then, we have seen an overall improvement in how the JSC conducts interviews, largely as a result of these new criteria. Despite this, we urge the JSC to revise and improve the criteria and adhere to them more consistently.
8. 2023 criteria clarified the requirements that the JSC considers when recommending candidates for judicial appointment. The criteria provide what can easily be described as a 'mission statement' for the JSC when undertaking its judicial appointment function in terms of section 174 of the Constitution. Furthermore, the criteria provide important guidelines for what issues commissioners may legitimately take up with candidates during the interview and, significantly, those issues they may not venture into. The criteria also provide significant powers to the Chairperson to overrule questions that

¹ Criteria and Guidelines used by the JSC for Judicial Appointment <https://www.judiciary.org.za/index.php/judicial-service-commission/criteria-for-judicial-appointment>

are inappropriate or irrelevant

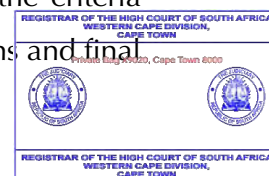
9. We welcome and support these criteria and are pleased to see their implementation during interviews in April and October of 2023 and 2024. We look forward to seeing their implementation for the April 2025 and future sessions. We encourage their regular revision to improve their effectiveness in ensuring quality judicial appointments.
10. We were pleased to observe the criteria being actively applied by commissioners at all the interview sessions in April and October 2023, and three interview sessions in April, May and October 2024. At most interviews during that period, each interview started with the chairperson reiterating the JSC's intention to be rigorous yet respectful of the candidate's dignity. This was important. The line of questioning also followed closely on the issues identified in the criteria, including a candidates' professional track record, their expertise in particular fields of the law, and their readiness for appointment in reference to their experience as acting judges. We were also pleased to see the JSC generally follow a standard interview duration for most candidates, as this improves the general fairness of the interview. Again, we commend the JSC for how it is implementing the criteria during the interviews and wish that this standard of rigour be maintained going forward.
11. We were however concerned by the glaring inconsistency that prevailed during the interviews for the SCA. While it is to be expected that candidates will be assessed at different levels to test their strength for elevation to one of our apex appellate courts, we were alarmed by the aggressive and hostile tone taken against some candidates by the Deputy President of the SCA, which jarringly contrasted with the more polite tone he took with other candidates. This tone was not restrained by the chairperson, and created the unfortunate impression that there were some favoured candidates and others who were not favoured. We would recommend that the chairperson pay closer attention to the line of questioning and intervene where unfairness is likely to result.
12. In our November 2022 submission² to the draft criteria, we emphasised that criteria need to be applied – in varying degrees – through all the stages of the judicial appointment process. This must start from shortlisting, through to the interviews and continue even



² DGRU and Judges Matter, 'Submission on Criteria for Judicial Appointments in South Africa' (28 November 2022) para 14 – 18 <https://www.judgesmatter.co.za/opinions/judges-matter-dgru-submission-on-criteria-and-guidelines-for-judicial-appointment-in-south-africa/>

during deliberations. This is in order to maintain consistently high standards throughout. We repeated this point ahead of the JSC's subsequent interview sessions.

13. However, events subsequent to the October 2023 interviews suggest that the deliberations become a free-for-all that is not constrained by any reference to the criteria or issues canvassed in the interview. A reading of the transcript supplied by the JSC in its litigation³ with Freedom Under Law suggests that commissioners feel at latitude to raise whatever issue as disqualifying to any candidate, even when the issue is not related to criteria nor was it ever raised during the interview. This defeats the very purpose of having written criteria, and undermines the fairness and integrity of the appointment process. We therefore strongly urge the JSC to apply the criteria throughout the appointment process, including at the stage of deliberations and final recommendation.



Supplements to existing criteria

14. In our November 2022 submission on the draft criteria, and again in the April⁴ and October⁵ 2023 submissions, we urged the JSC to include additional questions on ethics and integrity of candidates. These questions test whether the candidate is fit and proper for judicial office. Similar questions are already asked in the questionnaire and interviews for magistrates.⁶
15. We were pleased to see, ahead of the October 2024 interviews, the JSC revise its judicial questionnaire for new judges and specifically include questions about a candidates' previous disciplinary proceedings, and/or other court proceedings. We have no doubt that this small amendment greatly improved the rigour of the judicial application process and ensured that only the best candidates applied. Indeed, it was unfortunate to see that a candidate who had previously successfully interviewed by the JSC in October 2022, fell short of appointment in October 2024

³ *Freedom Under Law v Judicial Service Commission and Others* (ZAGPPJHC Case No. 129593/2023), <https://www.freedomunderlaw.org/2023/12/07/freedom-under-law-v-jsc-and-others/>

⁴ DGRU and Judges Matter, 'Submission for JSC Interviews April 2023' (3 March 2023) https://www.judgesmatter.co.za/wp-content/uploads/2023/04/DGRU_submission_JSC_Apr-2023.pdf

⁵ DGRU and Judges Matter, 'Submission for JSC Interviews October 2023' (1 September 2023) https://www.judgesmatter.co.za/wp-content/uploads/2023/09/Final_DGRU_submission_JSC_Oct-2023.pdf

⁶ Magistrates Commission of SA, *Questionnaire for Judicial Appointment* <https://www.lssa.org.za/wp-content/uploads/2023/03/Form-1-Advert-1-of-2023.pdf>

due to the disclosure of a court order against him.

16. Nevertheless, we still urge the JSC to make further amendments to the JSC questionnaire to also include questions that relate to disciplinary, criminal or civil proceedings against candidates, even when those proceedings had never been completed or the outcome was favourable to the candidate. In our view, it still poses an integrity risk to have candidates who have been credibly accused of unethical conduct but who had those proceedings not reach finality or been concluded favourably on sometimes technical grounds. At the very least, candidates should be required to disclose and explain the circumstances of those proceedings, as they may have some bearing on the assessment of their propriety for judicial office.

17. In that regard, we strongly urge the JSC to include a question asking:

“have you ever had disciplinary, criminal or civil proceedings proceedings against you? If so, please explain the circumstances and the outcome”.



18. We do not propose these additional questions to embarrass the candidates. We simply recognise the limitations of the current questionnaire. These questions could be included in the questionnaire that candidates submit as part of their application for appointment as judges. The candidate should be given an opportunity to elaborate on each question by explaining the circumstances of each entry, well ahead of the interview.
19. To protect the candidate’s reputation, the JSC’s Shortlisting Committee should collate a list of the candidates’ responses on the integrity questions. In anticipation of the interview, the Shortlisting Committee must circulate the list to commissioners for them to indicate if they would raise any questions about the candidates’ responses during the interview. The Chief Justice as chairperson should give commissioners clear guidance on the limitations of the questioning, and that it should not cause embarrassment or undermine the candidate’s reputation during the interview, which is broadcast on television and online.

C. Code of Conduct for commissioners

20. While the adoption of a clear criteria document is an important step to inspire public confidence in the judicial appointment process, this step is unlikely to achieve its aims

without an enforcement mechanism. We therefore propose that, in addition to criteria and the questioning guidelines, the JSC adopt a code of conduct for commissioners.

21. Such a Code would list all the qualities expected from commissioners. It would generally include the kind of behaviour expected from commissioners during the public interview. It would remind commissioners of their solemn duty to uphold the Constitution and carry the important functions of the JSC with dignity. It would also be a public declaration of each commissioner's commitment to their duty.
22. The Code would also provide an enforcement mechanism for the criteria and question guidelines. It would allow the JSC chairperson to report an errant commissioner to their relevant nominating body for further action. Such a Code would also give additional assurance to the public that the JSC takes its work seriously, and sanctions those who do not.
23. Accompanying this submission, is a comprehensive submission based on comparative research on ethical codes of judicial appointment commissions in different countries around the world. We hope that the JSC will seriously consider this submission in order to draw its own Code of Conduct for Commissioners.



D. Failure to advertise vacancies

24. In the past, we have raised a concern about the non-advertisement of some vacancies and withdrawal of others, particularly on the Constitutional Court and Supreme Court of Appeal. In each case, no explanation was given for this decision, which is worrying.
25. We understand that sometimes Heads of Court do not declare vacancies to the JSC in order to allow a 'window period' where a pool of candidates with acting experience can be drawn. While this reason may seem plausible, we do not believe that it is entirely borne out by the evidence, as some courts have attracted exceptional candidates without allowing any window period. The Labour Court is a case in point. At the same time, for several successive years the Constitutional Court has allowed this window period but to no success, as not enough candidates applied at the end of it.
26. For the April 2025 session, the JSC advertised only vacancies at three superior courts:

the Competition Appeal Court, the Electoral Court, and the Labour Court. While we understand that this session was mainly to deal with specialist courts, we are concerned that the JSC did not also advertise vacancies that were left unfilled after the October 2024 session, including at the Eastern Cape, KZN and Western Cape divisions. Leaving these vacancies unfilled until October 2024 means that courts operate below capacity and rely on acting judges. This is unfair to the litigating public.

27. We are also concerned that the JSC will convene commissioners from all over the country for only one days' worth of interviews. We do not believe that this is the most prudent use of scarce resources in the current economic climate.
28. We find it hard to imagine a reasonable reading of the Constitution that permits a head of court to unilaterally and artificially maintain a vacancy at a superior court for any reason, let alone a reason of convenience. Section 237 of the Constitution requires that all constitutional obligations to be performed without delay. The Judicial Service Commission has a constitutional obligation to advise the President on the appointment of judges to existing vacancies in the superior courts. It troubles us that vacancies are left open for extended periods of time without their prompt advertising and filling. As we have stated in previous submissions, we urge the JSC to seriously consider developing guidelines for heads of courts on when and how vacancies must be declared by and advertised.



E. The JSC's strategic 'Human Resources' function

29. As the body responsible for the appointment function, the JSC plays a crucial role in determining the shape, size and competence of South Africa's judiciary. In this regard, the JSC needs to be strategic in the judicial appointments it recommends at each round of interviews. Put simply, the JSC needs to take seriously its 'human resources' function. We made a similar argument in our October 2023 submission and reiterate now.
30. We understand the JSC's practice to be that, at the start of the deliberations stage at each interview session, the head of that specific court provides commissioners with their view of how the candidates fared. They then comment on which candidates are suitable for appointment based on the needs of that specific court.¹⁸ However, we believe that this is far too little and far too late.

31. In our view, commissioners must be armed with information much earlier – at the Sifting Stage of the judicial appointments. That means the Sifting Committee must approach the shortlisting with the needs of the court firmly at the front of mind. The Committee must firstly review the candidates technical skills and experiences, then assess the individual candidate’s suitability based on the needs of the court at that particular time. They should then assess this against the other candidates in that pool.
32. The Committee must try its utmost to match the needs of the court with the skills of the candidates. Other considerations may include demographics, age and expected tenure on the bench. Later, when the process moves to the interview stage, the Commission must also question the candidates’ qualities, and test them against the needs of the court the broader judiciary and South African society in general, in line with section 178(2) of the Constitution.
33. In fulfilling this strategic HR role, both the Sifting Committee and the full Commission must receive comprehensive reports on the needs of specific courts and the judiciary in general. These reports must detail the caseloads and nature of cases the specific courts deal with, the skills needed to handle these cases, and the skills currently available at the specific court. For example, while virtually all high court divisions deal with RAF and rape matters, the Mpumalanga High Court deals with wildlife crimes while the Pretoria High Court deals with complex commercial and administrative law cases due to it being the seat of government. The JSC must also receive reserved judgments and case backlog reports.
34. The ages of all the judges stationed at a specific court at a particular time is also a metric that the JSC must monitor closely. Older, more senior judges are generally more productive and can boost a court’s productivity. However, older judges are also vulnerable to illness and too many of them retiring at once may completely wipe out a court’s productivity and institutional memory, leaving junior judges without the guidance and mentorship necessary for optimal function. For example, in the 5 years between 2018 and 2023 the SCA has ‘lost’, through retirement and promotions, over 200 collective years of appellate judicial experience. While this might not always be bad, the risks associated must be mitigated through well-considered appointments.
35. The JSC must constantly keep in mind considerations like the pipeline of skilled judges



to appoint to leadership positions; to specialist courts; and to appellate courts like the CAC, SCA and the Constitutional Court. The Commission must also consider the pipeline of women judges available, in order to maintain the levels of representivity required by section 174(2) of the Constitution. Even at the sifting stage the JSC must be acutely aware of these tensions and try to balance them in each successive round of interviews.

36. Where will the JSC source this information? This information must primarily come from the heads of courts. However, they may also retrieve it from the OCJ's Statistics Unit and Judicial Support Unit. Even external bodies like the Department of Justice (which monitors rationalisation of the courts' jurisdiction, as well as the SA Police Service (for crime trends) and StatsSA (for demographic and economic trends).



37. Ultimately, the JSC must have at its disposal a full grasp of all the information before it arrives at a decision to select one candidate over another. It must also be able to competently predict the pool(s) from where it would appoint all of these judges in future. The JSC must seriously grapple with its 'HR' function.

F. How the JSC deals with judicial misconduct complaints

38. While issues of judicial misconduct do not strictly relate to the JSC's judicial appointment function, we raise them in this submission because these issues are often dealt with a JSC sittings in April and October each year.
39. We remain concerned at the slow pace at which the JSC deals with judicial misconduct complaints. The current process is too complex and too slow for it to properly discharge the JSC's constitutional function in terms of section 165(4) and section 178(4)-(5) of the Constitution.
40. While we understand that the structural causes of the delays, including a complex, multi-stage disciplinary process, coupled with the Judicial Conduct Committee being largely comprised of sitting judges, we believe that the JSC should not be a contributor to those delays. There have been several instances where the small JSC has take an inordinate delay in making crucial decisions at key points in the process, such as at the point of appointing (or not) of a Judicial Conduct Tribunal. In two cases in recent years

(i.e. the Hlophe/Goliath complaint and the Maumela/Mnqibisa-Thusi complaints), the JSC delayed in taking decisions due to simple issues of quorum. These kinds of delays for these sorts of reasons causes a loss of confidence in the JSC's ability to uphold the judiciary's integrity.

41. We reiterate our call for the JSC to act swiftly on these matters. We also call on the JSC to invest more human and other resources in ensuring the Judicial Conduct Committee and the Judicial Conduct Appeal Committee are properly capacitated to avoid the extremely long delays in how complaints and appeals are adjudicated.
42. We raise these concerns in the hope that the JSC will self-correct and invest the necessary resources and attention to fulfil its disciplinary mandate. This will also be fulfilling the JSC's mandate to assist and protect the courts and ensure their independence, impartiality, dignity, accessibility, and effectiveness in terms of the Constitution.



G. Conclusion

43. Once again, we commend the JSC for the important progress in relation to implementation of criteria. We also applaud the JSC's general improvement in the quality of its appointment processes. We nevertheless urge the JSC to proceed with adopting a code of conduct for commissioners; to supplement the questions in the questionnaire; to provide transparency in relation to the non-advertisement of superior court vacancies; and to seriously consider the JSC's strategic 'HR function' in relation to judicial appointments. We also urge the JSC to capacitate the Judicial Conduct and Judicial Conduct Appeal committees. All of this will sustain and entrench the important successes that have been gained so far.

H. Acknowledgments

44. This submission was made possible by the diligent team of researchers led by Mbekezeli Benjamin, and the generous support of the Millennium Trust, both of which we gratefully acknowledge.

DGRU and Judges Matter
March 2025

COURT ONLINE COVER PAGE

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

CASE NO: **2026-109516**

In the matter between:

Helen Suzman Foundation

Plaintiff / Applicant / Appellant

and

Speaker of the National Assembly, Julius Sello Malema ,Judicial Service Commission,Minister of Justice and Constitutional Development,All Parties Represented in the National Assembly Defendant / Respondent

Annexure 16 and More

NOTE: This document was filed electronically by the Registrar on 14/5/2026 at 2:46:09 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



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BY:

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



SUBMISSION FOR THE JSC INTERVIEWS APRIL 2026



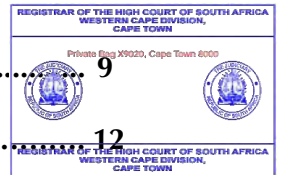
12 March 2026



DGRU SUBMISSION FOR THE JSC APRIL 2026 INTERVIEWS

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DGRU SUBMISSION FOR THE JSC APRIL 2026 INTERVIEWS

A. Introduction

1. The Democratic Governance and Rights Unit (“**DGRU**”) is an applied research unit based in the Department of Public Law, at the University of Cape Town. DGRU’s vision is of a socially just Africa, where equality and constitutional democracy are upheld by progressive and accountable legal systems, enforced by independent and transformative judiciaries, anchored by a strong rule of law.
2. The DGRU has established itself as one of Africa’s leading research centres in the area of judicial governance. The mission of the DGRU is to advance social justice, constitutional democracy, and the rule of law across Africa by:
 - a. conducting applied and comparative research.
 - b. supporting the development of an independent, accountable and progressive judiciary.
 - c. promoting gender equality and diversity in the judiciary and in the legal profession; providing free access to law; and
 - d. enabling scholarship, advocacy and online access to legal information.
3. **Judges Matter** is a project of the DGRU with a dedicated focus on monitoring judiciary in South Africa. Through applied research and advocacy, Judges Matter monitors the appointment of judges, their discipline for misconduct, and how the judiciary is governed and administered. More information is available on www.judgesmatter.co.za
4. The DGRU has regularly made submissions to the Judicial Service Commission since we first began monitoring the judicial appointments process in 2009 (see [here](#)). Most of these submissions have also included our analysis of the key issues affecting the judiciary. They also include research reports analysing candidates’ judicial track records. However, in order to reduce the size and improve accessibility, this submission does not include the profiles of the candidates as was done previously. However, profiles of the candidates will be uploaded onto our Judges Matter website: <https://www.judgesmatter.co.za/jsc-interviews/jsc-candidates-april-2026/>



5. All our submissions since 2015 have focused on the importance of the JSC developing more detailed criteria for the selection of judges, plus a questioning guideline to assist commissioners in the interview process. We commend the JSC's April 2023 decision to adopt revised criteria and question guidelines for judicial appointments, which we believe improve the process of appointing judges in South Africa. It will strengthen judicial independence in the process.
6. In this submission will comment on the improvements observed since the JSC adopted revised criteria in April 2023, its implementation in the interviews since then, including the areas that still need to be strengthened in these new criteria.

The submission will also address the following issues:

- a. The need to apply criteria throughout the judicial appointment process (shortlisting, interviews, and final selection).
- b. the JSC's decision-making and voting procedures
- c. the need to develop a code of conduct for commissioners
- d. the need for the JSC to recognise its strategic 'HR function'
- e. problems with the JSC dealing with judicial misconduct.

7. We discuss each topic in turn below.

B. The impact of new criteria and recommendations for improvement

8. Following a year-long revision led by the JSC's Rules Committee, the JSC's adopted new criteria for judicial appointment¹ in April 2023. In the eight JSC sessions since then, we have seen an overall improvement in how the JSC conducts interviews. This is largely as a result of these new criteria but also through the commendable conduct of commissioners overall. Despite this, we urge the JSC to revise and improve the criteria, and adhere to them more consistently.

¹ Criteria and Guidelines used by the JSC for Judicial Appointment <https://www.judiciary.org.za/index.php/judicial-service-commission/criteria-for-judicial-appointment>

9. The 2023 criteria clarified the requirements that the JSC considers when recommending candidates for judicial appointment. The criteria provide what can easily be described as a 'mission statement' for the JSC when undertaking its judicial appointment function in terms of section 174 of the Constitution. Furthermore, the criteria provide important guidelines for what issues commissioners may legitimately take up with candidates during the interview and, significantly, those issues they may not venture into. The criteria also provide significant powers to the Chairperson to overrule questions that are inappropriate or irrelevant
10. We reiterate our support for these criteria and are pleased to see their implementation during interviews from October 2023 through to and including October 2025. We look forward to seeing their implementation for the April 2026 and future sessions. We encourage their regular revision to improve their effectiveness in ensuring quality judicial appointments. Below, we provide some suggestions for areas of improvement.



Supplements to existing criteria

11. In our November 2022 submission on the draft criteria, and again in the April² and October³ 2023 submissions, we urged the JSC to include additional questions on ethics and integrity of candidates. These questions test whether the candidate is fit and proper for judicial office. Similar questions are already asked in the questionnaire and interviews for magistrates.⁴
12. We were pleased to see that, ahead of the October 2024 interviews, the JSC revised its judicial questionnaire for new judges to specifically include questions about a candidates' previous disciplinary proceedings, and/or other court proceedings. Similar improvements were made in 2025. We have no doubt that these small amendments greatly improved the rigour of the judicial application process and ensured that only the best candidates applied. Indeed, it was unfortunate to see that

² DGRU and Judges Matter, 'Submission for JSC Interviews April 2023' (3 March 2023)

https://www.judgesmatter.co.za/wp-content/uploads/2023/04/DGRU_submission_JSC_Apr-2023.pdf

³ DGRU and Judges Matter, 'Submission for JSC Interviews October 2023' (1 September 2023)

https://www.judgesmatter.co.za/wp-content/uploads/2023/09/Final_DGRU_submission_JSC_Oct-2023.pdf

⁴ Magistrates Commission of SA, *Questionnaire for Judicial Appointment* <https://www.lssa.org.za/wp-content/uploads/2023/03/Form-1-Advert-1-of-2023.pdf>

a candidate who had previously successfully interviewed by the JSC in October 2022, fell short of appointment in October 2024 due to the disclosure of a court order against him.⁵ Similarly, a candidate shortlisted for the October 2025 interviews for the Constitutional Court was not recommended for permanent appointment partly because of the financial disclosures required by the new questionnaire.⁶ Unfortunate as these disclosures are, this is what is needed to ensure consistently high quality judicial appointments.

13. Nevertheless, we still urge the JSC to make further amendments to the JSC questionnaire to also include questions that relate to disciplinary, criminal or civil proceedings against candidates, even when those proceedings had never been completed or the outcome was favourable to the candidate. In our view, it still poses an integrity risk to have candidates who have been credibly accused of unethical conduct but who had those proceedings not reach finality or been concluded favourably on sometimes technical grounds. At the very least, candidates should be required to disclose and explain the circumstances of those proceedings, as they may have some bearing on the assessment of their propriety for judicial office. This is more so in light of recent events where several judges are facing legal proceedings for pre-appointment conduct.⁷



14. In that regard, we strongly urge the JSC to include the following questions:

- Have you ever had disciplinary proceedings initiated against you? If so, please explain the circumstances and the outcome.
- Have you ever appeared in criminal court as an accused person? Please explain the circumstances.
- Have you ever had civil proceedings initiated against you, and what is their status? Please explain the circumstances.
- Have you ever initiated civil proceedings against another, and what is their status? Please explain the circumstances.
- Do you have any legal proceedings pending involving you that might cause

⁵ See: K. Maughan, 'Keep away from social media': Prof quits bid to be judge after grilling over 'defamatory' posts' News24 (11 October 2024) <https://www.news24.com/southafrica/news/keep-away-from-social-media-young-man-prof-quits-bid-to-be-judge-after-defamatory-posts-grilling-20241011>

⁶ K. Modise. 'Alleged theft of church funds comes back to haunt Constitutional Court candidate' EWN (7 October 2025) <https://www.ewn.co.za/2025/10/07/alleged-theft-of-church-funds-comes-back-to-haunt-constitutional-court-candidate>

⁷ See, for example, the case of Judge Mushtak Parker <https://www.judgesmatter.co.za/conduct/parker-tribunal/> and Judge Mpina Mathebula <https://www.judgesmatter.co.za/opinions/free-state-high-court-judge-mpina-mathebula-faces-trial-over-alleged-theft-of-raf-funds/>

disrepute, embarrassment, or other prejudice to your holding judicial office?

15. These questions could be included in the questionnaire that candidates submit as part of their application for appointment as judges. The candidate should be given an opportunity to elaborate on each question by explaining the circumstances of each entry, well ahead of the interview.
16. We do not propose these additional questions to embarrass the candidates. We simply recognise the limitations of the current questionnaire and criteria document. By the same token, we recognise the reputational risk of the updated questionnaire for judges, which require sitting judges to disclose information on their propriety that might cause them individual embarrassment and, in turn, embarrassment to the judiciary as an institution. We would urge the JSC to consider these outcomes carefully.
17. To protect the candidate's reputation, the JSC's Shortlisting Committee should collate a list of the candidates' responses to the integrity questions. In anticipation of the interview, the Shortlisting Committee must circulate the list to commissioners for them to indicate if they would raise any questions about the candidates' responses during the interview. Some of these issues might have also been raised by the professional bodies. The Chief Justice as chairperson should give commissioners clear guidance on the limitations of the questioning, and that it should not cause embarrassment or undermine the candidate's reputation during the interview, which is broadcast on television and online.



C. Applying criteria throughout the appointment process

18. In our November 2022 submission⁸ to the draft criteria, we emphasised that criteria need to be applied – in varying degrees – through all the stages of the judicial appointment process. This must start from shortlisting, through to the interviews, and continue even during deliberations. This is to maintain consistently high standards throughout. We repeated this point this time, especially in light of recent criticism,⁹ and some

⁸ DGRU and Judges Matter, 'Submission on Criteria for Judicial Appointments in South Africa' (28 November 2022) para 14 – 18 <https://www.judgesmatter.co.za/opinions/judges-matter-dgru-submission-on-criteria-and-guidelines-for-judicial-appointment-in-south-africa/>

⁹ J. February and C. Oxtoby 'Hope and controversy as JSC prepares for crucial interviews amid ongoing vacancies in courts' <https://www.dailymaverick.co.za/article/2025-10-02-hope-and-controversy-as-jsc-prepares-for-crucial-interviews-amid-ongoing-vacancies-in-courts/>

litigation,¹⁰ over how the JSC applies criteria at crucial stages of appointment. Two recent events illustrate the urgent need for the JSC to seriously consider implementing this recommendation.

The Constitutional Court 2025 shortlist

For the October 2025 interviews for the Constitutional Court, seven candidates were shortlisted, including Dr Kate Malepe, a recently retired senior government official who had a background as a legal academic. Dr Malepe had applied for the Constitutional Court and several other courts, including the Land Court, the Labour Court, and several divisions of the high court. Without much experience in land or labour law, she was easily excluded from the specialist courts, which statutorily require expertise in those domains. Without much evidence of legal practice, nor of acting as a judge, she was also found not suitable for the high court and was not shortlisted for any of those positions. However, remarkably, she was shortlisted for the Constitutional Court. The decision to shortlist Dr Malepe was surprising because, both from her disclosed record of academic publications, and without any evidence of postgraduate supervision, it was not clear how Dr Malepe would be suited to the rigours of judicial work at the apex court. Even if the JSC was willing to consider pure academics, who have no practical experience, it is doubtful that Dr Malepe had the kind of academic experience that would make her eligible to be shortlisted. The ineluctable impression is therefore that the JSC had not seriously considered the criteria and guidelines document during shortlisting. Otherwise, if it had, Dr Malepe would not have been shortlisted for the highest court in the land.



The SCA deliberations of 2023

The litigation brought by the NGO Freedom Under Law against the JSC's October 2023 interviews suggest that the deliberations after the interviews become a free-for-all that is not constrained by any reference to the criteria or issues canvassed in the interview. A reading of the transcript supplied by the JSC in the litigation¹¹ suggests that commissioners feel at latitude to raise whatever

¹⁰ *Polity*. 'Freedom Under Law to legally challenge JSC's Supreme Court of Appeal appointments' <https://www.polity.org.za/article/freedom-under-law-to-legally-challenge-jscs-supreme-court-of-appeal-appointments-2023-11-10>

¹¹ *Freedom Under Law v Judicial Service Commission and Others* (ZAGPPJHC Case No. 129593/2023), <https://www.freedomunderlaw.org/2023/12/07/freedom-under-law-v-jsc-and-others/>

issue as disqualifying to any candidate, even when the issue is not related to criteria nor was it ever raised during the interview. This defeats the very purpose of having written criteria and undermines the fairness and integrity of the appointment process. We therefore strongly urge the JSC to apply the criteria throughout the appointment process, including at the stage of deliberations and final recommendation.

19. In light of these examples, we would reiterate our recommendation that the JSC make clear that the Sifting Committee must utilise criteria when considering the suitability of candidates to be shortlisted and interviewed. After the interviews, the JSC must also make clear to commissioners that their deliberations must be guided by the criteria. Any consideration of the qualities of the candidate must be made with clear reference to the criteria and not consider extraneous information that does not go to a candidate's suitability for judicial appointment – especially if such information was never canvassed in the interview. In sum: the JSC must ensure that the written criteria must be applied throughout the whole process of judicial appointment, from start to finish.



D. The JSC's decision-making and voting procedures

20. We welcome the JSC's stated intention, made after the SCA interviews of October 2025, that the commission will review its voting procedures, which is the main mechanism it decides on judicial appointments.¹² We welcome this intention in light of the JSC's failure to appoint a candidate to a post on the Supreme Court of Appeal, despite spending a full day interviewing nine candidates. The review is long overdue.
21. As we understand it, the current practice by the JSC is that, after private deliberations, the JSC subjects each appointment decision to a vote. This means that each candidate must garner at least 12 of the at least 23 available votes to be appointed. Even then, if they are tied or another candidate garners more votes, that candidate might not be appointed. Similarly, if no candidate garners the 12 votes the JSC has set as a requirement, it means that no candidate will be appointed, even if one candidate scores higher votes than others.

¹² F. Rabkin, 'JSC to review voting process after senior post left vacant' *Sunday Times* (12 October 2025) <https://www.sundaytimes.timeslive.co.za/news/2025-10-11-st-news-jsc-to-review-voting-procedure-after-leaving-sca-post-vacant/>

22. This voting practice seems sensible, but it has in the past yielded undesirable outcomes. For example, for the October 2023 SCA interviews, the JSC interviewed 11 candidates for four vacancies but ultimately appointed only two, leaving the other two vacancies open. The JSC's publicly stated at the time was that only those two candidates had garnered the minimum 12 votes required for appointment, and the others had simply not. It later emerged that the JSC had in fact undertaken two rounds of voting: in the first round, five of the nine candidates had yielded the 12 minimum votes, yet the JSC only had four vacancies available. In order to break the stalemate. The JSC went into a second round of voting for all nine candidates once again. Several commissioners seemingly switched their votes and, in the end, only two candidates breached the 12-vote threshold. This was clearly an absurd outcome. But it's precisely because the JSC's voting process is faulty.
23. In the October 2025 interviews for the SCA, the JSC similarly did not fill the single vacancy after spending a full day interviewing six candidates. The official reason the JSC gave was that none of the candidates had yielded the minimum votes required for appointment.¹³ But news reports also indicate that the JSC undertook a single round of voting and, despite there being two candidates with higher number of votes who were tied, the JSC decided against going into a second round of voting to break the tie.¹⁴ This is yet another absurd outcome.
24. Therefore, the JSC needs to reconsider the ways in which it goes about deciding who to appoint and to which positions. In our view, the JSC should consider arriving at its selection decisions in the following way:



First Step: Consensus

During the deliberations, the JSC should aim to reach consensus on the candidates that it clearly finds suitable for appointment to specific positions. That is, those candidates who enjoy overwhelming support among commissions as clearly appointable. Similarly, the JSC should aim to arrive at a consensus on which

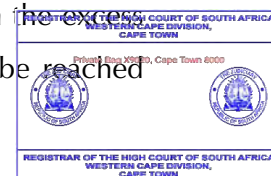
¹³ F. Rabkin, 'JSC to review voting process after senior post left vacant' *Sunday Times* (12 October 2025) <https://www.sundaytimes.timeslive.co.za/news/2025-10-11-st-news-jsc-to-review-voting-procedure-after-leaving-sca-post-vacant/>

¹⁴ K. Maughan, 'Indecisive JSC doesn't fill SCA vacancy – as two strong female candidates split votes' *News24* (9 October 2025) <https://www.news24.com/southafrica/news/indecisive-jsc-doesnt-fill-sca-vacancy-as-two-strong-female-candidates-split-votes-20251009-0223>

candidates are clearly not suitable for appointment. All of this must be done in open discussion, with commissioners possibly motivating for why each candidate should be excluded or to remain on the list. Those candidates that are not appointable should immediately be excluded from further consideration. That is, unappointable candidates must be eliminated in the first round, leaving only those candidates found appointable.

Second Step: Determine the excess

Should there be an excess of candidates found to be appointable, the JSC should then go to a second round of consideration, where the aim is to trim the excess candidates. Again, this should be done by consensus, which must be reached through deliberations.



Third Step: Vote to break the tie

Should the JSC not find consensus on which candidates are in excess, only then should the JSC decide through using votes by secret ballot. The aim of the vote should be to break the tie and arrive at the exact candidates that should be appointed. Therefore, the ultimate decision must be based on a plurality of votes, instead of a minimum threshold. This would make it easier to discern the clear intention of the commission as a collective body, instead of allowing single commissioners to change their votes and tilt the scales in an irrational fashion.

25. We believe that this process of decision-making is much more inclusive and properly justifies why certain candidates are appointed over others. It is also the most rational means at arriving at a collective decision, as it is done through serious and open engagement and persuasion, rather than a simple where reasons to explain the decision are much hard to rationalise through an explanation.
26. We also believe that such a consensus-making decision process is also likely to produce a higher-quality decision that yields a collective outcome each time and avoids the absurd outcome of non-appointments where there are clearly appointable candidates.
27. It's important to bring to the JSC's attention that the interview process places enormous

strain on candidates who put themselves forward for judicial appointment. Preparation for application takes time and effort, subjecting yourself to scrutiny ahead of – and during a televised public interview with widespread coverage also takes an enormous mental toll on candidates. The JSC itself spends an enormous amount of time and money in undertaking the interviews, let alone the time and effort individual commissioners and staff also spend. Therefore, whenever the JSC process inexplicably produces the absurdity of a non-appointment, the cost is far greater than simply postponing the interviews to another day. We believe that the JSC should review its decision-making and voting process to avoid this outcome at all costs.

E. Code of Conduct for commissioners



28. While the adoption of a clear criteria and questioning guidelines document is an important step to inspire public confidence in the judicial appointment process, this step is unlikely to achieve its aims without an enforcement mechanism. We therefore propose that, in addition to criteria and the questioning guidelines, the JSC adopt a code of conduct for commissioners.
29. Such a Code would list all the qualities and ethical guidelines expected from commissioners. It would generally include the kind of behaviour expected from commissioners for all work undertaken in their role as members of the JSC, particularly during the public interview. It would remind commissioners of their solemn duty to uphold the Constitution and carry the important functions of the JSC with dignity. It would also be a public declaration of each commissioner's commitment to their duty.
30. The Code would also provide an enforcement mechanism for the criteria and questioning guidelines. It would allow the JSC chairperson to report an errant commissioner to their relevant nominating body for further action. Such a Code would also give additional assurance to the public that the JSC takes its work seriously, and sanctions those who do not.
31. To have legal force, the Code could be developed and gazetted in terms of section 178(6) of the Constitution read with section 5 of the JSC Act, which permits the JSC to develop its own procedures with the support of a majority of its members.

32. In previous submissions we have drawn attention to the need for a Code of Conduct for Commissioners, including submitting comparative research from other countries which have in force similar codes for their judicial appointment commissions. See here: https://www.judgesmatter.co.za/wp-content/uploads/2025/03/DGRU_submission_JSC_Apr-2025.pdf

F. The JSC's strategic 'Human Resources' function

33. As the body responsible for the appointment function, the JSC plays a crucial role in determining the shape, size and competence of South Africa's judiciary. In this regard, the JSC needs to be strategic in the judicial appointments it recommends at each round of interviews. Put simply, the JSC needs to take seriously its 'human resources' function. We made a similar point in previous submissions and reiterate now.
34. We understand the JSC's practice to be that, at the start of the deliberations stage at each interview session, the head of that specific court provides commissioners with their view of how the candidates fared. They then comment on which candidates are suitable for appointment based on the needs of that specific court.¹⁸ However, we believe that this is far too little and far too late.
35. In our view, commissioners must be armed with information much earlier – at the Sifting Stage of the judicial appointments. That means the Sifting Committee must approach the shortlisting with the needs of the court firmly at the front of mind. The Committee must firstly review the candidates' technical skills and experiences, then assess the individual candidate's suitability based on the needs of the court at that particular time. They should then assess this against the other candidates in that pool.
36. The Committee must try its utmost to match the needs of the court with the skills of the candidates. Other considerations may include demographics, age and expected tenure on the bench (i.e. date of discharge or retirement date). Later, when the process moves to the interview stage, the Commission must also question the candidates' qualities, and test them against the needs of the court, the broader judiciary and South African society in general, in line with section 174(2) of the Constitution.



37. In fulfilling this strategic HR role, both the Sifting Committee and the full Commission must receive comprehensive reports on the needs of specific courts and the judiciary in general. These reports must detail the caseloads and nature of cases the specific courts deal with presently and in future (including backlogs and reserved judgments), the skills needed to handle these cases, and the skills currently available at the specific court. For example, while virtually all high court divisions deal with RAF and rape matters, the Pretoria High Court deals with the largest volume, and needs judges who can handle these. Similarly, the Mpumalanga High Court deals with high volumes of wildlife crimes, while the Pretoria High Court deals with complex commercial and administrative law cases due to it being the seat of government. All these factors should influence the JSC's approach to selecting judges for these courts, and the JSC must be armed with sufficient information to select skills that will be most impactful to the work of the court.



38. The ages of all the judges stationed at a specific court at a particular time is also a metric that the JSC must monitor closely. Older, more senior judges are generally more effective and can boost a court's productivity. However, older judges are also vulnerable to illness and too many of them retiring at once may completely wipe out a court's productivity and institutional memory, leaving junior judges without the guidance and mentorship necessary for optimal function. For example, in the 5 years between 2018 and 2023 the SCA has 'lost', through retirement and promotions, over 200 collective years of appellate judicial experience. Similarly, between 2026 and 2029, the Constitutional Court may 'lose' over half of its current crop of judges. While this might not always be bad, the risks associated must be mitigated through well-considered appointments, which are facilitated by the JSC being provided with these key data.

39. The JSC must also constantly keep in mind considerations like the pipeline of skilled judges to appoint to leadership positions, to specialist courts, and to appellate courts like the CAC, SCA and the Constitutional Court. The JSC must play an active role in ensuring that a sufficient pool of talent is earmarked for advancement to these strategic positions, and it may do this through the appointments it makes. The Commission must also consider the pipeline of women judges available, in order to maintain the levels of representivity required by section 174(2) of the Constitution. Even at the sifting stage, the JSC must be acutely aware of these tensions and try to balance them in each successive round of interviews.

40. Where will the JSC source this information? This information must primarily come from the heads of courts. However, they may also retrieve it from the OCJ's Statistics Unit and Judicial Support Unit. Even external bodies like the Department of Justice (which monitors rationalisation of the courts' jurisdiction), the SA Police Service (for crime trends) and StatsSA (for demographic and economic trends) may be reliable sources for the kind of data the JSC will need to fulfil this strategic HR function to the judiciary.
41. Ultimately, the JSC must have at its disposal a full grasp of all the information before it arrives at a decision to select one candidate over another. It must also be able to competently predict the pool(s) from where it would appoint all of these judges in future. The JSC must seriously grapple with its 'HR' function.



G. How the JSC deals with judicial misconduct complaints

42. While issues of judicial misconduct do not strictly relate to the JSC's judicial appointment function, we raise them in this submission because these issues are often dealt with a JSC sittings in April and October each year.
43. We remain concerned at the slow pace at which the JSC deals with judicial misconduct complaints. The current process is too complex and too slow for it to properly discharge the JSC's constitutional function in terms of section 165(4) and section 178(4)-(5) of the Constitution.
44. While we understand that the structural causes of the delays, including a complex, multi-stage disciplinary process, coupled with the Judicial Conduct Committee still largely comprised of sitting judges, we believe that the JSC should not be a contributor to those delays. There have been several instances where the small JSC has taken an inordinate amount of time in making crucial decisions at key points in the process, such as at the point of appointing (or not) of a Judicial Conduct Tribunal. In two cases in recent years (i.e. the Hlophe/Goliath complaint and the Maumela/Mnqibisa-Thusi complaints), the JSC delayed in taking decisions due to simple issues of quorum. In the case of Judge Makhubele, the JSC inexplicably took eight months to reach its decision, after the Tribunal submitted its report in January 2025. These kinds of delays for these sorts of reasons causes a loss of confidence in the JSC's ability to uphold the judiciary's

integrity.

45. We reiterate our call for the JSC to act swiftly on these matters. We also call on the JSC to invest more human and other resources in ensuring the Judicial Conduct Committee and the Judicial Conduct Appeal Committee are properly capacitated to avoid the extremely long delays in how complaints and appeals are adjudicated.
46. We raise these concerns in the hope that the JSC will self-correct and invest the necessary resources and attention to fulfil its disciplinary mandate. This will also be fulfilling the JSC's constitutional mandate to assist and protect the courts and ensure their independence, impartiality, dignity, accessibility, and effectiveness in terms of the section 165(4) of the Constitution.



H. Conclusion

47. Once again, we commend the JSC for the important progress in relation to implementation of criteria. We also applaud the JSC's general improvement in the quality of its appointment processes. We nevertheless urge the JSC to proceed with to supplementing the questions in the questionnaire or criteria document; to review its decision-making and voting processes, to adopt a code of conduct for commissioners; and to seriously consider the JSC's strategic 'HR function' in relation to judicial appointments. We also urge the JSC to capacitate the Judicial Conduct and Judicial Conduct Appeal committees, while processing the JSC's decisions much faster than is currently done. All of this will sustain and entrench the important successes that have been gained so far, and affirm the JSC's role as constitutional institution that is vital to the South African judiciary's success.

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DGRU and Judges Matter

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