

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No: CCT 89/17

In the matter between:

UNITED DEMOCRATIC MOVEMENT

Applicant

and

SPEAKER OF THE NATIONAL ASSEMBLY & 13 OTHERS

Respondents

FIRST RESPONDENT'S ANSWERING AFFIDAVIT

I, the undersigned,

BALEKA MMAKOTA MBETE

do hereby make oath and say the following:

1.

1.1. I am the Speaker of the National Assembly (NA). I have been elected to this position in terms of section 52(1) to (3), read with Part A of Schedule 3, of the Constitution of the Republic of South Africa, 1996, (the Constitution).

1.2. I am cited in these proceedings as the First Respondent.

1.3. I am also acting herein as the nominal respondent on behalf of the NA in terms of section 23 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act of 2004.

1.4. My offices are situated at Parliament Street, Cape Town.

1.5. The facts deposed to herein are true and correct and are, except where the context indicates otherwise, within my personal knowledge. Where I make submissions of a legal nature I do so on the advice of my legal representatives, which advice I accept.

2. I have read the founding affidavit of Mr Bantubonke Harrington Holomisa and respond thereto only in so far as the Applicant seeks to impugn my decision


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not to accede to the Applicant's request to have the motion of no confidence in the President of the Republic of South Africa conducted by way of secret ballot and characterises my conduct as unconstitutional and invalid.

3. The failure to deal with the other allegations contained in the Applicant's founding affidavit should not be regarded as an admission thereof. On the contrary, the allegations should be regarded as having been denied.
4. At the outset, I wish to state that I am personally not averse to having a motion of no confidence in the President being decided by secret ballot. I am, however, bound by the Constitution and the Rules that the NA has adopted (the Rules). Accordingly, I have no authority or discretion to accede to the Applicant's request. Instead the Applicant could have and should have acted as set out in paragraph 35 below.
5. I also wish to bring to the attention of this Court that when the Rules were amended as part of the rules review process and pursuant to the decision of this Court in the *Mazibuko* matter (referred to in paragraph 33 footnote 6 of the Applicant's founding affidavit) a proposal was made to include a provision for a vote by secret ballot, but the NA declined to adopt the said proposal.
6. In its application, the Applicant seeks, *inter alia*, declarations that:



- 6.1 this Court has exclusive jurisdiction to determine the application, *alternatively*, the Applicant is granted direct access to this Court;
- 6.2 the Constitution requires that motions of no confidence in terms of section 102 of the Constitution must be decided by secret ballot;
- 6.3 *alternatively to paragraph 6.2 above*, the Constitution permits motions of no confidence in terms of section 102 of the Constitution to be decided by secret ballot;
- 6.4 the Rules permit motions of no confidence in terms of section 102 of the Constitution to be decided by secret ballot;
- 6.5 *alternatively to paragraph 6.4 above*, Rules 102 to 104 are unconstitutional and invalid to the extent that they preclude secret ballots being used for motions of confidence (sic).
7. The Applicant also seeks an order that my decision of 6 April 2017 to refuse to allow the confidence motions to be decided by secret ballot be reviewed and set aside and declared unconstitutional and invalid.



8. The Applicant further moves for a direction that I make all the necessary arrangements to ensure that the motion of no confidence scheduled for 18 April 2017 is decided by secret ballot, including designating a new date for the motion to be debated and voted on no later than 25 April 2017.

9. To the extent set out below, I oppose this application for reasons which will become evident in this answering affidavit.

10. By way of general comment, I respectfully submit that this application has no merit; it does not fall within the exclusive jurisdiction of this Court; it does not meet the requirements for direct access; it is calculated to embroil this Court in political controversy in a matter that involves a violation of the principle of separation of powers and it is grounded on an assumption that the members of the NA, particularly, members of the African National Congress, are weak-kneed, timid, cowardly, unprincipled and spineless persons, which assumption I am not prepared to make.

11. Each of these matters will be dealt with in turn.

Exclusive jurisdiction

12. With specific reference to this matter, section 167(4)(e) of the Constitution stipulates that only this Court may decide that Parliament has failed to fulfil a constitutional obligation.
13. The Applicant submits that I, on behalf of the NA, am obliged by the Constitution to allow for a secret ballot on a no confidence motion, either in all cases or at the very least in a case such as the present.
14. The Applicant further states or implies that I have, and therefore Parliament has, failed to fulfil the said constitutional obligation.
15. The Applicant relies on the judgment of this Court in the matter of ***Economic Freedom Fighters & Others v The Speaker of the National Assembly & Others; Democratic Alliance v Speaker of the National Assembly & Others*** 2016 (3) SA 580 (CC) paras [16] and [18] for the above proposition.
16. I respectfully submit that the said judgment is not authority for the contended proposition. I say so for a number of reasons.
17. Firstly, nowhere does the Constitution impose the said obligation. Section 102(2) of the Constitution provides that “(I)f the National Assembly, by a vote supported by a majority of its members, passes a vote of no confidence in the


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President, the President and the other members of the Cabinet and any Deputy Ministers must resign”.

18. Section 57 of the Constitution is headed “*Internal arrangements, proceedings and procedures of National Assembly*”. Subsection (1) thereof provides that: “*The National Assembly may- (a) determine and control its internal arrangements, proceedings and procedures; and (b) make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.*”

19. The Constitution stipulates whenever an act or proceeding has to be done in secret or by secret ballot. For instance, in terms of section 19(3)(a) thereof “*every adult citizen has the right to vote in elections.....and to do so in secret...*”.

20. Furthermore, in terms of section 52(3) of the Constitution, the procedure set out in Part A of Schedule 3 applies to the election of the Speaker and the Deputy Speaker. In terms of section 86(2) the same procedure applies to the election of the President. The said procedure involves voting by secret ballot in the case of the nomination of more than one candidate for the position.

21. I submit that if the Constitution required a vote of no confidence in the President (or Cabinet) to be conducted by secret ballot, it would have expressly said so.
22. *A fortiori*, the determination of the lawfulness of my refusal of the Applicant's request for a secret ballot is not a matter that is within the exclusive jurisdiction of this Court. Paragraph [17] of the ***Economic Freedom Fighters*** case and other cases make that clear.
23. A vote of no confidence in the Cabinet or the President is provided for in Rule 129 read with Rules 102 to 104. As stated in paragraph 5 above, the Rules were amended on 26 May 2016 in order to comply with the ***Mazibuko*** judgment.
24. The Full Court of the Western Cape Division, Cape Town effectively found that the NA had complied with the said decision. (See: the ***Tlouamma*** case referred to in paragraph 35 of the Applicant's founding affidavit footnote 8 and Annexure "UDM2" thereto.)
25. I, accordingly, submit that the High Court has jurisdiction to determine this case.

Direct access

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26. I am advised that sections 79(4)(b) and (5), 80, 121(2)(b) and (3), 122 and 167(4) of the Constitution set out instances where a party can have direct recourse to this Court as the court of first and final instance.
27. Section 167(6)(a) provides that *“national legislation or the rules of the Constitutional Court must allow a person, when it is in the interests of justice and with leave of the Constitutional Court... to bring a matter directly to the Constitutional Court.”*
28. I am further advised that Rule 18 of the Constitutional Court Rules regulates the procedure whereby an application for direct access contemplated in section 167(6)(a) may be brought.
29. Section 169(1) of the Constitution sets out the wide constitutional jurisdiction of the High Court, save for those matters where the Constitutional Court has exclusive jurisdiction or have been assigned by an Act of Parliament to another court of a status similar to the High Court of South Africa.
30. I am advised that the following principles have been established in relation to direct applications to this Court:
- 30.1. this Court, save for cases where it has exclusive jurisdiction, ordinarily functions as an appellate court;
- 30.2. the Court can act as a court of first instance where the interests of justice so permit; and



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30.3. the mechanism and procedure for so doing is set out in Rule 18 of the Rules of this Court.

31. The rationale for the rule has been articulated as follows:

31.1. the applicant must provide cogent reasons (in principle and practice) why it is in the interests of justice for direct access to be granted;

31.2. it should be borne in mind that there could be factual disputes on the papers, necessitating the leading of evidence;

31.3. this Court does not benefit from the views of other courts having concurrent jurisdiction; such views enrich this Court's jurisprudence;

31.4. issues in relation to substantive law and appropriate orders to be made, are crystallised out for focused research and attention;

31.5. the issue before this Court is important and has serious ramifications for the NA's power to regulate its own processes; an order in favour of the Applicant would intrude into the domain of legislative power, that being so, an opportunity for the ventilation of these issues before lower courts is advantageous;

31.6. there must be exceptional circumstances that justify a departure from the normal procedure; and

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- 31.7. the disadvantage is that there is no possibility of an appeal; experience has shown that decisions are more likely to be correct if more than one court has been required to consider the issues raised.
32. In order to determine whether it is in the interests of justice to grant direct access to this Court, the following considerations are important:
- 32.1. that the applicant has exhausted all other internal remedies and procedures available;
- 32.2. exceptional reasons must be set out that require the circumvention of the jurisdiction of the High Court and the Supreme Court of Appeal;
- 32.3. the matter must be of sufficient urgency and public importance to warrant direct access;
- 32.4. there must, *inter alia*, be proof of prejudice to the public interest or the ends of justice and good government; and
- 32.5. the urgency must not be self-created.
33. Accordingly, and in view of the above, applications for direct access must be sought in the most exceptional of circumstances.

34. I submit that there are no exceptional circumstances warranting the granting of direct access *in casu*. Moreover, the hearsay allegations of the Applicant will probably be disputed and would require factual resolution.
35. In this matter the Applicant has not exhausted its internal remedies, in that, a party or a member has the right to approach the Rules Committee with proposals for amendments to the Rules. In terms of this procedure a member may make submissions to the Rules Committee. If it is a complicated or complex matter the Rules Committee refers the matter to its sub-committee which will make proposals to it. After decision by the rules committee the proposed amendment will serve before the House for consideration (see paragraph 53 below). Where a matter is extremely urgent there may be a motion submitted to the House for consideration after political consultation. (see paragraph 54 below)
36. On the contrary, the Applicant supported the adoption of the current Rules that were adopted on 26 May 2016.
37. Furthermore, the *Tlouamma* case was not taken on appeal and when it came to be decided the main issue had become moot.
38. I, therefore submit that it is not in the interests of justice for direct access to be granted.

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Urgency

39. In the light of the directions of this Court dated 11 April 2017, I do not take issue with urgency. I must, however, express my great concern at the extremely truncated time within which the Applicant sought to have the Respondents answer its allegations.

Separation of powers

40. Contrary to what the Applicant states in paragraph 15 of its founding Affidavit, I am advised that the principle of the separation of powers is implicated in this application.
41. The Applicant seeks this Court to prescribe to the NA that it must determine motions of no confidence by secret ballot.
42. I am advised that the principle of separation of powers forbids Courts from intervening in matters that fall within the domain of the national legislature except where the intervention is mandated by the Constitution.
43. I am also advised that Courts must observe the limits of their own power.

44. The Constitution grants the power to Parliament [NA and the National Council of Provinces (NCOP)] to determine and control their internal arrangements, proceedings and procedures and make rules and orders concerning their business with due regard to representative and participatory democracy, accountability, transparency and public involvement. [S 57(1) in the case of the NA, s70(1) in the case of the NCOP].
45. I am further advised that when it comes to the matters referred to in paragraph 44, above, the Constitution contemplates a restrained approach to intervention to those matters by the courts. Such intervention will only be permissible if it is undertaken to uphold the Constitution.
46. I am advised that established legal principles, based on case law, provide as follows:
- 46.1. the Rules do not expressly or implicitly provide for voting by secret ballot;
- 46.2. Rule 6(1) of the Rules is intended to cover matters that are not dealt with in the Rules; the Rules deal with voting expressly, therefore, Rule 6(1) cannot be applicable thereto;
- 46.3. courts are not concerned with the motives of members of the Legislature who vote in favour of particular legislation;


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- 46.4. there was nothing wrong in our multiparty democracy, with Cabinet seeking to give effect to the policy of the majority party;
- 46.5. it is not for the courts to be concerned with political questions but the function of the courts is to ensure that political decisions conform with the Constitution;
- 46.6. the NA is the master of its own internal arrangements, proceedings and procedures;
- 46.7. courts should be mindful of the judicial limits not to impose specific rules on the NA;
- 46.8. it is not the function of the Court to introduce the requirement for a secret ballot.
47. I am advised that, as neither the Rules nor my impugned decision of 6 April 2017, violate or threaten to violate any provision of the Constitution, intervention by this Court is not warranted.
48. Finally, I am advised that granting the relief sought by the Applicant would constitute an infringement of the principle of the separation of powers.

Role of Rules Committee in the NA



49. The NA Rules Committee, is empowered in terms of Rule 193, to issue directives and guidelines to assist with the implementation of the NA Rules and orders. It comprises the Speaker, the Deputy Speaker, the Chief Whip and nine members of the majority party, the Chief Whip of the largest opposition party and two other members of that party, two members of the second largest opposition party, and two member's representative of other parties (clause 191 of the NA Rules).
50. The function and powers of the Rules Committee are to:
- 50.1. develop and formulate policy proposals concerning the exclusive business of the Assembly in respect of the proceedings, procedures, rules, orders and practices concerning the business of the Assembly;
 - 50.2. monitor and oversee the implementation of policy on all matters referred to in Paragraph 50.1;
 - 50.3. make recommendations to the Joint Rules Committee on any matter falling within the functions and powers of the Rules Committee;
 - 50.4. lay down guidelines and issue directives regarding any aspect of policy referred to in this rule;
 - 50.5. appoint committees or subcommittees to assist it with the performance of any of its functions or the exercise of any of its powers;

- 50.6. recommend to the Assembly for adoption rules and orders and other policy proposals concerning the business of the Assembly; and
- 50.7. perform any other functions assigned to it by legislation, other provisions of these rules or resolutions of the Assembly.
51. The Rules Committee can deal with a matter falling within its functions and powers on its own initiative or when referred to it for consideration and report by the NA, the Speaker or a member.
52. Rule 8 regulates the rulings of the NA and provides that:
- 52.1. The Speaker must perform the functions as provided for in the Rules and may make rulings in applying and interpreting these rules, orders of the House and directives and guidelines approved by the Rules Committee.
- 52.2. The Speaker and other presiding officers may make rulings in accordance with sub-rule (1) in respect of procedural matters that arise when they are presiding at a sitting of the House or a mini-plenary session.
- 52.3. Members must comply with rulings made by presiding officers.



- 52.4. A member may request that a ruling be referred to the Rules Committee for consideration and report.
- 52.5. In considering a ruling referred to it in terms of Sub-rule (4(a), the Rules Committee must confine itself to the principle underlying, or subject of, the ruling in question.”
53. The Applicant’s complaint in respect of the impugned decision (or Rule) could (and should have) been referred to the Rules Committee for deliberation, direction and guidelines in terms of clause 8(4)(a) of the Rules. The members of the NA are enjoined to comply with the directives and guidelines issued by the Rules Committee (clause 7 of the NA Rules).
54. Alternative to this process, the Applicant could (and should) have brought a motion before the House for the amendment of the Rules. This being an internal House issue, the Applicant should have attempted to lobby its members and all other parties represented in the House to amend the Rules.
55. I note the voting procedures of the NA are an internal process issue. The Court cannot be called upon to resolve an internal issue in circumstances where the Applicant has not exhausted all available internal remedies and choosing instead, to invite the Court to intrude into the domain of the Legislature.

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56. I note that there has been no allegation by the Applicant that such an attempt was made on the papers. Accordingly, this application is not ripe for determination and, therefore, and as stated above, direct access should not be granted.

Voting Procedure in the NA

57. The Rules provide that the NA voting process is subject to the Constitution and the Rules 103 or 104. Rules 103 and 104 provide that:

57.1. Rule 103 Electronic voting system

57.1.1. At a sitting of the House held in a Chamber where an electronic voting system is in operation, unless the presiding officer directs otherwise, questions are decided by the utilisation of such system in accordance with a procedure predetermined by the Speaker and directives as announced by the presiding officer.

57.1.2. Members may vote only from the seats allocated to them individually in the Chamber.

57.1.3. Members vote by pressing the "Yes", "No" or "Abstain"

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button on the electronic consoles at their seats when directed by the presiding officer to cast their votes.

57.1.4. A member who is unable to cast his or her vote, must draw this to the attention of the Chair and may in person or through a whip of his or her party inform the Secretary at the Table of his or her vote.

57.1.5. When all members have cast their votes, the presiding officer must immediately announce the result of the division.

57.1.6. Members' names and votes must be printed in the Minutes of Proceedings.

57.2. Rule 104. Manual voting procedure

57.2.1. Where no electronic voting system is in operation, a manual voting system may be used in accordance with a procedure predetermined by the Speaker and directives to be announced by the presiding officer.

57.2.2. When members' votes have been counted, the presiding officer must immediately announce the result of the division.


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57.2.3. If the manual voting procedure permits, members' names and votes must be printed in the Minutes of Proceedings.

58. The Rules make provision for members to bring motions of no confidence in terms of s102 of the Constitution. In particular, Rule 129 provides that:

58.1. A member may propose that a motion of no confidence in the Cabinet or the President in terms of Section 102 of the Constitution be placed on the Order Paper.

58.2. The Speaker must accord such motion of no confidence due priority and before scheduling it must consult with the Leader of Government Business and the Chief Whip.

58.3. The motion must comply, to the satisfaction of the Speaker, with the prescripts of any relevant law or any relevant rules and orders of the House and directives and guidelines approved by the Rules Committee, before being placed on the Order Paper, and must include the grounds on which the proposed vote of no confidence is based.

58.4. The Speaker may request an amendment of, or in any other manner deal, with a notice of a motion of no confidence which contravenes the

law, rules and orders of the House or directives and guidelines approved by the Rules Committee.

58.5. After proper consultation and once the Speaker is satisfied that the motion of no confidence complies with the aforementioned prescribed law, rules and orders of the House and directives or guidelines of the Rules Committee, the Speaker must ensure that the motion of no confidence is scheduled, debated and voted on within a reasonable period of time given the programme of the Assembly.

58.6. The debate on a motion of no confidence may not exceed the time allocated for it by the Speaker, after aforesaid consultation process.

58.7. If a motion of no confidence cannot reasonably be scheduled by the last sitting day of an annual session, it must be scheduled for consideration as soon as possible in the next annual session.

58.8. Rules 120, 123 and 127 do not apply to motions of no confidence in terms of this rule.

59. I now propose to respond *seriatim* to the allegations contained in the Founding Affidavit of the Applicant.



AD PARA 1

60. The allegations contained in this paragraph are admitted.

AD PARA 2

61. Save as set out above, the allegations contained in this paragraph are denied.

AD PARAS 3 TO 9

62. The allegations contained in these paragraphs are noted.

AD PARAS 10 TO 11

63. Save as set out above, the allegations contained in these paragraphs are noted.

AD PARA 12

64. I admit that the motion of no confidence vote is scheduled for 18 April 2017.

65. I also admit that it makes practical sense for this application to be decided before the motion of no confidence vote, otherwise this application would become moot.


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66. I wish to point out that the meeting of 18 April 2017 has been postponed pending consideration of the matter by the Programme Committee.

AD PARAS 13 TO 14

67. The First Respondent denies the allegations contained in these paragraphs.

68. The Applicant's case has no basis in law. In amplification thereof, I submit that there is no express or implicit provision in the Constitution or the Rules that requires that the no confidence vote be taken by way of secret ballot.

69. Accordingly, the normal voting procedures set out in the Rules, as set out above, are applicable.

AD PARA 15

70. The allegations contained in this paragraph are denied.

71. As stated above, the application does implicate the principle of separation of powers.

72. In particular, I refer the Court to prayer 6 of the Applicant's notice of motion where the Court is invited specifically to intrude into the domain of the Legislature.



73. On the Applicant's logic and reasoning, the Court cannot direct or instruct me on the process to be adopted in the motion of no confidence.

AD PARA 16

74. The allegations contained in this paragraph are noted.

AD PARAS 17 TO 24

75. As stated above, the meeting scheduled for 18 April 2017 has been postponed.

AD PARA 25

76. As set out above, the allegations contained in this paragraph are denied.

77. In amplification thereof, I deny that this Court has exclusive jurisdiction over this matter or that the Applicant has satisfied the requirements for direct access.

AD PARA 26

78. I deny that Parliament has failed to fulfil its constitutional obligations.

79. On the contrary, the NA adopted the Rules with the majority of its members,


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including the Applicant, having voted. I submit that the Rules are not in conflict with the requirements of the Constitution.

AD PARA 26

80. I admit the allegations contained in this paragraph.

AD PARAS 27 TO 31

81. As set out above, I deny that this is a matter that falls within the exclusive jurisdiction of this Court.

AD PARAS 32 AND 34

82. Save as set out above, the allegations contained in these paragraphs are denied.

AD PARA 35

83. Save as set out above, the allegations contained in this paragraph are denied.

84. In amplification of this denial, the applicant on its version (See FA, Annexure "UDM1") noted that *Tlouamma v Mbete, Speaker of the National Assembly of the Parliament of the Republic of South Africa and Others* 2016 (1) SA 534 (WCC) was distinguishable from the facts of the present case, it having


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relied on more extensive grounds in bringing this application.

AD PARA 36

85. Save as set out above, the allegations contained in this paragraph are denied.

AD PARAS 37 TO 66

86. In the main, this case concerns the NA's power and prerogative to run its processes. Secondly, it involves the question whether this Court can prescribe a procedure to the NA. These are the questions that this Court is called upon to determine.

87. These are the legal issues to which we have devoted our attention, in view of the attendant time constraints.

88. The issues raised in the media reports in Applicant's founding papers are not issues to be determined in these proceedings.

89. Accordingly, the allegations contained in these paragraphs are not relevant to the determination of the legal question and the relief sought in this application.

90. The Court in deciding the merits of this case, should have due regard to the principle of separation of powers and the NA's power to regulate its own processes.


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91. It is important to note that the members of the NA represent their political parties as well as the constituencies that voted for them. The exercise of their powers as members of the House should not be unduly fettered or interfered with, certainly not on the basis of hearsay allegations contained in newspaper articles and reports which may or may not be accurate.

92. Save for the admission that I returned from Bangladesh to attend to the important matter of the vote of no confidence in the President, the allegations that follow are not relevant to the legal question and the relief sought.

AD PARAS 67 TO 70

93. The allegations contained in these paragraphs are admitted, to the extent that they accurately reflect the content and reasons provided for in the Applicant's demand to me and my response thereto.

94. I submit that there is no basis for the Applicant to refute the last three grounds advanced by me.

AD PARA 71

95. The allegations contained in this paragraph are admitted.

AD PARAS 72 TO 83


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96. Save as set out above, the allegations contained in these paragraphs are denied.
97. It does not follow as a matter of logic that where the Constitution expressly lays down a particular detailed procedure for the election of the President and expresses in general and different terms the procedures for her or his removal or resignation, the Constitution thereby prescribes identical procedures.
98. On the contrary, the different wording suggests a different intent.
99. The proposition has merely to be stated to be rejected.
100. The Constitution prescribes a particular procedure for the removal of the President, which involves a supporting vote of at least two thirds of the members of the NA. (Section 89).
101. The Constitution also prescribes a particular procedure for the resignation of the President, which involves a supporting vote of a mere majority of the members of the NA. [Section 102(2)]
102. The procedure to be followed in both instances is governed by the Rules of the NA.
103. By contrast, in the case of the election of the President, the Constitution prescribes a very detailed procedure in terms of rules made by the Chief

Justice. (Schedule 3 Part A to the Constitution). The Chief Justice or her/his designate conducts the said election.

104. It therefore does not follow, as contended by the Applicant, that the same procedure must be followed when a motion of no confidence in the President is decided by the NA as when he or she is elected by the NA.

AD PARA 84

105. The allegations contained in this paragraph are admitted, to the extent that these accurately reflect the decision of the Court in *Mazibuko*.

AD PARAS 85 to 87

106. The allegations contained in these paragraphs are denied.
107. The allegations contained in these paragraphs are speculative, tendentious, argumentative and are not based on fact.

AD PARA 88

108. The allegations contained in this paragraph are admitted, to the extent that these accurately reflect decision of the court in *Mazibuko*.

AD PARAS 89 TO 90


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109. Save as set out above, the allegations contained in these paragraphs are denied.

110. There is no telling in advance how a particular member of the NA will vote in a motion of no confidence debate.

111. It is also wrong to assume that a member of the NA will not vote according to her or his conscience; or that her or his vote will be improperly influenced by fear or other extraneous factors.

AD PARAS 91 TO 99

112. To the extent that the allegations contained in these paragraphs are an accurate reflection of the provisions of the Constitution, the allegations contained in paragraphs 91 and 92 are admitted.

113. Save as set out above, the allegations contained in these sub-paragraphs are speculative, tendentious, argumentative and are, consequently, denied.

AD PARAS 100 TO 105

114. I deny the allegations contained in these paragraphs. I considered the request and applied my mind thereto.


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115. The fact that the Constitution may permit a secret ballot, as alleged is irrelevant. The real issue in this matter is whether the Constitution imposes such an obligation.

116. As stated above, the Constitution does not impose any such obligation. On the contrary, the Constitution, unless expressly provided, contemplates an open and transparent process.

AD PARA 106 to 107

117. I deny all the allegations made and arguments advanced in these subparagraphs and the conclusions arrived at.

AD PARA 108

118. The allegations contained in this paragraph are denied.

119. If, however, my decision is held to be unconstitutional, unlawful and invalid, and that I do have the power to consider and order a motion of no confidence involving a secret ballot procedure, the matter may be remitted to me for reconsideration. I would act in accordance with the principle laid down by the Court in its judgment.

AD PARAS 109 to 111


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120. The allegations contained in these sub-paragraphs are denied.
121. In amplification of the denial, I submit that the Constitution does not provide “otherwise”.
122. Rule 103(6) peremptorily precludes secret ballot voting.
123. The manual voting procedure does permit the printing of members' names and votes in the Minutes of Proceedings. Therefore, in terms of Rule 104(3) they must be so printed.

AD PARAGRAPH 112


124. The allegations contained in this paragraph are denied.
125. As stated above, Rules 102 to 104 are not inconsistent with the Constitution.
126. Section 57(1)(b) of the Constitution does not prescribe or permit that secret ballots are to be used in a no confidence motion.
127. The fact that the said section does not expressly preclude such use does not mean or imply that it is permissible. The important consideration is that there is no legal basis for such use. *A fortiori*, it does not create an obligation for such use.



CONCLUSION

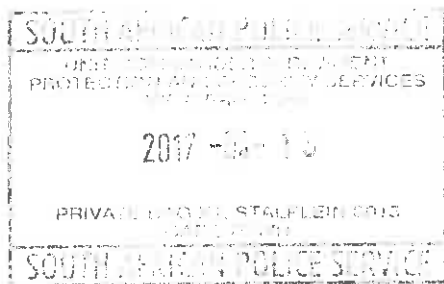
- 128. In the premises, I pray that the applicant’s application be dismissed with costs, including the costs of two counsel.

- 129. Alternatively, I pray that the matter be remitted to me for reconsideration, with each party paying their own costs.



BALEKA MMAKOTA MBETE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of her knowledge both true and correct. This affidavit was signed and sworn to before me at CAPE TOWN on **13 APRIL 2017**, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended, have been complied with.



CF 7172615/2
GB Currie

COMMISSIONER OF OATHS
Full names: *Grace Currie*
Address: *P.O. Paragon A*
Capacity: *Police Officer*