



EXHIBIT CC 30

**HLAUDI GEORGE
MOTSOENENG**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

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EXHIBIT CC 30.1

AFFIDAVIT & ANNEXURE

OF

**HLAUDI GEORGE
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Hlaudi George Motsoeneng State Capture Affidavit
02092019(Mtk)

**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

Held at Johannesburg

In RE:

HLAUDI MOTSOENENG

SUPPORTING AFFIDAVIT OF HLAUDI GEORGE MOTSOENENG

I, the undersigned,

HLAUDI GEORGE MOTSOENENG

do hereby make oath and state that:

INTRODUCTION

1. I am an adult male and was dismissed as an employee of the South African Broadcasting Corporation SOC Limited ("**SABC**"). Prior to my dismissal, I was the SABC's Group Executive for Corporate Affairs. I was also its Chief Operations Officer until my appointment was set aside by the Western Cape High Court¹.

¹ see DA v SABC & 8 Others 12497/2014 per Davis J

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2. The facts herein contained are within my personal knowledge, save where otherwise stated, or otherwise indicated by the context, and to the best of my knowledge and belief, both true and correct. I am not legally trained. Where I make statements of a legal nature or come to any legal conclusion, I do so on the advice of my legal representatives and I accept the advice so given.
3. I depose to this affidavit on request of the Judicial Commission of Inquiry into Allegations on State Capture, Corruption and Fraud in the Public Sector including Organs of State, established in terms of Proclamation 3 of 2018, published in Government Gazette 41403 of the 25th day of January 2018 (hereinafter the "Commission").
4. The request from the Commission is recorded in a letter dated the 2nd day of August 2019 to my legal representatives and refers to a number of issues which need to be addressed chief of which is whether or not I had meetings or interactions or dealings with any one or more of the Gupta brothers and, if so, disclose the nature and extent of such interactions.
5. On 2 November 2016, the Office of the Public Protector of the Republic of South Africa released a "Report on an investigation into alleged improper and unethical conduct by the President and other state functionaries relating to alleged improper relationships and involvement of the Gupta family in the removal and appointment of Ministers and Directors of State-Owned Enterprises resulting in improper and possibly corrupt award of state contracts and benefits to the Gupta family's business".being the "TheState of Capture Report".


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6. One of the key recommendations made in the Report, was that a commission of inquiry headed by a Judge nominated by the Chief Justice of the Republic of South Africa should be established by the President to investigate matters raised in The State of Capture Report pertaining to malfeasance and maladministration in state owned companies such as the South African Broadcasting Corporation SOC Limited just to mention the entity with which I was closely associated with at the time of my appointment and curiously now, as there are a number of matters which are pending litigation between the SABC and myself.
7. Most of the information I would like to have referred to has been worn thin by the fact that I am in no position to access the Board Minutes, documents and/or recordings which might assist in qualifying a number of explanations and narratives, inclusive of conclusions I would draw. Regrettably, despite repeated requests for assistance from the Commission, such documents, and/or recordings have not been provided to me. Some documents have been provided though, but not all the documents needed to do justice to the inquiry.
8. The main object of the Corporation is to supply broadcasting and information services and services that are ancillary thereto, to the general public in the Republic of South Africa and beyond its borders and to achieve the objectives as set out in the Broadcasting Act 4 of 1999, as amended, ('Broadcasting Act') in accordance with the objectives set out in the Independent Broadcasting Authority Act 153 of 1993, as amended, that are directly relevant to the Corporation.



9. The SABC is no ordinary private broadcaster. The SABC is an organ of state. It is accordingly obliged to "respect, protect, promote and fulfil the rights in the Bill of Rights."² It is directly bound by the rights in the Bill of Rights³.
10. The SABC is the only public broadcaster in the country. It belongs to and is controlled by South Africans. It provides a public service in its broadcasting.
11. Section 6(4) of the Broadcasting Act 4 of 1999 (as amended) provides:
- "The Corporation must encourage the development of South African expression by providing, in South African official languages, a wide range of programming that-
- (a) reflects South African attitudes, opinions, ideas, values and artistic creativity;
 - (b) displays South African talent in education and entertainment programmes;
 - (c) offers a plurality of views and a variety of news, information and analysis from a South African point of view;
 - (d) advances the national and public interest."
12. As such any work or reference to the Act, is solely done to show that all things were done with cognisance to the provisions of the said Act.
13. The contents of the affidavit are purely mine. All my legal representatives did was to review and align the content in line with what is requested of me by the secretariat of the Commission.

² section 7(1) of the Constitution

³ section 8(1) of the Constitution

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SUPPORT STRUCTURE OF THE SABC

14. My support structure in my office was as follows:

14.1. My personal assistant;

14.2. office manager,

14.3. the Operations team that includes television, radio, media technology infrastructure, news, sports, commercial sales division etc.

15. I have attached the organogram of the SABC during my tenure there to assist (Annexure HGM1-SABC Organogram).

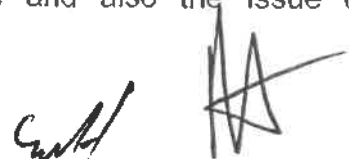
16. The MOI is the Minister's issue and I cannot comment on it. Any changes or structure was informed by the strategy of the SABC.

17. I could not allow the Board to appoint people who report to me. The Board agreed with me. I could not agree with the Board to appoint senior management for us directors.

18. I at one time even cautioned Mr Krish Naidoo one of the SABC board members from bringing political discussions to board meetings and stated that the SABC was a National Broadcaster and not a political party. (See Annexure HGM2-).

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16. ^B The MOI is the Minister's issue and I cannot comment on it. Any changes or structure was informed by the strategy of the SABC. (See Annexure HGM2-).
17. ^B I could not allow the Board to appoint people who report to me. The Board agreed with me. I could not agree with the Board to appoint senior management for us directors.
18. ^B I at one time even cautioned Mr Krish Naidoo one of the SABC board members from bringing political discussions to board meetings and stated that the SABC was a National Broadcaster and not a political party. (See Annexure HGM3-).
19. ^A This was after that he had made reference of attending an ANC workshop wherein it had been discussed and pointed out that SABC board members were supposed to be politically deployed by the ANC.
20. ^A Equally as well, any supporting staff for the said executives should not be appointed by the board or any other person other than according to the Human Resources Policy and the Act.
21. ^A Any political party whether its DA, ANC or EFF were being engaged as stakeholders and some were trying to influence the direction of the SABC like the former Minister Carrim which I rejected such as encryption in favour of e-TV.
22. ^A The President of the Republic Mr Cyril Matamela Ramaphosa (at the time Deputy President) also wanted to have a clear understanding of the role of the SABC pertaining to contract between SABC and Multichoice and also the issue of

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19. This was after that he had made reference of attending an ANC workshop wherein it had been discussed and pointed out that SABC board members were supposed to be politically deployed by the ANC.
20. Equally as well, any supporting staff for the said executives should not be appointed by the board or any other person other than according to the Human Resources Policy and the Act.
21. Any political party whether its DA, ANC or EFF were being engaged as stakeholders and some were trying to influence the direction of the SABC like the former Minister Carrim which I rejected such as encryption in favour of e-TV.
22. The President of the Republic Cyril Matamela Ramaphosa (at the time Deputy President) also wanted to have a clear understanding of the role of the SABC pertaining to contract between SABC and Multichoice and also the issue of encryption was raised in the same meeting. This is supported by the court judgement (*Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* [2017] ZACC 17) which had to give a sobering reminder on the issue of interference at the SABC as far as encryption was concerned.
23. The former President Jacob Zuma was also appraised about the infighting between board Members and Minister Carrim.
24. The former President Zuma left the issue to be resolved by the parties, that is the board and Minister Carrim. Even the State Attorney could not support Minister Carrim's views.



25. Encryption was for pay-tv and not for free to air as the Act does not allow non-paying citizens of the tv licenses to be unable to access the SABC channels.
26. My view was that if there was money to be invested, it must be ushered towards local content and not private entities. Such views are supported by the Act section 6(5) which states amongst others that local policy content must be developed which is in line with section 8(n) which entails that South African talent including training of people in production skills must be nurtured. That's why we introduced 90% and 80% for SABC 3. I could not allow SABC to be a blesser outside the country while our own people are suffering. The Commission must investigate the SABC on the issue of the reversing the 90/10. Also by the SABC misleading the public by saying that 90% has caused the SABC revenue because there is no such I believe they are captured by the monopoly. I can confirm that most of the advertisers were in support of the 90/10. I have been against the SABC giving discounts to advertisers including SABC management putting their own target so that they can get commission. I believe people who are running SABC currently are clueless on Broadcasting issues except one person that I know who is the deputy chairperson of the Board.
27. Section 6 (7) reads as follows:
- "(7) The Corporation must provide suitable means for regular inputs of public opinion on its services and ensure that such public opinion is given due consideration."

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28. I took note of this provision in the execution of my mandate and duties of the SABC, I never was influenced or persuaded to take into account any undue influence of any political party which resulted in marches against the SABC by DA, EFF; COPE and SOS.

THE SABC 8 (STAFF RELATED MATTERS)

29. I must refute from the onset that I never purged any SABC staff members.
30. This view is incorrectly raised and without any factual basis, recommendations and findings were made by the Public Protector.
31. In my disciplinary hearing, by Adv Edling, the remedial action was implemented by the SABC and I was cleared. (see Annexure HGM4-Edling Report)
32. In the said inquiry, Montlennyane Diphoko attributed his departure from the SABC to Mr Phil Molefe and he vehemently denied that I was never involved in his purging or of the six employees named in my charge sheet. It should be noted that all the witnesses testified under oath and it was a public hearing as opposed to the normal closed circuit disciplinary inquiries.
33. He even stated that I was still in Bloemfontein and I was in no position of authority to dismiss him, even if I had wanted to do so.

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34. This is sad as all charges emanated from the Public Protector's findings and recommendations.
35. Mr Diphoko denied ever being interviewed or being consulted by the Public Protector.
36. Bernard Koma also disputed that I never purged him.
37. Koma was then settled by the SABC without any intervention on my part but rather some reliance on an internal memorandum which was signed without any influence from my part.
38. Diphoko also was shocked that his name is in the report as he never testified or gave evidence before the Public Protector (quote him word for word) (Edling Report).
39. The "SABC 8" was charged for misconduct mostly for bringing the SABC into disrepute by their superior and not me and even the Court could not find my involvement.
40. The so called "SABC 8" was charged for talking to the media without permission what is amazing is that the court has ordered SABC to take them back, but in my case I was dismissed for the same reasons.
41. Unfortunately, I am out because of my ability in transforming the SABC and also my name.

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42. The Court made generous findings that I should have intervened in the disciplinary processes which I am of the view that it would have entailed my intervention in all disciplinary processes of the SABC at the turn of a hand. If that was the case, why it was never referred to the GCEO baffles the mind.

43. I still find it unfair that I was said to have irregularly changed this said editorial "decision"⁴ notwithstanding Rule 3 of the ICASA Code of Conduct for Broadcasting Licensees Regulations 2009 which reads thus:

"3(1) Broadcasting service licensees must not broadcast material which, judged within context :

(a) contains violence which does not play an integral role in developing the plot character or theme of the material a whole or;

(b) sanctions or promotes or glamorises violence or unlawful conduct;"

44. ICASA also went against their own regulations because of political pressure and buckled down unnecessarily so, as all I was doing was to ensure we at the SABC comply with the regulations.

45. A good example was the glamorising of the burning of schools in Vuwani, Limpopo Province and clinics in the North West and also WITS Library fire.

46. Should these violent scenes be flighted, I was of the view that the risk of the perpetrators continuing with such illegal activities will end up being given "Robin

⁴ this was not a policy but merely a directive in line with the said regulations.



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Hood Status “ and continues unabated much to the destruction of property , life and limb.

47. I was ordered to pay costs pursuant to a consolidated application, consolidated only for purposes of determining costs in the now famously depicted SABC 8 matter, even though I was not a party to any of the consolidated applications when the merits were heard and determined, and even though there was no evidence before the court which implicated me in any wrongdoing that could attract a cost order. I have attached my affidavit, which was filed at the Constitutional Court for the sake of consistency and exhibiting the same information, which I believe the Commission will be able to afford a keen eye to re-examine it further. (see Annexure HGM4B)
48. I was under a duty to support the policies of the SABC and I did so responsibly and within the scope of my duties. It is not accurate that my involvement taking a decision against the live reckless broadcast of violent images of people burning down buildings and at times people, should attract a punitive cost order in this matter. Since I was not cited as a party in my personal or official capacity in any of these applications, I did not have any opportunity to answer the charges of involvement in the so-called Protest Decision. This approach failed to take my right to equality before the law and access to courts, both of which are guaranteed in the Bill of Rights, into account. If I had been a party to the dispute, and the issue of my involvement and personal beliefs on the so-called Protest Policy came up, I would have defended myself accordingly.

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49. My view, which remains today, is that violent images of protesters burning down hospitals and schools and at times people should not be broadcast live irresponsibly. However, there are many South Africans who share the same view with me. One of the SABC mandate is to educate, my view is supported by the mandate of the SABC. For example, SABC mandate is to educate, you cannot educate people by saying they should glamorize violence or show visuals that are explicit. My view is that some of the judges are captured by the media. They are also captured by their own view they do not follow the law and abuse discretion. For example; Judge Navsa during my Appeal in the SCA he made uncalled statements that say how can I be paid a high salary more than judges when he in fact knew the judges get paid until they pass on. That comment was misleading because judges get paid more than me. Already when he made such a comment I knew I was not going to win because he had personalized the matter. When I go to court I get advised by my legal team. I think the same Commission should investigate the same judges because no one is above the law. I also give credit to Judge Davis although he ruled against me I feel I was respected.
50. Such an order was inimical to and inconsistent with my rights guaranteed in section 16 of the Constitution.
51. As such I was never responsible for the plight of the SABC 8 and remain resolute and committed to the functions of our Constitution. In fact the SABC was advised by the legal team on this matter.

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52. The inverse is actually true under the current SABC leadership who are purging staff without even affording them the opportunity to undergo the disciplinary processes.
53. What I find interesting is I was also purged myself and there was interference by the SABC board in daily running of the corporation and yet no one even bothers to examine such unlawful conduct.
54. What is noteworthy is that Mr Krish Naidoo, one of the board members had always had an axe to grind with me and had "warned" ANC about me in September 2013 and strangely he also packed his bags and turned his back to the very same board he had "loyally " served in 2019. (See Annexure HGM5)
55. I guess his resignation was fueled by the fact that he had accomplished his primary goal being to ensure I was dismissed.
56. His being called as witness in my disciplinary inquiry against me was to "deal with Motsoeneng ".
57. All SABC board chairpersons Dr Ngubane, Prof Maguvhe and Mrs Ellen Tshabalala were given a mandate to get rid of me as I was a stumbling block for the board members who wanted to "eat".
58. They refused to take political instruction for my removal and they were target as well. (Chairpersons). The Minutes of the SABC will confirm what I am saying.



59. My purging was mooted a long time before I was even dismissed and in this regard I make reference to the Special Meeting of the board on the 1st day of July 2011. (See Annexure HGM6- Special Meeting Minutes 1 July 2011).

60. A number of utterances were made and discussed by Advocate Qawe Mahlati and the late Mr Cedric Gina wherein they are heard and even recorded stating:

"And wena what is your view about Hlaudi? I don't want to sit in our meetings (sic). He must not be there..."

"Hlaudi and Robin... look at me....so we must clip them so that we can get into position . i' m talking from self-interest ."

61. Further on in the conversation Adv Mahlati is heard vouching:

"And you know what, these newspapers, we can control them from here Cedric... we must do a conduit so we can give them money and be comfortable"

62. Regrettably I have requested the Commission through my attorneys for a digital recording of the meeting and to date was not provided with the same. I would have wanted to get it properly transcribed as part(s) of the conversation were in Zulu and might even give a better and clearer context as to what was being discussed.

63. My understanding of the conversation, which is made succinctly clear by the said discussion(s), is that the money was to be paid to influential politicians (ama Cde



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wethu) to get rid of me and also to then improperly position Adv Mahlati for his self-interest.

64. Inadvertently the board members in attendance were not supportive of their ideas and deliberately wanted to collapse the meeting, as there was no quorum and also because their hidden agenda was likely not get a keen ear from those currently present.
65. Suffice to state that I was clear that daggers had been drawn and they were baying for my blood so that they could benefit for their self-interest.


THE GUPTA FAMILY

66. The commission has requested me to state and acknowledge whether I had any meetings, and/or dealings with the Guptas.
67. I do acknowledge that I have met with some of the Gupta brothers and not all of them, on several occasions.
68. My interactions with the Gupta were result of professional relationship because of the partnership of TNA and SABC and nothing of consequence pertaining to the discharge of my duties at the SABC was ever discussed other than social interactions.

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69. Additionally, I was meeting with them in an effort to exchange ideas in the media space and some of the meetings were initiated by me to deal with issues related to media. For example the pro's and con's of the media.
70. Never at any time did I receive any gifts, money or forms of gratification from the Gupta family.
71. At most what I shared with the family were dinners and lunches.
72. I have met other influential business people but strangely I have never been queried about them.

MULTICHOICE

73. The Independent Communications Authority of South Africa ("the Authority") issued a media release of its intention to conduct a Regulatory Impact Assessment ("RIA") on the Must Carry Regulations ("the Regulations") published in Government Gazette No 31500 of 10 October 2008.
74. Prior to the promulgation of the Electronic Communications Act, 2005 (Act No. 36 of 2005), as amended ("ECA"), the Independent Broadcasting Authority Act, 1993 (Act No. 153 of 1993) ("the IBA Act") governed broadcasting and in turn, the relationship between the public broadcaster and the subscription broadcasters.
- 

75. In June 2005, the Authority published a Position Paper on Subscription Broadcasting² in terms of the IBA Act. In that Position Paper it was stated that:

"The Authority shall prescribe, in licence conditions, the extent to which satellite/cable subscription television broadcasting services may carry the public service television channels of the SABC. The SABC shall be required to offer its public service channels subject to agreed terms. Digital terrestrial subscription television services shall be required to reserve a channel for public access television".

76. Subsequent to the publication of the Authority's position above, the ECA was promulgated. Section 60 (3) thereof provides that:

"The Authority must prescribe regulations regarding the extent to which subscription broadcast services must carry, subject to commercially negotiable terms, the television programmes provided by a public broadcast service licensee".

77. The Authority consequently exercised the powers granted to it in section 60(3) of the ECA and prescribed the Regulations, which state in Regulation 6(1) that, "(t)he PBS Licensee must offer its television programmes, at no cost, to a SBS Licensee upon a request from the SBS Licensee".

78. Further, in relation to the discussion of the contractual terms, stakeholders highlighted that section 60(3) of the ECA did not grant the Authority powers to ascertain the commercial terms of must carry contracts between the PBS licensee and SBS licensees.

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79. Furthermore, regulation 6 requires the PBS licensee to offer its television programmes, upon request from an SBS licensee, free of charge and deliver the signal to the SBS at its own cost. The SBS licensees would however incur the cost of broadcasting the must carry channels. Any other cost in excess, which is not related to the delivery of the signal or carriage of channels, would be based on commercial negotiations between the broadcasters. It is therefore on this premise that the different wording of "at no cost" in the Regulations came about.
80. The Regulations are driven by a central public interest principle of universal access as per the White Paper on Broadcasting Policy of 1998, to ensure that PBS programming is available to all citizens, targeting those citizens that use subscription services as their preferred means of access to television.
81. The public broadcaster has limited analogue network coverage. The network does not extend to 100% geographic coverage; thus, it does not provide coverage to 100% of the population and is therefore not universally accessible to the public of South African. Its geographic reach differs for the three television channels it offers on analogue network.
82. The public broadcaster acknowledges that the Regulations have been effective "...because the SABC Channels (SABC 1, SABC 2 and SABC 3) are available to members of the public through (a) the terrestrial platform, (b) OpenView, (c) DTT, as well as on the SBS platform. Therefore, there is universal access of the SABC Channels."⁵

⁵SABC submission on the Regulatory Impact Assessment ("RIA") of the Must Carry Regulations



83. Thus any deal with Multichoice was to give effect to the must carry regulations.
84. Never at any time did I receive any gifts, money or forms of gratification from the Multichoice management.
85. Over the relevant period I was the Chief Operating Officer of the SABC. The corporation draws the bulk of its income from advertising sales. It's revenue from television licenses is very limited if not so little that it is trickle of what entails revenue, and government funds 2-3 % of the shortfall by and large. Over the applicable period the SABC simply did not earn enough from advertising revenue to fulfil its mandate.
86. The sourcing of additional income streams was not part of my tasks and/or functions as COO. However, it became apparent to me that there are opportunities to broaden the income base of the SABC in this new environment, and that the SABC's structures and methodologies did not at the time provide for capitalising thereon.
87. I therefore took upon myself to negotiate or renegotiate a number of contracts. I point out that this was all done with the knowledge and approval of the other executives, and the relevant Board sub-committees. Lulama Mokhobo and Dr Ngubane had initiated the first deals with Multi-choice.
88. SABC and Multi-choice had a previous relationship from such and the money to be generated was not enough and at one time, Treasury refused to fund SABC404 and it collapsed.

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89. These efforts led to the income listed under item 4.4 in the minute of the Governance & Nominations Committee of 19 August 2016. Without this income, the SABC would have had to find alternative funding. Evidently advertising revenue and license revenue could simply not cover the shortfall. Government was not in a position to assist, without funding being borrowed from the open market. (See Annexure HGM6B-Minutes of Governance Committee)
90. Thus, the only alternative was for the SABC to borrow monies in the open market. In the minute, comment is recorded that Mr. Aguma explained the cost that would have involved. Simply put, borrowing the equivalent amount would have been expensive. Raising fees and interests on the borrowings would have added substantially to the SABC's financial burden.
91. In this context, the Committee accepted that it would have to incentivise executives and employees of the corporation in line with the incentives that the corporate environment generally accepting to be necessary in the circumstances. The Committee accepted a 2.5% success fee is market related, and necessary in order to retain effective and committed personnel and the execution of its constitutional and statutory mandate.
92. At the time the SABC's policies did not recognise specifically the necessity of success fee. As can be seen from the same minute, the Committee also resolved that its then commission policy should be renamed the commission and success fee policy, and that it should be amended to also cater for a success fee where capital is



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raised for the corporation. It dealt in some detail with the contents of this new section in the Commission Policy.

93. However, because there was no set standard mechanism to pay a success fee, the Committee, after having analysed the case made out for the payment, approved the payment to me at a rate of 2.5% of the capital raised.

94. Without me raising those funds, the SABC will only be running three channels. As result of my efforts, SABC Encore and SABC 404 (News) were born and continue to be flighted to this very day.

95. This is supported by the Delegation of Authority and section 26 of the Act. Thus payment of the success fee was lawfully made.

96. Section 26(1) of the Act states that:

"the corporation may engage such officers and other employees as it may deemed necessary for attainment of its objects and may determine their duties and salaries, wages, allowances, or other remuneration and their other conditions of service in general".

97. In these circumstances, it was a rational, legitimate business decision to incentivise the securing of crucial funding for the SABC to pay the success fee. The decision of payment was thus lawful.



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98. The role that I play was to initiate the projects and sports rights to benefit the SABC includes the following: SABC sports rights such as rugby, Encore channel, transmission for example; SABC does not pay for the SABC 404 channel and Encore and also within the African continent.
99. It was a resolution from the SABC Finance Committee.
100. Without Multichoice SABC was no longer able to broadcast sports rights e.g. rugby was being cast at R6m per match which was expensive and out of reach for the SABC. When I arrived I stopped blackouts, after I left the SABC went to blackouts. They also went back to needing to be bailed which did not happen in my time and I am not taking credit alone with the previous Board and management of my time at the SABC. I was able to negotiate and ensure such rights are obtained from Multichoice.
101. Current SABC board and management have pulled out the begging bowl and if had been there, I would have ensured adequate funding and revenue generation without any support from government and SABC would be having two further channels to cater for the other disadvantaged languages making a total of seven channels available.
102. Additionally, by having a dedicated news channel being SABC 404, it ensured that disruption of schedule on SABC 1, 2 and 3 was avoided and saved money for the SABC.

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VISION VIEW PRODUCTIONS

103. With regards to Vision View, my involvement was to ensure that the SABC's outdated technology which at that time was outdated compared to its competitors in the market is updated to enable it to carry out its obligations and mandate.

104. My role further was to also ensure that whilst the SABC is introducing new technology, it does not neglect to empower the previously disadvantaged and young entrants in that space of technology as the SABC had never engaged them and there was a notion that such persons with such capability do not exist. It appears that those that were opposed to the appointment of Vision View remain unhappy and have singled it out as if it was a bad decision hence they ensured that they attached negative connotations to it all over the media. Vision View delivered sterling job and to date the studio that Vision View built is used by the SABC.

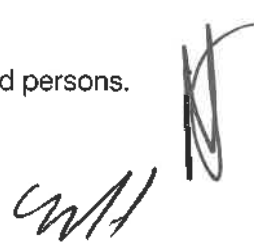
105. This view is supported by the Act in terms of section 2 (c) which provides as follows⁶:

2 (c) encourage ownership and control of broadcasting services through participation by persons from historically disadvantaged groups;

106. The corporate plan had intimated it will take three years to build new studios. I saw it essential and necessary to cut the time to one year. The cost was also drastically reduced as result of that intervention.

107. These were multipurpose set studios (See attached HGM7 memo dated the 4th day of August 2015-Certified Extract Round Robin Approval-Theresa Gildenhuys)

⁶ see section 5 (9)(b) of the Act which also entails support for youths and disabled persons.

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108. There was never any relationship or gifts or monies received from Vision View.
109. My role with VV was to introduce new technology and all SABC processes were followed including deviations.
110. My involvement was in making sure all SABC offices have put sets/studios and they move with the times to adjust and adapt to new technologies.

TNA MEDIA PTY LTD

111. The relationship with New Media which has now in common parlance becomes referred to as TNA, the TNA Media Group. In the main, discussions centered around entering into a memorandum of understanding (MOU) in terms of which the SABC would allow TNA to air live broadcasts of its Business Breakfasts on Morning Live; for a stake in the SABC's news channel which was still in the pipelines at that time. I will need the interaction between the SABC and TNA and if my memory serves me well I was in Free State however, without the minutes I am unable to assist.
112. There was initiation with the TNA Media Group which had resulted in the TNA Business Breakfasts being aired during Morning Live. Without the minutes I am unable to assist.

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114. The breakfasts were a partnership and not TNA show alone. The SABC had full editorial control of the content of the shows and unfortunately I am not in possession of those minutes pertaining to the breakfast meetings and/or shows. There were MOU's signed between the SABC and TNA which the SABC legal department is in possession of. The SABC regulations do not allow the newsroom to generate revenue.
115. There are restrictions on sponsorship of news, current affairs and information programmes which has been prohibited by ICASA. (See Annexure HGM8)
116. SABC were in control and unfortunately I am not in possession of those minutes pertaining to the breakfast meetings and/or shows.
117. The contract was signed by the GCEO.(Annexure HGM9)
118. Thus I was never involved in the establishing of the contract and in a number of instances I merely signed as a witness.
119. I was never involved in the initiation of the contract, but I did participate in meetings connected to the contract as a development plan was already in place.
120. Unfortunately, I am unable to proffer any further information, unless the Commission assist me with getting the minutes from the SABC to talk to the very information.

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Hlaudi George Motsoeneng State Capture Affidavit
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121. Never at any time did I receive any money, gifts or other forms of gratification for the role I played as my duties were done in accordance with being an employee of the Broadcaster.

AD HOC COMMITTEE ON THE SABC BOARD INQUIRY INTO THE FITNESS OF THE SABC BOARD

122. The National Assembly (NA) established the ad hoc Committee on the SABC Board Inquiry (the Committee) to inquire *inter alia* into the fitness of the SABC Board to discharge its duties as prescribed in the Broadcasting Act, No 4 of 1999 and any other applicable legislation.

123. The following former SABC employees were invited to give evidence on the SABC's human resource management and compliance with the Public Finance Management Act, No 1 of 1999 (PFMA) with regard to financial and supply chain management:

123.1. Mr Phil Molefe (former acting Group CEO, July 2011 to January 2012);

123.2. Ms Lulama Mokhobo (former Group CEO, January 2012 to February 2014);

123.3. Mr Itani Tseisi (former Group Executive: Risk and Governance, 2013 to 2016);

123.4. Mr Jabulani Mabaso (former Group Executive: Human Resources, June 2013 to June 2016);

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Hlaudi George Motsoeneng State Capture Affidavit
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123.5.Ms Madiwe Nkosi (former General Manager: Labour Relations, July 2011 to September 2016);

123.6.Mr Sipho Masinga (Former Group Executive: Technology);

123.7.Mr Madoda Shushu (Former Head of Procurement, April 2013 to October 2016); and

123.8.Mr Jimi Matthews (former Head of News and Group CEO).

124. It is strange and interesting to note, that I was never invited to also give evidence before the same parliamentary platform. I requested them to give me an opportunity and they refused.

125. It was the same narrative to get rid of me as explained somewhere else in my affidavit.

126. One of the board members Mr Vusumuzi Mavuso had persistently tried to improperly influence me into offering him the position of Chief Corporate Affairs Officer and I refused to entrain such undue influence from his part. (See Annexure HGM10-V Mavuso Letter to H Motsoeneng for Appointment as Chief Corporate Affairs Officer.

127. He was subsequently employed at parliament and sought to undermine my efforts as a way of getting back to me for refusing to give him the said job.

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Hlaudi George Motsoeneng State Capture Affidavit
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128. The same narrative has been followed in the appointment of the current SABC Head of Legal Mr Nthuthuzelo Vanara, who I have been informed was the parliament evidence leader in the AD HOC investigation into the SABC Board. Mr Vanara was appointed on Krish Naidoo's interference with the recruitment and selection process despite not being the recommended candidate by the panel and despite having never practiced the law. Mr Vanara was according to SABC Human Resources, not even the second recommended candidate. To deal further with this issue I will need the minutes and the panel score will be needed. The commission should also check the new appointees and check what kind of processes was followed especially Thandeka Gqubule whom I have been advised never attended any interviews.

129. I respectfully submit that his appointment to the SABC was a "dankie" for twisting facts and information before the parliamentary portfolio committee.

130. If there were any changes to the MOI, it was at the instance of the shareholder being the Minister of Communications, the SABC nor myself cannot get involved in the shareholders issues.

THE DEBACLE INTO ISSUES OF THE MATRIC CERTIFICATE

131. There has been an exaggerated and improper finding by the Public protector that: I made gross fraudulent misrepresentation of facts by allegedly declaring myself to be in possession of a matric certificate obtained at Metsimantsho High:

132. The Edling Report (Annexure HGM4) disposes off this narrative. In one of the findings, it was stated as follows⁷:

⁷ letter form Paul Tati Human Resources dated 27 March 1996



"Re: educational qualification. We refer to the conversation between yourself and the writer on 19 March 1996 in the above regard and confirm that you have undertaken to write the outstanding course toward obtaining your matric certificate during October 1996. We also confirm that it was pointed out to you that the lack of the certificate will be a serious impediment in your career progression in the corporation. We wish you every success in your academic endeavours and advise we will follow your progress with interest. yours faithfully Paul Tati, Human Resources Consultant."

133. From the above, it is clear and no secret that I was not in possession of a matric certificate.

134. Additionally, Ms Swanepoel had also wrote a letter that my matric certificate was outstanding and thus I never lied about being in possession of same. (See Annexure HGM11).

135. Even when I was appointed as part of SABC's current affairs team, "it was a known fact to all in attendance that I had no matric certificate". (See Annexure HGM12-Pulapula Mothibi Affidavit dated 31 July 2012).

136. Mothibi was part of the decision making process that came to the conclusion that the said matric certificate would not be a requirement or concern for the SABC. He even went further to state that he does not "regret the decision of appointing me, as he is proud of my vision, innovation and contribution aimed at improving the quality of service and operations at the SABC."

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137. A further letter is attached from Mr Tati to show that the issue of matric was that, I never lied about it. (See Annexure HGM13).

138. There is further amplification and evidence that I never lied or misled the SABC in the affidavit deposed to by Alwyn Kloppers, Manager: Regional Resources SABC News (Annexure HGM14-Affidavit of Alwyn Kloppers dated 27th day of July 2012).

139. All these affidavits inclusive of correspondence were totalled ignored by the PP Adv Madonsela.

140. Mr Kloppers categorically stated that Mr Reddy and himself were aware that I had declared to them that I did not have matric. Given my skills and capabilities, they went on to appoint me.

141. Therefore, I never lied or misled the SABC about my qualifications as I declared that right from the onset.

THE PUBLIC PROTECTORS REPORT

142. The Public Protector's Report entitled "When Governance and Ethics Fail: A REPORT ON AN INVESTIGATION INTO ALLEGATIONS OF MALADMINISTRATION."



SYSTEMIC CORPORATE GOVERNANCE DEFICIENCIES, ABUSE OF POWER AND THE IRREGULAR APPOINTMENT OF MR. HLAUDI MOTSOENENG BY THE SOUTH AFRICAN BROADCASTING CORPORATION (SABC) was issued by the then erstwhile Public Protector Adv Thuli Madonsela in February 2014⁸

143. In terms of the Reports executive summary, the complaint arose from Ms Phumelele Ntombela-Nzimande, who requested an investigation into allegations relating to various corporate governance failures on the part of the South African Broadcasting Corporation (SABC) management and the SABC Board, financial mismanagement at the SABC involving the spiraling of financial expenditure and undue interference by the Minister and Department of Communications.

144. Shortly after the investigation commenced, Ms Charlotte Mampane a former Senior Executive at the SABC and several other former SABC employees, lodged a substantially similar complaint which included further allegations. There is no record that Ms Mampane ever complained to the PP.

145. The further allegations included:

145.1. the irregular appointment of Mr Hlaudi Motsoeneng to the position of the Acting Chief Operations Officer (COO) by the SABC despite not having a matriculation (matric) certificate and the required qualifications:

⁸see <http://pmg-assets.s3-website-eu-west-1.amazonaws.com/>

WHEN GOVERNANCE FAILS REPORT EXEC SUMMARY.pdf(last accessed on the 1st day of August 2019)

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145.2. gross fraudulent misrepresentation of facts by allegedly declaring himself to be in possession of a matric certificate obtained at Metsimantsho High;

145.3. the purging of staff by Mr Motsoeneng and the former Acting Group Chief Executive Officer (GCEO), Mr. Robin Nicholson;

145.4. the subsequent unprecedented escalation of the SABC's salary bill, attributed primarily to Mr Motsoeneng's purging of senior executive staff.

145.5. irregular employee appointments and irregular salary increases, including Mr Motsoeneng's own 3 salary increases taking his remuneration increments, package from R1.5 million per annum to R2.4 million per annum in a single year.

146. Eight issues for investigation then arose being:

146.1. Whether the alleged appointment and salary progression of Mr. Motsoeneng, the Acting Chief Operations Officer, were irregular and accordingly constitute improper conduct and maladministration;

146.2. Whether Mr. Motsoeneng fraudulently misrepresented his qualifications to the SABC, including stating that he had passed matric when applying for employment;



146.3. Whether the alleged appointment(s) and salary progression of Ms. Sully Motsweni were irregular and accordingly constitute improper conduct and maladministration;

146.4. Whether the alleged appointment of Ms. Gugu Duda as CFO was irregular and accordingly constitutes improper conduct and maladministration;

146.5. Whether Mr Motsoeneng purged senior officials at the SABC resulting in unnecessary financial losses in CCMA, court and other settlements and, accordingly, financial mismanagement and if this constitutes improper conduct and maladministration;

146.6. Whether Mr Motsoeneng irregularly increased the salaries of various staff members, including a shop steward, resulting in a salary bill increase in excess of R29 million and if this amounted to financial mismanagement and accordingly improper conduct and maladministration;

146.7. Whether there were systemic corporate governance failures at the SABC and the causes thereof; and

146.8. Whether the Department and former Minister of Communications unduly interfered in the affairs of the SABC, giving unlawful orders to the SABC Board and staff and if the said acts constitute improper conduct and maladministration.

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Hlaudi George Motsoeneng State Capture Affidavit
02092019(Mtk)

147. What is noteworthy is the manner in which the report sought to paint and portray me in a different light as it incorporates my name as part of the title of the Report. I pause at that and reflect briefly that such manner is consonant with a biased narrative as the findings did exhume that most of the improprieties complained about were never initiated or done at my behest. Such title is misleading and serves a certain narrative other than one which accords with section 182 (1)(b) of the Constitution Act 108 of 1996 as read with section 34 and section 16 of the Constitution.

148. Most of the issues complained of were more than two years old⁹. Section 6(9) of the PP Act provides that she may not entertain a complaint that's more than two years old. The PP never complied with her own test of "special circumstances" to assume jurisdiction to investigate and thus acted unconstitutionally as she acted ultra vires.

149. A plethora of review proceedings have since been precipitated against the Public Protector which might shed more light on the present matter¹⁰.

150. Since the issuing of the report, the SABC lodged a review application which was then surreptitiously abandoned by the Interim Board chaired by Khanyisile Kweyama.

151. A finding in *Gordhan*¹¹ that supports my case is:

⁹ see page 6 of the Report

¹⁰ *Public Protector v South African Reserve Bank* (CCT107/18) [2019] ZACC 29 (22 July 2019); *Gordhan v Public Protector and Others* (48521-19) [2019] ZAGPPHC 311 (29 July 2019)

¹¹ see paras 32 and



"On behalf of Pillay and Gordhan it was submitted that it is common cause that there is no prescribed requirements in law or policies for appointment as Deputy Commissioner of SARS. On this basis the fact that Pillay has no tertiary education does not offend any law or policy. Pillay's experience in the public service from January 19 95 was the basis for his appointment and his appointment was accordingly proper, regular and lawful."

158. Armed with this and the provisions of section 20 of the Employment Equity Act 55 of 1998 as read with section 22 of the Constitution Act 108 of 1996, I am of the firm view that the finding that I was not suitable qualified was generous and ill-considered and to date I have not been afforded an opportunity to lay the aspersions and uniformed decision a test at law and lay them aside for want of veracity.

159. Furthermore, the PP misaligned herself and failed to take into account my following qualifications(Annexure HGM15):

159.1. Leadership Development Programme, Gordon Institute of Business Science (GIBS)(NQF level 7- Bachelor's Degree);

159.2. National Certificate in Generic Management (Prodigy) (NQF Level 5- Higher Certificate);

159.3. The Thompson Foundation Certificate in Radio Journalism; Analysis of Contemporary Social Issues (University of Witwatersrand)

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Hlaudi George Motsoeneng State Capture Affidavit
02092019(Mtk)

160. Additionally, the fact that I was not afforded an opportunity to respond to the adverse findings as that will have been reserved for the disciplinary processes which the SABC never conducted or initiated.


161. In *Democratic Alliance v SABC & others* 12497/2014 The court at para 53 of the judgment had to state:

"[53] Much has been made by respondents of Mr Motsoeneng's achievements at the SABC and his 'unique' ability to be the COO of the SABC. If it is properly shown that none of the allegations made against him are sustainable, it would be unfair and, hence premature at this stage, to preclude him from such consideration. In summary, it is preferable to allow the relevant disciplinary proceedings to run its course and to reflect this finding in the order. Hence, I agree with Mr Maenetje that this is the prudent course of action. Accordingly I propose to tailor the order which is to be granted accordingly."

162. The SABC regrettably defied this judgment and did not put any effect to the echoed words of Davis J which would have resolved much of the issues as raised as part of the remedial action so ordered by the PP.

163. The relevant disciplinary proceedings were never allowed to run their course and as it stands, I remain tainted by the findings of the PP, which was supposed to be subjected to a test in the normal course of a disciplinary hearing.

164. It should be noted that the disciplinary proceedings was the stage I was eagerly awaiting for to clear the unfounded and generous findings made against me in the PP Report.



165. In that disciplinary inquiry I would then have been able to prove and show that none of the said allegations are sustainable against me.

166. The PP report conveniently left out the fact that the salaries of all the PA's of the Executive Directors were adjusted from scale code 300 to scale code 130. This information is contained in memo dated the 13th day of May 2012. (Annexure HGM15-Memo dated 13 May 2012)

167. Section 7(9)(a) of the Public Protector Act renders it mandatory for the PP to afford any person an opportunity to respond to adverse findings. It is argued that even on a narrow interpretation this would include an opportunity to submissions prior to a finding or sanction thereof¹². I would be more inclined to further extend the test and state that I must not only be afforded an opportunity to address the PP, but also to challenge the evidence from the so called complainants by meeting and testing the veracity of those complaints. The finding by the PP was therefore lopsided and irrational in the circumstances and persuaded by bias and ulterior motive.

168. The SABC board by failing to take action as recommended and which remedial action is binding, makes the report remain binding and enforceable in so far as the findings which were made against me .

169. Regrettably, I have not been afforded such an opportunity and as such, the aspersions and the remedial action anticipated even though not implemented, remain binding and serve as a "suspended sentence" on my integrity and dignity.

¹²*Masethla v President of the RSA* 2008 (1) SA 566 (CC) at paras 74 and 75.

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170. The then Public Protector Advocate Thuli Madonsela misled the public when she said the SABC should appoint a suitable person knowing that I am suitable by law herewith, She knew I had skills, expertise and experience and the law does in fact recognise prior learning. Public Protector also misled the public saying that I admitted lying whilst the transcripts show that I did not lie.

The request came from the Chairperson Professor Maguvhe for the SSA to come into the SABC to deal with the issue of leaking of information and hacking of electronic systems. There was interaction between myself and officials from SSA but the Commission can find such information from SSA.

171. Additionally, the SABC taking into account that it is a National Key point in terms of the National Key Points Act 102 of 1980.

172. The Government Security Regulator provides for security regulations, evaluations and the administration of National Key Points and strategic installations and chief amongst the security cluster is the State Security Agency.

173. As regards the ANN7, my role was to direct the ANN7 management to engage the person who was responsible for the Archives.

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174. The Act in section 8(j) states as follows;

the objectives of the corporation are -

.....

.....

(j) to establish and maintain libraries and archives containing materials relevant to the objects of the Corporation and to make available in the public such libraries and archives with or without charge:

175. As much as I was not involved in the archiving debacle, am only proffering this information to the Commission to come to a just and determinate conclusion.

176. Suffice to say the SABC is not obliged to generate revenue from use of archives.

177. I confirm that I will make myself available to assist the Commission when called upon to do so in the near future.


HLAUDI GEORGE MOTSOENENG

THUS SIGNED AND SWORN TO AT KRUGERSDORP ON THIS THE 2nd DAY OF SEPTEMBER 2019. THE DEPONENT HAVING ACKNOWLEDGED THAT THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT,

Hlaudi George Motsoeneng State Capture Affidavit
02092019(Mtk)

THAT THE OATH WHICH THE DEPONENT HAS TAKEN IN RESPECT THEREOF IS
BINDING ON THE DEPONENT'S CONSCIENCE, AND THAT THE CONTENTS OF THIS
AFFIDAVIT ARE BOTH TRUE AND CORRECT.

I CERTIFY FURTHER THAT THE PROVISIONS OF REGULATION R1258 OF 21 JULY
1972, AS AMENDED, AND GOVERNMENT NOTICE NO R1648 OF 19 AUGUST 1977,
AS AMENDED, HAVE BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

NAME: MOTLATS! CORNELIUS SELEKE
PRACTISING ATTORNEY EX OFFICIO
ADDRESS: COMMISSIONER OF OATHS
40 Piet Joubert Street
CAPACITY: Monument, Krugersdorp



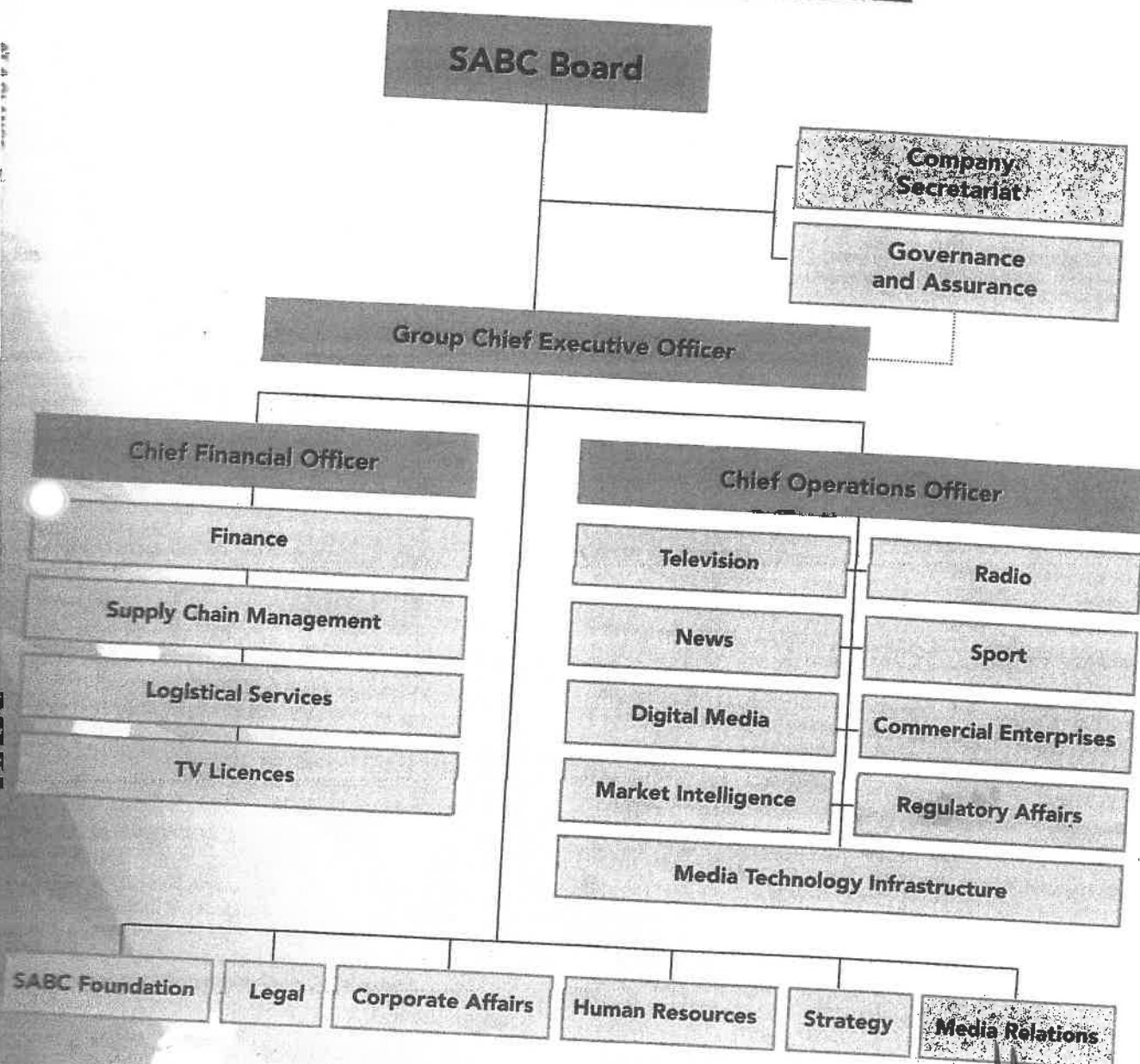
HGM I

ANNEXURE HGM1

Organisational Structure

Department of Communications

Minister of Communications



HGMZ

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ANNEXURE HGM 2 HGM-045

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SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED
REGISTRATION NUMBER 2003/023915/30

MINUTES OF A SPECIAL MEETING OF THE BOARD OF DIRECTORS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED HELD IN THE 28TH FLOOR BOARDROOM, RADIO PARK, HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG

AT 14:45

ON 25 FEBRUARY 2016

MEETING NUMBER 2016/02

PRESENT

Prof M O Maguvhe
Mr J R Aguma
Ms L T Khumalo
Mr J B Matthews
Mr V G M Mavuso
Mr G H Motsoeneng
Mr K Naidoo

Chairperson
Member (Chief Financial Officer [CFO])
Deputy Chairperson
Member (Acting Group Chief Executive Officer [AGCEO])
Member
Member (Chief Operations Officer [COO]) (From 15:15)
Member

APOLOGIES

Ms N M Mhlakaza
Dr N A Tshidzumba

Member
Member

IN ATTENDANCE

Ms L V Bayi
Ms F Y Valla

Deputy Company Secretary
Deputy Company Secretary

BY INVITATION

Ms M Nepfumbada
Ms C Kevvy

SABC Legal Department (Item 2.1)
Acting GM: Strategic Planning (Item 2.2)

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1. CONSTITUTION OF THE MEETING AND OPENING REMARKS

The Chairperson, Prof M O Maguvhe, welcomed everyone present. It was noted that, due to the absence of some of the Members, the meeting was not quorate. It was agreed that the meeting would proceed and that resolutions taken would be ratified at the next Board meeting. It was further agreed that, due to the urgency of the matter, the Board approval for the 2016/17 to 2018/19 Corporate Plan to be submitted to the DoC and National Treasury would be obtained on a Round Robin basis.

1.1 OBSERVATION OF MOMENT OF SILENCE

A moment of silence was observed.

1.2 SECURITY BRIEFING

As previously resolved, the video on the Safety and Emergency Processes was not presented.

1.3 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.4 APOLOGIES

Apologies were received and noted.

1.5 DECLARATION OF INTEREST

The Declaration of Interest document was circulated and signed as required by legislation. No interests in the items on the agenda were declared.

1.6 APPROVAL OF THE AGENDA

The agenda was unanimously adopted with the addition of Item 2.3 Editorial Policy.

2. APPROVALS/NOTING/DISCUSSION**2.1 FEEDBACK ON PLATCO/e.tv MATTER**

The Chairperson welcomed Ms N Nepfumbada who attended the meeting to present a report on the Platco/e.tv matter, which detailed what had transpired subsequent to the Board's instruction on the manner in which the matter had to be dealt with in Court.

She stated that a report, based on her engagement with Mr S Vilakazi, the Acting GM: Litigation who had attended the case, had been presented to the Risk Committee on 20 October 2014. During the consultation with the External Legal Team, Mr Vilakazi had advised that it had been established that there was a dispute of fact and that issues had been raised regarding the Relief to be sought in Court. When the matter was heard in Court, the SABC Legal Team did not follow the instructions to seek an Interim Relief, hence the SABC had lost the case. Ms Nepfumbada stated that the full report that had been circulated to Board Members had reflected clearly the manner in which the matter had been dealt with from its inception and on the fact that the second SABC Legal Team had misinformed the SABC by stating that the SABC would win the matter.

She pointed out that, after the First Legal Team had made a presentation to the Board on this matter, the Board had indicated its dissatisfaction on how the Team was handling the matter and had instructed that their mandate be terminated, hence the Second Legal Team led by Advocate Khoza SC had been appointed.

Subsequent to the appointment of the Second Legal Team, the COO had requested that the matter proceed by way of an Urgent Application, to which the SABC Legal Department, in the presence of the Second Legal Team, had advised that it would be impossible as the SABC had already filed its papers on a Semi-Urgent basis. Despite the advice provided by the SABC Legal Department, Advocate Khoza SC gave the COO the impression that the Urgent Application was possible. However, when the matter was argued in Court the SABC had lost the case.

Mr J B Matthews stated that, at the previous Board meeting, Advocate Khoza SC had vehemently denied the allegation that he had misled the SABC in anyway and Mr Vilakazi had not refuted the statement at the time.

Mr V G M Mavuso stated that it had been evident at the previous Board meeting subsequent to Advocate Khoza SC's presentation that the Board had been to a large degree misled by the

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SABC Legal Department. Members had agreed that the SABC Board owed Advocate Khoza SC an apology in this regard. He stated that there must be consequential management and that the Head of Legal must submit a report on what had been accomplished in this regard.

Mr K Naidoo stated that losing cases of this magnitude was costly to the Corporation and brought its reputation into disrepute. He implored Management to audit the competence of the Legal Department to establish if it had the capacity and the correct skills required by the Corporation.

Ms L T Khumalo concurred with the sentiments that this matter had been handled poorly by the Legal Department and that the Head of Legal must take the responsibility as the Board's reputation was at stake.

Resolution Number: 25/02/16 – B732 RESOLVED that:

- (1) The AGCEO, Mr J B Matthews, must provide a report on the steps taken to implement consequential management within the Legal Department with regard to the Platco/e.tv matter at the Board meeting scheduled for 26 April 2016;
- (2) In order to preserve the SABC Board's integrity, an apology must be sent to Advocate Khoza SC regarding the allegations made against him regarding the manner in which he had handled the Platco/e.tv matter.

2.2 2016/17 TO 2018/19 CORPORATE PLAN AND BUDGETS

The salient points included in the 2016/17 to 2018/19 Corporate Plan and Budgets, which had been deliberated by the Joint PBS/PCS Committees were highlighted by Mr Matthews and briefly discussed.

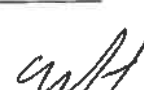
Mr Mavuso appreciated having been part of the discussions of the Corporate Plan during the Joint PBS/PCS Committees meeting and expressed his concern regarding the late submission of documents as it impeded on the Members' ability to exercise their oversight responsibility and to do their work accordingly. In response, Mr Matthews apologised for having submitted the documents late and endeavoured to ensure that, going forward, documents would be submitted on time.

Mr Matthews pointed out that the Corporate Plan was a three-year plan, which required constant review. He drew Members' attention to the Corporation's revised structure, which had been aligned with the SABC's Strategy to ensure that the Corporation carried out its work in line with its core business and mandate. He stated that the Group Executives had presented their various structures and that, subsequent to the approval of the Corporate Plan, further consultations and engagements in terms of the structure would be undertaken to address some of the challenges that had been identified, including the disproportionate management to staff ratios. He mentioned that the SABC's Internal Audit Unit had performed a preliminary review of the Predetermined Objectives and had made some minor recommendations, which had been effected in the Corporate Plan.

AT THIS STAGE MR MATTHEWS LEFT THE MEETING

Mr Aguma tabled the budget and highlighted the salient points. He stated that the budget was R9 billion, with an anticipated minimal profit of R3.4 million in 2017, R160 million in 2018 and R150 million in 2019. The reason for anticipating a minimal profit for 2017 was that the Corporation would be investing its funds on the acquisition of content. He stated that the budget had been premised on cost containment, including employee costs, which had been capped at 7%, a reduction of consumption expenditure that was not linked to the core business and ensuring that any recruitment considered was motivated by increasing capacity in the core business. Procurement and Internal Processes would also be reviewed to ensure efficiencies and the realised financial savings would be invested in capex projects that supported the core business. The anticipated cash projections were R900 million for 2017, R895 million for 2018 and R1 billion for 2019. The net assets would be approximately R2 billion in the next three years, which meant that the Corporation would be solvent as it would have more assets than liabilities. In order to ensure that there was enough cash in the bank to run the operations, the target in the Corporate Plan was that the profits would maintain a net profit figure of R3.4 million and a positive net position of R600 million per month.

The CFO drew Members' attention to the Materiality and Significance Framework, which was an annexure to the Corporate Plan. He informed Members that the Materiality and Significance Framework was a requirement of the PFMA and essentially implied that each organisation needed to determine what it considered as material taking into account the size and the nature of the business. Over the past years, the SABC had had a complex materiality framework that literally went to the financial statements to determine the different rates for each transaction,



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including programme, films and sports rights, which made it difficult to monitor. Currently National Treasury required the Board to review its audited financials and decide on what would be material for the Corporation. For example, it could decide between one and two per cent of its turnover in the audited financials as a figure for significant transactions. He stated that, taking into account the benchmark that had been conducted with other State Owned Entities and considering the nature of the SABC's business, the proposal was that the SABC set its quantitative materiality at R50 million. With regard to the Irregular Fruitless and Wasteful Expenditure resulting from gross negligence, the proposal was R1 million and R8 million for any other Irregular Fruitless and Wasteful Expenditure, which was 2% of the Corporation's surplus or deficit. This meant that any amounts below the proposed R1 million or R8 million would be immaterial for reporting purposes, but would be dealt with internally in the form of disciplinary action or any identified corrective measure. All amounts that arose from criminal conduct would be reported. For significant transactions that required the permission of the Executive Authority and Minister of Finance's approval as per Section 54 (2) of the PFMA, the proposal was a rate of R90 million.

With regard to the new structure, Mr Motsoeneng stated that the delivery of the strategy of the Corporation had been fundamental for the Corporate Plan and that the Operations had been reviewed in the process to ensure that they were aligned and structured in a manner that would enable the SABC to deliver on its Strategy. He stated that the Governance Portfolios had been identified as one of the misaligned areas and, under the new structure, in order to rationalise the reporting relationships, they would all report to the GCEO. Suitable professional titles would be identified for them in order to address the issue of large numbers of Senior Management as had been stated by the Auditor-General in 2009. People would be deployed to areas where there were vacancies to avoid retrenchment and external appointments would not be made. The target was to complete the job profiling and alignment of job descriptions by end April 2016.

In response to Ms Khumalo's query, Mr Aguma stated that the benchmark had been conducted against Airports Company of Southern Africa and Rand Water. He stated that the materiality amounts and the percentages had been provided by National Treasury based on audit practice.

Mr Mavuso stated that the upcoming Human Resources Workshop would deliberate on some of these matters in order to manage and contain the number of employees within the SABC. He stated that the movement of individuals was a sensitive matter and that the process must be managed with caution so that people were able to volunteer to move to different areas. However, Management must appreciate and take into consideration that there may be instances where an aggressive intervention would be required. He appreciated that the process might not be completed by the beginning of the new financial year, and stated that there must be evidence that work was being done to move into a particular direction and that the process must be managed in a manner that was not going to disadvantage any person. He stated that a lot of work had been done and that he was sufficiently satisfied with the refined document and moved for adoption of the Corporate Plan.

In response to Mr Naidoo's query, Mr Motsoeneng stated that the Corporate Plan was a strategy for the SABC and that the structure must be informed by the strategy. He appreciated the fact that structural changes had an impact on the human element hence the Corporation would ensure that communication of the structure was handled in a sensitive and humane manner and that provisions of the Labour Relations Act would be taken into account.

Resolution Number: 25/02/16 – B733 RESOLVED that:

- (1) Approval be and is hereby given for the 2016/17 to 2018/19 Corporate Plan and Budgets be approved for submission to the DoC and National Treasury on a Round Robin basis;
- (2) Resolution (1) above be ratified at the next properly constituted Board meeting;
- (3) Management must ensure that communication of the new SABC Structure was managed in a sensitive manner and that provisions of the Labour Relations Act were taken into account in addressing issues of structural changes.

2.3 EDITORIAL POLICY

Mr Mavuso stated that robust engagements were held during the Joint PBS/PCS Committees meeting in order to ensure that the Editorial Policy could stand the test of time. It had been agreed that, essentially, the Editorial Policy was a compliance matter in terms of Section 5 of the Broadcasting Act 4 of 1999, which referred to the licensing conditions to which the SABC must adhere. Amongst others, the Editorial Policy addressed matters of programming, local content, education, universal service and access, language and religion. The Policy was a living document that required revision every five years and must be available in all official languages including braille on request. In addition, it was essential to align all the platforms of the SABC under one brand and that process required a Marketing Strategy to be put in place. The Policy

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took into account the editorial values including healing the divisions of the past pertaining to equality, editorial independence, nation building and social cohesion including matters pertaining to diversity, human dignity, accountability and transparency as it was critical that they were linked to the Editorial Code. The Policy expressed the need to report matters in a truthful manner, but most importantly, making sure that there was journalistic freedom and excellence in whatever report provided, whilst protecting the services of the day-to-day sources of SABC information.

It was emphasised that, insofar as programming was concerned, issues of explicit language and the manner in which programmes were reflected must be in keeping with the essence of dignity and integrity and to ensure that SABC's programming was underpinned by confidentiality and moral standing. In addition, the Policy addressed anti-stereotypical approaches as far as they related to matters pertaining to disability, race, and gender and making sure that the office of the Ombuds person within the SABC was elevated. Further, the Policy addressed issues relating to Broadcasting of events of national importance as there was an expectation that the SABC broadcasted them. Mr Mavuso made an example of the Breakfast Show with the Minister of Finance, which the SABC had to share with another free to air broadcaster and emphasised that, in such instances, matters must be escalated to a Ministerial level because in matters of national importance, the SABC must be the broadcaster.

Mr Naidoo stated that Management must ensure that the existence of the local Ombuds office was advertised from time to time on the various radio stations and TV so that people could respond.

Resolution Number: 25/02/16 – B734 RESOLVED that:

The Editorial Policy be and is hereby approved for implementation with immediate effect.

3. DATE OF THE NEXT MEETING

The next scheduled meeting will be held on THURSDAY 26 APRIL 2016.

4. CLOSURE

There being no further business to transact, the Chairperson terminated the meeting at 16:10.

APPROVED AS A TRUE RECORD OF THE PROCEEDINGS

Prof. M.O. Maguvhe

**PROF M O MAGUVHE
CHAIRPERSON**

26 APRIL 2016

DATE

HGM 3

ANNEXURE HGM 23

2015 and that, for completeness and good governance practice, the decisions taken at the meeting would be ratified when the new Members of the Committee were appointed.

Ms Zinde felt that the matter should have been discussed in a fully quorate Governance and Nominations Committee meeting and that she did not think it would be logically correct to address the matter in terms of the requirements of the Companies Act. She requested that either the Acting Chairperson, the Company Secretary or Mr Naidoo, who knows the law, or anyone who understood it to explain to her the provisions of the Broadcasting Act and the Companies Act in order for her to determine whether Members had the authority to do what it was doing. She stated that she would like each Member that had been present at the ANC Workshop to state or record what she had said and whether it was bad or good.

Ms Zinde requested clarity to be provided from the policies and based on what was in the policy, if there was such a policy, that guidance be provided so that the Board could proceed. In response, Ms Geldenhuys read Clause 3 of the Directors' Code of Business Conduct and Ethics, which dealt with the requirement of confidentiality by Directors, and pointed out that Section 71(3) of the Companies Act authorised the Board to remove a Director. She mentioned that Section 15(a) of the Broadcasting Act required the Board to conduct an enquiry, which was the purpose of this meeting.

Mr Naidoo pointed out that, in order to comply with the *audi alteram partem* rule, which was Ms Zinde's Constitutional right, an enquiry must be set up to adjudicate the matter and make recommendations to the Board for tabling to the National Assembly.

Members were of the view that the Board reported to the Shareholder and that procedurally the Board was required to firstly discuss and deal with its internal issues prior to involving external parties.

It was highlighted that an allegation, that Ms Zinde had discussed Board matters at an ANC Workshop without a mandate from the Board and by so doing she had placed the SABC Board into disrepute, had been brought to the attention of the Acting Chairperson. Ms Zinde had been duly informed of the allegation and had been given an opportunity to respond by 11 March 2015. Ms Zinde had responded by email on 8 March 2015 a copy of which was included in the document pack.

It was pointed out that the importance of the deliberations of the Board being confined to the Board could not be sufficiently stressed. It was highlighted that, if a Director was allowed to discuss Board matters without a mandate it put all Directors at risk and would hamper the discussions of Directors in addition to such actions not being in the best interest of the SABC.

At the request of Members to be addressed on the allegations, Ms Zinde pointed out that people had been attacking the SABC at the ANC Workshop and Board Members who had been present had tried to make the SABC look good. She dismissed and refuted the allegations that she spoke badly of the SABC and stated that she never uttered anything about the issue of the Archives.

In responding to the interpretation of her response to the Acting Chairperson, more in particular, the statement that 'she was doing her job' and that 'she was not at the Chairperson's mercy', Ms Zinde pointed out that she had responded to the Acting Chairperson as honestly as she could and that she was aggrieved by the allegations as they were fabricated spurious lies. She stated that the procedure was not correct and requested to be presented with an opportunity to express herself. She stated that the Board must obtain the minutes of the ANC Workshop and voice recordings in order to establish facts regarding what was said. She confirmed that she had been angry when she wrote the e-mails to the Acting Chairperson as she had felt that she had been targeted by the Acting Chairperson because on numerous correspondences she had raised the issue of MultiChoice and the Archives to which the Acting Chairperson had not responded to a point that she felt that she was not being taken seriously. Subsequently, she had written to the Minister and laid a formal complaint regarding the manner in which she had been treated in the Board.

It was pointed out that the issue of MultiChoice and the Archives had been deliberated and decided upon by a fully quorate Board and that it did not make sense to keep on bringing the matter up.

Mr Naidoo pointed out that he had been present at the ANC Workshop and that a concern had been raised that SABC Board Members were supposed to be deployed by the ANC, however, they had taken a different turn on their appointment to the SABC Board.

Mr Motsoeneng requested Mr Naidoo to refrain from bringing political discussions to the meeting and stated that the SABC was a National Broadcaster and not a political party. He emphasised that Members were required to be independent as they had been appointed to the Board to serve the country and not a political party.

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HGM 4

ANNEXURE HGM 4

HGM-053

ARBITRATION HEARING HELD IN SANDTON AT THE SOUTHERN SUN

CASE NO: SABC

DATE: 12-12-2015

In the matter between

SABC

Claimant

and

HLAUDI MOTSOENENG

Defendant

HELD BEFORE PRESIDING CHAIRPERSON – ADV. W J EDELING

ON BEHALF OF THE CLAIMANT:

MR PHALANE

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ON BEHALF OF THE DEFENDANT:

MR MAJAVU

CONTRACTOR	:	LEPELLE SCRIBES
		P O Box 73090 Lynwoodridge 0040
		Tel. No.: (012) 817 – 2033 (051) 430 – 1052
		Fax: (086) 512 - 9211
		Cell/Sel: (082) – 866 9707



mt

PROCEEDINGS ON 12 DECEMBER 2015

CHAIRPERSON: Thank you before I start with my ruling is there anything that you Mr Phalane would like to add before I do proceed with the ruling and/or you Mr Majavu.

5 **MR PHALANE:** There is nothing to add Chair.

CHAIRPERSON: Thank you and you Mr Majavu?

MR MAJAVU: Nothing to add Chair.

CHAIRPERSON: That is funny but I enjoyed all the arguments of both of you gentlemen which I carefully looked at and applied my mind so
10 I thought if I just give you another opportunity if there is anything you would add please feel free to do that, you have now indicated that you do not want to do that, I now proceed with my ruling.

RULING

I think it is important to mention that a lot of history happened in this
15 matter prior to me chairing on December 7th, Monday 2015. On my arrival here on Monday morning at 09:00 I was informed that there was now a new initiator and he presented himself to me and so did Mr Majavu, I was informed that he had just received instructions and that he was seeking an indulgence to postpone the matter. Matter stood down and he was
20 requested to go and get proper instructions of what the magnitude was of his instructions so that I could properly apply my mind at the time.

We formally went on record and Mr Phalane on behalf of the employer who is the SABC requested that the matter be postponed and Mr Majavu on behalf of the employee George Hlaudi Motsoeneng



JUDGEMENT
12/12/2015

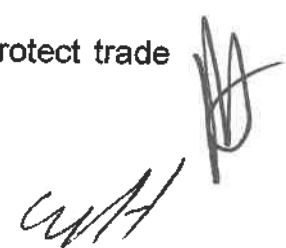
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HLAUDI MOTSOENENG
SABC

objected. Mr Phalane then got further instructions that he would be ready
on the evening around 20:00 and that time would be sufficient and upon
that information I then granted him the indulgence to stand over until the
next morning at 10:00 which was Tuesday the 8th. On Tuesday the 8th Mr
5 Phalane indicated that he was ready to proceed and so we did.

As we started on record again I was confronted with an application
to hear evidence in camera of three witnesses who were presently
employed by the SABC. Mr Majavu objected vehemently and Mr Phalane
based his application on the basis that these witnesses would be
10 prejudiced and since they are still in the employ of the SABC they would
prefer not to testify should it not be in camera. In the interest of justice I
made my ruling that I would hear the evidence in camera on a provisional
basis and later then adjudicate whether it should be lifted or not. I was
reluctant at the time to do that because of the following.

15 As I have indicated, during my ruling I will deal more in detail what
the prerequisites of hearing evidence in camera. It has been a
fundamental principle and trite that courts have always been hesitant to
hear matters in camera unless there are good and justifiable grounds as
necessary in a democratic society to do otherwise. Our constitution
20 reflects a strong emphasis on the openness and accessibility in the affairs
of government and the state agencies. A common concern for evidence
to be ruled in camera would be amongst others about national security in
cases where evidence aired before the public could present a security
threat, company's may also request hearings in camera to protect trade



secrets under the argument that being forced to disclose such information in public is damaging and unfair.

Confidentiality may also be extended to protect witnesses including people at risk for their testimony and young children who might be upset
5 by being in a crowded courtroom with strangers. Mr Justice Kriegler observed in Botha versus Minister of Law and Order 1993 SA 937 [Witwatersrand] 942 [C] and I quote,

*"The extent of this sort of public speculation and debate
indentation that the public in general has an intense interest in the
10 activities or suspected activities at issue. Extensive public interest is accordingly difficult to distinguish from a legitimate interest on the part of the public to know what the issue is about, he concluded that the antidote to widespread rumours, speculation and rampant bush telegrams is hard information not closed doors".*

15 The key principle is that of openness and accessibility to the public, the discretion to hear evidence behind closed doors should be properly and scrupulously exercised, not only has this been the fundamental principle in our case law throughout, also recently in the Supreme Court of Appeal the decision of Staggie versus The State 2012 [2] SACR 311
20 [SCA] confirms same. It is under those circumstances that after hearing the evidence that Mr Phalane motivated would be prejudiced, I could not find any prejudice in the evidence and consequently ruled that the evidence should be open to all, that being said and a lot of the history which was placed on record I do not think I am called upon to repeat all of




that it is fully on record as placed on record by Mr Majavu.

After that it was clear that I received an indictment with three charges which was exhibit A and Mr Motsoeneng pleaded on all three charges not guilty. I think suffice to say that exhibit B which is the
5 indictment deals in all detail with regard to the three alleged charges, I will shortly just refer to them, charge 1 deals with gross dishonesty alternatively misrepresentation and that it was alleged that the SABC records show that he commenced an employment at the SABC on or about 1 March 1995 as a trainee journalist.

10 When he applied for his position as a trainee journalist he completed an application form and the application form he indicated that he had passed standard 10 at the age of 23 with the following subjects, English, South Sotho, Afrikaans, Bibs and History. He was appointed in the abovementioned position on the basis that he had passed standard 10 as
15 indicated in this application form. I accept the alternative although not mentioned like that was alleged that he misrepresented the facts relating to his qualifications in that he did not possess standard 10 as alleged to have passed in his application form.

Charge 2 dealt with gross misconduct in that on 1 February 2012 he
20 transferred Miss Mtsweni from the position of general manager compliance to the position of head monitoring compliance operation services that was a new position which he created. He offered her fixed term contract for the duration of five years and a salary package of R1.5 million per annum. It was alleged that his position was never advertised




or that position was never advertised either internally or externally as required by the SABC recruitment and selection policy. It was further alleged that there was no interview process conducted in appointing Miss Mtsweni to the latter position.

5 It was further alleged that the appointment or promoted Miss Mtsweni to the latter position without having complied with the provisions of SABC delegation of authority framework or DAF. The specific provision of DAF is section G [3], section G [3] requires that an appointment of a person to newly created position must be approved by the SABC
10 executive committee. Miss Mtsweni's appointment to the latter position was never approved by the executive, he appointed on his own accord, it was therefore alleged that in that regard he contravened the provisions of the selection and recruitment policy of DAF and constituted gross misconduct.

15 Charge 3 was the abuse of his position in that it is alleged that during tenier as the COO he unfairly dismissed senior staff members of the SABC for differing in opinion with him, it was alleged that you directly initiated the dismissal or termination of employment of the following individuals. Ms Bernard Koma, Hosiah Jiyane, Sello Thulo, Montlenyane
20 Diphoko and Miss Mapule Mbalathi and Ntswaki Ramaposa. After the application to hear the evidence in camera was granted on a provisional basis which was later rejected as said herein above, Mr Phalane proceeded with his first witness which was Mr Jabulani Mabaso.

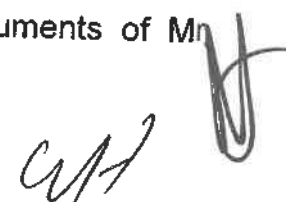
He testified that he was employed by the SABC on 3 June 2013 in

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the position of group executive human resources, he summarised his duties to include amongst others the development of people strategy for organisation, provision, people based solutions for the business and to ensure oversight on all human resource processes and policies in the
5 entire value chain starting from recruitment right up to termination of employment of employees. He also stated that the scope of his responsibilities makes him the custodian of all HR processes and policies.

In some instances where specifically asked about the procedure to follow when vacancies are filled, he indicated that either such a vacancy
10 may be advertised internally or externally or a combination of both internal and external. He however stated that in many stances they would lean favourably towards internal candidates how were suitable once are found to be in existence. He further stated that in instances where there is no appropriate policy dealing with the movement of employees they would
15 then rely on the best practice of what he described as the industry norm.

He further stated that there were instances where managers would use their discretion in motivating for such movement of employees and ultimately it would become the responsibility of the HR practitioner such as himself to create such a newly intended position together with its
20 responsibilities for purposes of ensuring the right grade and that commensurate compensation. He stated further one of his immediate tasks upon arrival at the SABC was to ensure that the personal files of all employees were regularised as they were in a state of disarray. He also remembers dealing with the issue pertaining to the documents of Mr

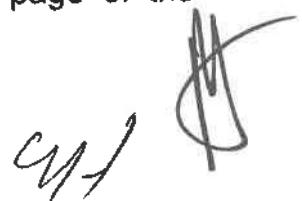


Motsoeneng as an employee amongst others.

However he indicated that he had no knowledge of the circumstances that could have led to his appointment back in 1995 as he was not yet in the employ of the SABC then, that meant that he could not
5 assist the disciplinary enquiry in any manner whatsoever with regards to the allegations or Mr Motsoeneng having misrepresented, falsified his qualifications to the SABC and with a view to securing a job. The other aspect of his testimony was related to charge 2 which had to do with the alleged unlawful appointment of Ms Sally Mtsweni by him as well as the
10 concomitant salary package attaching thereto.

Even on that score other than having explained the general politics and procedures as he understood them. He had no knowledge with regard to that specific appointment. He was confronted with a document which was received as exhibit 1 that purported to be an employment
15 contract between the SABC and Ms Mtsweni in the capacity of monitoring and compliance, he was asked to look at the last page, the execution page, and confirmed the signatories that appear therein. Initially it appeared that the signatories were Mr Motsoeneng and Ms Sally Mtsweni, let me just go to that exhibit.

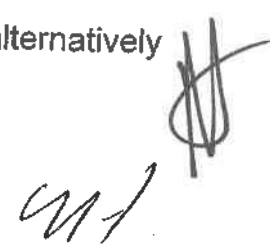
20 He was asked to look at the last page, the execution page, and confirm the signatories that appeared therein, initially it appeared that the signatories were Motsoeneng and that of Ms Sally Mtsweni. Under cross-examination it was pointed out to him that the first page of the document he identified is not necessarily a continuation of the last page of the

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document he identified. He conceded that there were two instances where there were two sets of signatories and they related to two substantive positions. He related to the position that is contained in charge 2, at the end of that particular document there were three
5 signatures, namely that of Mr Motsoeneng, Ms Sally Mtsweni and of Thabiso Lesala who was his predecessor.

He testified that the significance of Mr Lesala's signature confirmed the correctness of the applicable process that were followed. He could not make that point any further and he himself had no knowledge of how
10 that contract came to be concluded, he could therefore not assist with regard to charge 3 and had simply no knowledge thereof. Mr Mabaso's testimony as of a general nature and he basically referred to charge 1 and 2, he did not suggest that Mr Motsoeneng may have contravened any of the policies that he testified about including that of exhibit B, that was the
15 long and short of his testimony.

Second witness in camera at the time was Lorraine Fraser Francois, she testified that she was employed by the SABC in the position of chief audit executive, her duties amongst others but not limited to anything specifically was to the provision of assurance around effectiveness of the
20 SABC's business policies, procedures, compliance and forensics to related matters. She was led extensively on exhibit 2 which was the SABC's anti fraud and corruption policy. She referred to different triggering mechanisms that would lead her into action, it could be on the basis of a whistle blower who would have phoned the hotline, alternatively



any affected employee or any party who feels they have information to suggest that something untoward may have been committed by an SABC employee.

In that case she would then undertake an investigation and the
5 conclusion of which may then determine the appropriate steps to be taken. She confirmed that she was aware of the investigation that pertained to Mr Motsoeneng's qualifications however she did not prepare any report in that regard at best her evidence was of some general nature that there would have been, if there would have been some wrongdoing
10 by Mr Motsoeneng in relation to his matric qualifications that was all she could testify to and had no details to present.

The third and last witness who initially testified in camera was
Montlonyane Diphoko; he testified that he joined the SABC for the first
time in 1993 until 2003 when he left voluntarily and attempted some
15 business ventures which he did not yield any positive results. He later joined Media 24 as a Media practitioner and that did not work out for him, he later again joined the SABC in 2006, his evidence was led with specific reference to charge 3.

He was asked if he knew Mr Motsoeneng and he responded that
20 they met in the early 1990's when he used to work in Johannesburg and Mr Motsoeneng was stationed in Bloemfontein. They were both reporters at the same time, he regarded their relationship as collegial and from time to time they would meet at work related functions. He was eventually fired by the SABC in 2009 and he unambiguously attributed his departure

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from the SABC to Mr Phil Molefe. He specifically indicated that Molefe was on a charade of purging for reasons that related to how Mr Molefe himself left his previous position at the SABC and only to return in a different position.

5 He testified that the trouble started when Mr Molefe returned in his new capacity. According to him Mr Molefe ensured that all the management teams who were there when he left was fired. He referred to himself and Mapule Mbalathi and Mr Ntswaki Ramaposa in that regard. He indicated that as a matter of fact when Mr Phil Molefe achieved their
10 purging he utilised Mr Bernard Koma as the initiator and Mr Hosiah Jiyane as the Chairman of the disciplinary proceedings and one Mr Sello Thulo as one of the witnesses.

It was pointed out to him that as a matter of fact the six names who were contained in the charge sheet under charge 3 are supposedly the
15 ones who were directly dismissed by Mr Motsoeneng which he vehemently denied. He testified that instead stated that the last three names are the ones who purged but not by Mr Motsoeneng but rather by Mr Phil Molefe and such objective was achieved by the assistance of the three names mentioned in the same count on the charge sheet, he
20 repeatedly confirmed that Mr Motsoeneng had absolutely nothing to do with his termination of employment at the SABC.

He stated further that Mr Motsoeneng was in any event at the time still in Bloemfontein and was in no position to authority to have dismissed him even if he wanted to. It was pointed out to him that the wording in

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charge 3 seems to have been verbatim from the findings of the public protector and further that mention was made of his name in paragraph 10.5.2.1 under the heading direct involvement in page 140 and repeated in paragraph 10.5.2.7 at page 141 of the public protector's report. He
5 denied and testified that he never had any interview nor any consultation with the public protector.

He specifically indicated that he was never invited by the public protector and never spoke to the public protector about his termination of employment with the SABC. He confirmed that had he been invited by
10 the public protector or gone there of his own accord he could not have made those assertions because they are simply factually untrue. He however repeated in the proceedings that at no stage was he ever dismissed or his dismissal engineered by Mr Motsoeneng. He was adamant that his dismissal was engineered by Mr Phil Molefe with the
15 able assistance of Mr Bernard Koma and Hosiah Jiyane. The same was true of his fellow colleagues Mr Thomas Nhlabati and Ntswaki Ramaposa, that was the evidence of Mr Diphoko.

Fourth witness appeared and once again Mr Phalane requested that it be held in camera which was refused for the same reasons as already
20 referred to herein above. I heard then the testimony of Mr Bernard Koma. He testified that he joined the SABC in 1981 as a broadcaster in the then radio Setswana under the auspices of Radio Bantu until he left in 1991. He performed various functions ranging from broadcaster, translator, producer and boxing commentator. When he left the employ of the SABC

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he was holding the position of manager logistics.

Over and above his normal responsibilities he also acted as an initiator on behalf of the employer in disciplinary proceedings. In some instances he acted as the presiding Chairman and in such proceedings
5 he would deal with it, he even had to investigate and initiate a DC or a disciplinary hearing against Mr Motsoeneng which he stated was later aborted for reasons unbeknown to him. He was confronted and testified on exhibit D which I will deal with later. He recognised it as an employment similar one to which he completed when he joined the SABC.

10 He confirmed what was stated thereon notably the fact that there was a bold inscription on it written 'matric certificate outstanding'. He explained that it could also mean that it has never yet been achieved. He later conceded that on a mere reading of that form it was clear that the number of subjects indicated falls short of the minimum subjects that
15 ought to be passed before one could be said to have passed standard 10 which he said was between six and seven subjects. He nevertheless maintained that in this case he submitted both his matric and ...[indistinct] certificate was handed in when he applied.

He was unaware of the circumstances which preceded Mr
20 Motsoeneng's employment and thus had no personal knowledge thereof. Accordingly he could not take the matric issue any further. The bulk of his evidence related to how he felt betrayed in that he was wrongfully accused of having procured Mercedes Benz vehicles from Debbie's without following proper procedures. He mentioned Mr Motsoeneng's

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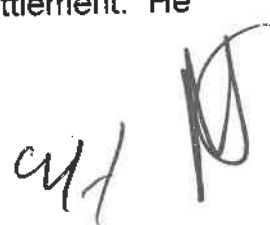


name on two occasions, on this regard he reflected to an incident when Mr Motsoeneng called him and informed him that he was with nine or ten colleagues and invited him to explain himself in the light of these allegations which he did.

5 He thought his explanation was acceptable however on the next occasion he heard Mr Motsoeneng stating in a press conference that they had fingered a manager in relation to that allegation and further that DC proceedings would be instituted against such person in the ordinary and normal course. He was aggravated by this, a few days later he received
10 a call from another employee of the SABC informing him that he must meet a messenger of the SABC to collect a document which turned out to be a charge sheet, this was on 18 November 2011.

On 21 November 2011, three days later, he voluntarily resigned in writing and consequently left the employ of the SABC before he could
15 face the DC. Those allegations were then never adjudicated, he testified that he was not charged or fired by Mr Motsoeneng. He always regarded the relationship as decent and collegial even when he preferred charges against Mr Motsoeneng up to date. He however did testify that Mr Motsoeneng told him that I am going to fire you however that was as far
20 as he could take it. He testified also that he sought and obtained legal advice which resulted in him referring his matter to the CCMA alleging constructive dismissal.

Before the constructive dismissal matter could be adjudicated upon by the CCMA both he and the SABC reached an amicable settlement. He



was employed back in March 1995. Most importantly he conceded that when he joined the SABC on 1 March 1996 Mr Motsoeneng had already been employed and he was thus personally unaware of the circumstances that led to that employment.


- 5 In fact he still does not know who concluded the form but assumed that it was Mr Motsoeneng. He testified that his interpretation of that form is that when someone puts next to the highest standard passed, standard 10, that person is misrepresenting that he had in fact passed standard 10 and regardless of any other information that may be inscribed in that form.
- 10 He also said the only interpretation to be placed on the words 'outstanding' with regards to the matric certificate is that the matric certificate should have been there and Mr Motsoeneng misrepresented the fact that he had it and that it was not on hand.

He later conceded that he had absolutely nothing to do with the

15 appointment of Mr Motsoeneng and therefore could not say the evidence of the people who were directly involved in his employment in 1995 when he was not even within the employ of the SABC. He was adamant that that form alone self standing is conclusive of Mr Motsoeneng's guilt in that he misrepresented his qualifications with a view to obtain a job as a

20 trainee journalist at the SABC. At some point in his evidence when he was pressured to answer the question he stated that the context is very important however in the case of the context pertaining to the form which was in any event completed a year or so before he joined that the SABC that the same context did not matter, all that matters was inscribed on the

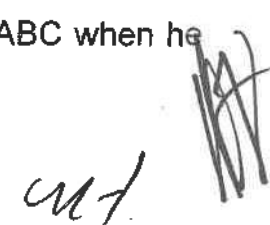
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testified that even after the matter was settled between him and the SABC amicably he nevertheless proceeded to register a complaint with the public protector that he did on his own and even at the public protector he attributed any direct blame on Mr Motsoeneng. He was confronted during
5 cross-examination with what a witness had testified earlier, one Mr Montlenyane Diphoko, who had as a matter of fact testified that he together with Mrs Mbalathi and Ramaposa were in fact the ones who were purged by Phil Molefe, Mr Phil Molefe with his assistance and Hosiah Jiyane the latter being the Chairman of the proceedings.

10 Interestingly Mr Koma response was that he was not going to comment on that and he was not present when such an allegation was made about him, that concluded the evidence of Mr Koma. Last witness was Mr Paul Tati, once again an application in camera which was refused and he testified in an open hearing with everybody present. He testified
15 at the very beginning of his testimony, he qualified it by stating that he felt that the SABC on whose behalf and in whose favour he is about to testify is attempting to either silence him or intimidate him by calling into question a contract which his close corporation concluded with the SABC approximately two years ago.

20 He further continued to state that he is nevertheless not lying that accused or suspicion at the door or on the shoulder of Mr Motsoeneng. He then testified at length about the employment application exhibit E and how according to his own interpretation that is conclusive of the fact that Mr Motsoeneng did misrepresent his qualifications to the SABC when he



form by some unknown person.

He was shown during cross-examination a copy of a letter I received as exhibit J, that he wrote on 27 March 1996 wherein he specifically he reminds Mr Motsoeneng to write the outstanding subject which he must
5 undertake by October 1996, I read from the exhibit, quote, it is a letter to Mr Motsoeneng trainee journalist radio news, from Paul Tati human resources consultant dated 27 March 1996,

*"Re: educational qualification. We refer to the conversation between yourself and the writer on 19 March 1996 in the above regard and confirm
10 that you have undertaken to write the outstanding course towards obtaining your matric certificate during October 1996. We also confirm that it was pointed out to you that the lack of the certificate will be a serious impediment in your career progression in the corporation. We wish you every success in your academic endeavours and advise we will
15 follow your progress with interest, yours faithfully Paul Tati, Human Resources Consultant".*

After he was confronted with this letter which he admitted that he had signed and that it was his signatory he mentioned that he had in fact spoken to Motsoeneng on two previous occasions about the matric issue
20 and he later confessed that Motsoeneng on the third meeting. He further stated in that self same Motsoeneng denied initially on the first two meetings, he told him that he had a matric certificate and on the third meeting he confessed that he did not. That was the totality of Mr Tati's evidence.

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Mr Phalane closed the case of the employer and Mr Majavu immediately ensued with the employees case. He called one witness Mr Alwyn Kloppers, Mr Alwyn Kloppers testified that he joined the SABC in 1977 and to date was still in the employ of the SABC and presently as the
5 general manager of the Gauteng Province of the SABC. He testified that his first encounter with Mr Motsoeneng was in 1993 at the steps of a government building where he had a meeting with Dr Mopele from the QwaQwa government. He indicated that within the first 60 seconds of his discussion with Mr Motsoeneng he informed him that he would like
10 permanent employment as a trainee journalist at the SABC and he had been made to believe that his lack of matric may be an impediment.

He further testified that Mr Motsoeneng was in any event as at the time a stringer or freelance journalist who was already filing stories with the SABC, later when the new dispensation came in and there was a
15 need to transform various regional stations he was informed that in Bloemfontein they were having difficulties locating a Sesotho speaking journalist. He informed them that he had previously told them about the talented young man by the name of Mr Motsoeneng who was already filing stories and performing various functions for the SABC albeit in a
20 freelance or stringer capacity.

That is how the discussions which resulted in Mr Motsoeneng being employed ensued. He made it abundantly clear that he was personally involved in the recruitment of Mr Motsoeneng and he informed all his colleagues and those who had the decision making authority about his


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situation including Mr Govan Reddy the news head of radio at the time. It is only person who had a problem was a one Jan Olivier in Bloemfontein with regard to the lack of his matric as disclosed by himself with employing him or being appointed.

5 At the end of it all and after a great deal of persuasion including by either senior executives from Head Office in Auckland Park Johannesburg he was appointed but only after the SABC itself sent Mr Motsoeneng to the Thompson Foundation to do a journalism course which covered various disciplines, it was only upon completion of that course that he was
10 permanently employed. His letter of offer was dated in February 1995 but he took formal employment only on 1 March 1995.

According to him that decision was already taken in Johannesburg at the Head Office and was to be implemented administratively in Bloemfontein. He was unaware of how the forms were filled however
15 there was nothing anyone in Bloemfontein could have done to reverse that decision for whatever reason. He said this when he was confronted with exhibit E and asked to comment on it. Most importantly he stated that it was shockingly completed and that it was poor HR work at play, had that form been completed in his office or under his supervision or
20 direction it would have been done in a manner that would not have yielded such confusion.

Be that as it may he conceded that he does not know who completed it neither does he know the circumstances arising thereof. He nevertheless dismissed it as a non issue as the decision to employ him

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had already been taken by those in authority to do so. Mr Kloppers dismissed the suggestion that Mr Motsoeneng lied in order to get a job as unfounded. He stated that Mr Motsoeneng had no reason to lie about it because he had already disclosed it back in 1993 and anybody who
5 mattered in his employment knew that so therefore it cannot be correct that the SABC now allege it was defrauded and that it would not have offered him a job had it known of this through matric status, that conclude the evidence of Mr Kloppers.

I should just deal with one last thing and that was when Mr, before I
10 evaluate the evidence, and that was when Mr Phalane requested a postponement to call a one Oosthuizen to qualify exhibit F which was provisionally admitted. I already ruled previously that I did not grant that postponement and it is trite law that requesting or applying for an indulgence such as a postponement one should place sufficient grounds
15 before a presiding officer to be in a position to judicially adjudicate either in favour or not.


With regard to the history of this matter it was quite clear as I also ruled earlier in the week that further delays in this matter would not be easily granted. On Tuesday morning Mr Phalane knew that and I had
20 also been told already on Tuesday that he was going to ask for a postponement for one Oosthuizen had apparently been in Mpumalanga if I remember correctly. I indicated in chambers that he better prepare properly and come with proper reasons so that I could apply my mind and adjudicate judiciously. On the basis that Mrs Oosthuizen, Elsha

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Oosthuizen would be called to testify I provisionally also allowed exhibit F although Mr Majavu vehemently objected again and although I did peruse the content of the document by merely glazing at it, one could see that there were lots of documents as annexure referred to it and some audit
5 internal investigation of which those exhibits were not appended to exhibit F.

Clearly was a document of a lot of information that she had investigated was mostly regard to documents and would probably come down to hearsay evidence or many other witnesses or where those
10 documents arrived from, be that as it may I allowed it provisionally on the basis that he would call her. At the end of his case when he applied for the postponement Mr Phalane told me that his witness would only be available on 11 January and requested or applied for such postponement. Mr Majavu once again vehemently objected and also indicated the history
15 of all the delays in the matter and also that he did not come cheaply, if I remember correctly.

Be that as it may the point is there are many peoples rights that must be taken into consideration and with requesting an indulgence it was clear that the application did not meet those grounds because they never
20 existed, I have not idea why she could not come, whether they did try and get her, whether some due processes were served on her I have no idea, be that as it may, on the basis that the application for postponement for her testimony was refused I finally now rule that exhibit F is disallowed. That brings me to the evaluation of the evidence.



I carefully considered each and every one of those witnesses testimony, I had the privilege of seeing them here testifying, I also had the privilege to see how they conveyed their evidence and cautiously evaluated each and every one of them in the manner and the method which they conveyed whatever they tried for me to accept. I must say that I never had any impression that any of them were bad in the sense of intentionally lying or trying to manipulate any one of us here. With regard to first three witnesses, I can only say that I was impressed with Mr Mabaso's evidence, when he had to conceded he conceded and when he did not know he told this hearing so.

Same goes for Ms Lorraine Francois and I must say I was quite impressed by Mr Montlennyane Diphoko, he came over very calmly, did not try to act, he testified chronologically about his whole refrain and I could clearly see his embarrassment when he for the first time saw the details in charge 3. I have no doubt that whatever Mr Diphoko or Francis or Mr Mabaso told me is correct. The fourth witness Mr Koma was a character of his own, I must say he was a gentleman with a long history in the SABC and a reputable identity in himself.

He impressed me and I could see that he was a person that had a lot of respect in the past. I got the impression that he basically came to tell us that he was heartbroken and that he had suffered severe disappointment, be that as it may I am not called upon to adjudicate whether he would have been acquitted or not at the time when he resigned before the disciplinary hearing, the mere allegation that

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Motsoeneng might have told him that he is going to fire him, he himself admitted many DC's people get acquitted and many get convicted, he could not say but he had made his mind up at the time that he was thinking because his mother had passed on and he was just under too
5 much pressure and I got the impression that he actually told us that he should never have resigned.

Be that as it may he never directly or indirectly indicated that Mr Motsoeneng was instrumental to his disciplinary hearing, he could not take the matter any further, that he went to the public protector basically
10 because of a constructive dismissal but not because he was purged by Motsoeneng. What is quite interesting is that he failed to answer when he was confronted with what Diphoko had said with regard to Phil Molefe. He elected not to answer.

The last witness was Paul Tati. The impression I got from Mr Tati
15 is that he was a responsible man. He actually indicated that he was a commissioner at the CCMA and he was a senior gentleman in the society and had come a long way since 1996 with the SABC. What is of concern, what concerns me, however, is that how he started his evidence. He gave me the impression that him as a lawyer and a chairman or presiding
20 officer in various matters needed to place something on record with regard to the contract he has with the SABC, and that he does not take likely to it with the words that he used, to feel, to be intimidated by making certain allegations with regard to some investigations that might ensue.

I quote from his testimony. This was his examination in-chief by Mr



Phalane:

"Mr Tati, where are you employed at the current moment?

Chair, I am practicing attorney, practicing for own account.

Were you ever in your life got employed by the SABC?

5 *Chair, if I may make a request before I go into that details of
my testimony, and I said yes. Then Mr Tati said: It may
sound irrelevant at the beginning, but there is a point which
I need to make which has a bearing on the proceedings. I*

*am a member of a close corporation in Centurion called
10 Mkoka Training. This company, and then it is intervened.*

*He then testified: Yes, I am a member of the close
corporation. This close corporation, Chair, provides
technical training services. We train broadcast engineers
for the broadcast industry. One of our clients is the SABC.*

15 *I have been two years ago in 2012, coming on to 2013 to
negotiate a three-year contract with the SABC and that
contract is coming to its end at the end of 2016, which is
next year. Chair, I am, two weeks ago I was requested to*

20 *avail myself to testify in these proceedings and I have since
learned from the HR person who negotiated the contract
with me, together with others, that she now are being
placed on suspension for alleged irregularities relating to
this contract. I see it as, I do not understand why the SABC
would behave in this way. If one has regard to the fact that*


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I am here to actually provide information on what I know about this matter, on this matter before you, the only inference I can make from what has happened is that there is an attempt to intimidate me. I do not take kindly to it "

5 Mr Tati came over well, he was skaam(?), responsible, but there are some issues around his evidence which bothers me. I quote from the record when he was appointed in Bloemfontein. Now bearing in mind that what Mr Kloppers testified is that he at the time of before 1994, even in 1993, was tasked to vigorously, he testified, implement transformation
10 and it was in the Eastern side of the Free State and he had no problems, except in Bloemfontein. They were reluctant to transform, and what more is, notwithstanding the fact that he had directed them to Mr Motsoeneng, who was a young talented man, eager, and had already been employed on a stringer or freelance basis, was paid by the SABC, and they should
15 utilise his services, specifically at the time in 1993, 1994, 1995, when all the pressure was on the SABC to transform.

Interestingly Mr Tati comes from Bloemfontein and there was something very interesting he testified when he started off with his testimony. I am going to quote from the record, once again led in-chief by
20 Phalane, Mr Phalane, Mr Tati answers:

I was employed as the HR consultant in the SABC Free State in Bloemfontein, this was on 1 March 1996. What were your responsibilities there? Chair, my responsibility included providing HR support to the different SABC



businesses, units that were housed at the Free State office. To develop an HR strategy, to support the business, to control an HR budget to also supervise the activities of one staff member who worked under the Marie Swanepoel, and basically to provide a generalised HR service which included training and development labour relations. Resolution of labour relations, problems and so on and issues. Do you know the man that is sitting in the middle between, I will point at the witness sitting on the middle. In the middle my microphone cannot see, you refer to Mr Motsoeneng? Yes. I know him very well. He is one of the staff members who was employed at the SABC at the time in Bloemfontein? Yes. What are his name? I used to call him Hlaudi. But he is Hlaudi. Thank you. I in fact never knew, never knew he had an English name, because I just never addressed him as such, by his English name. I have always called him Hlaudi. During Mr Motsoeneng's employ at the SABC and your employ, how was your relationship? It was actually very good, for good and long period of time, or rather for the entire period that I was in the Free State, we had a very good relationship. He used to refer to me as Tonakgolo. Tonakgolo? Yes, it means premier or president or something. He saw me as a leader and



such, and that he is, and how he is used to me.

I jump a little bit in the record and I go to the following and I quote again:

Chair, if I may just ask to give you some background.

5 *After I arrived in Bloemfontein Marie Swanepoel told me about the outstanding form, I mean matric certificate. I then planned my week in that first week to meet with all business unit managers to understand their issues. To understand their strategy and to ask them to tell us as*
10 *human resources how we can support them. The manager for radio news at the time was a lady called Helena Botes and when we, when I met with Helena one of the things that she left me with, she said to me Paul, we have employed a junior reporter from QwaQwa. He said*
15 *he has got a matric certificate. We have now spent a year asking him for his matric certificate. He has not submitted it and hereafter I requested Mr Motsoeneng to attend at my office.*

This now bring me to EXHIBIT E, the application form that is
20 *referred to for employment. I provisionally admitted this document and Mr Majavu and everybody has addressed me on whether I should allow it finally or not. I think it is important that I first place on record, which I have in front of me in detail, which is important. One should not forget that this document should derive from Bloemfontein, where the people*



were reluctant to appoint people who did not have matric certificates. We should also remember what Mr Kloppers told us. He said notwithstanding whatever Bloemfontein wanted, at very high level Mr Motsoeneng's appointment was accepted without a matric certificate, because of the
5 time the transformation was most important.

It was never the testimony of Mr Kloppers that Motsoeneng was conditionally appointed on the basis that he gets a matric certificate. It was clear to me in his evidence that it was abandoned. The document, exhibit E, is firstly a photo copy and you do not have to be a handwriting
10 expert to see that the different pages have different handwritings on. There is one page here and it is also not clear to me whether it is in chronological order.

There is one M Swanepoel that signed on page 247 of whatever record this was, dated 15 February 1995, confirming the commencement
15 date of 1 March 1995. What is suspicious is that there are certain blocks on these documents that you cannot see, they are faded and then others are clear. Furthermore, there black, big letters written in another handwriting again "outstanding matric certificate 3/95" that is suspicious to me with regards to the testimony of Mr Kloppers.

20 It was common knowledge in the SABC, up to the highest levels that a matric certificate was not outstanding. At no stage and no document placed before me was there any indication that his permanent employ was subject to obtaining a matric certificate. The first person who spoke about that was Mr Tati. Mr Tati confronted Mr Motsoeneng after

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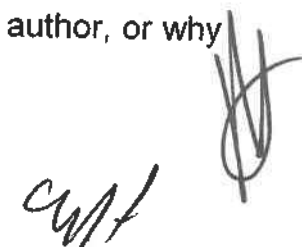
Mrs Botes, Helena Botes when he tot there told him about the man that did not have a matric certificate. I find it very strange that neither Mrs Botha or Botes, nor Mrs Swanepoel were called to come and put lights on this matter with regards to this document.

5 What bothers me further is, on all the pages, there is nothing at the bottom, but here on one of the pages is a brand marking of Ingang Printers, which is on none of the other pages.

 Lastly, but not the least, is the last page in this chronology which refers to work history of the so-called applicant. This is neat and clean,
10 whilst we know that that cannot be true, it was Mr Motsoeneng. Because previously he had been a stringer with the SABC, previously he had been a freelancer with the SABC. I fail to understand why this was not filled in, had been, he been the author. Because I cannot see why he would not have filled it in.

15 Be that as it may, even if I am wrong with regard to my perceptions of this document I have no idea who filled it in. It was for the employer to prove that, or whoever the author of the information on this document was to presume or to accept the speculation. It is not for the employee to speculate where this document derive from. Obviously he could have
20 come and told me, but surely he first has that burden to rebut, where there is sufficient evidence before me to say where does this information come from? Who filled these forms in?

 There is a Swanepoel here, there is a Botes who informed Mr Tati, they do not get called. I am not here to speculate who the author, or why



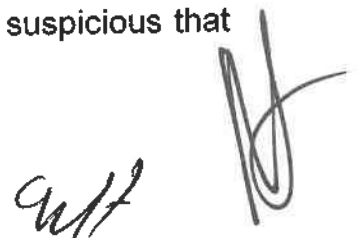
this document should be ruled as authentic. Clearly to me in my view this document does not meet the standards of documentary evidence to be accepted as authentic. Even if I said, and if I am wrong in this regard, whatever is enrolled on here can never be accepted, because there are
5 so many various versions of where this could have been derived from. Probably could be Mr Motsoeneng, it could be Mrs Swanepoel, it could be Mrs Botes, it could be Mr Jan Olivier, I do not know.

Consequently in the premises I therefore refuse to finally accept this document and I dismiss or lift the provisional acceptance of exhibit E.

10 Having said that I think I need to make special reference of Mr Kloppers, Alwyn Kloppers' testimony. He was the witness that impressed me the most. He was calm and sometimes got agitated, but the way in which he presented himself, not only on national TV with regard to one of the exhibits, he had submitted to me in evidence exhibit Q, he alluded to
15 many things and could not understand why the public protector invited him, he could not understand why Mr Tati did not invite him.

He had been there for many-many years, since 1977. He had recruited Mr Motsoeneng. He saw a talent in him and he had fought up to the highest level to have him there. Nobody, but nobody called him to the
20 public protector, notwithstanding his public appearances on national TV and on court papers, nobody listened to him. He thought it is his duty to come and testify in this enquiry or hearing, to tell the public what had transpired at the time.

As I have indicated previously in this ruling, I find it suspicious that

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at the time when Bloemfontein was reluctant with the transformation at the time, especially under the leadership of Mr Jan Olivier, that these two lady's influenced Mr Tati. Perhaps wrongfully, perhaps Mr Tati never knew, but however, I accept the evidence of Mr Kloppers as the correct
5 version. Mr Tati had been influenced by people at the time who knew that he did not need a matric certificate and conveyed information to Tati which was not correct.

I therefore weigh the value of Mr Kloppers' evidence as the more probable and more acceptable evidence of what had happened or
10 transpired at the time.

With regard to the charges that Mr Motsoeneng stands to be adjudicated upon, it is clear with regards to charge 3, starting from the back that the evidence of Mr Montlenyane Diphoko fatally flaws that charge in all spheres. The one that came the closest to having perhaps
15 Mr Motsoeneng answer on that was Mr Koma. But even if you evaluate his evidence with regard to Mr Diphoko it is crystal clear there was none of these allegations ever present as more fully set out in charge 3.

With regards to charge 2, I fail to understand why that charge was ever put to Mr Motsoeneng, suffice to say that I just got informative
20 evidence from the in-camera witnesses with regard to that charge. Nobody testified why Mr Mtsweni got the job as set out more fully in the charge I have no clue why he was charged with that charge of any evidence that was placed before me.

Charge 1 is the one that has more meat around it, and there, there



are various witnesses that looked at exhibit E, as I have already dismissed, and that of Mr Tati. The only person that really points a finger to him is Mr Tati. I have already indicated that the evidence conveyed to this hearing by Mr Tati is probably suspicious in regard to what he was told by people in Bloemfontein at the time, who was clearly lying to him. I can only make an adverse inference with regards to why they were not called. It is probably because they had nothing to say with these kind of issues that Mr Tati raised.

With regards to the failure of Mr Motsoeneng to testify, Mr Phalane requested me with various case law that I should raw an adverse inference from that. I agree with Mr Majavu. Had exhibit E had more evidential value I would have certainly have drawn an adverse inference if he failed to come and explain if it had been proved that he was the author of that document or either the information contained in that document.

I cannot draw such an inference when there is not sufficient evidence before me. The evidence that he had led in his matter with Mr Kloppers is impressive and credible. I therefore find finally the following with regards to charges 1 to 3. Mr Motsoeneng is discharged on charges 1 to 3.

Thank you Gentlemen, that will then be the end of this hearing, thank you for the time, you are excused.

HEARING ADJOURNS

HGM4 B

ANNEXURE HGM4B⁵

HGM-086

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CC. NO.

SCA NO. 301/18

LAC Case No: JA152/17

LC No: J1592/16

In the matter between:

HLAUDI GEORGE MOTSOENENG

Applicant

and

BEMAWU

First Respondent

BUSISIWE NTULI

Second Respondent

LUKHANYO CALATA

Third Respondent

THANDEKA GQIBULE-MBEKI

Fourth Respondent

**SOUTH AFRICAN BROADCASTING CORPORATION
(SOC) LIMITED**

Fifth Respondent

and *in re*:

Case No.: J1343/16

SOLIDARITY

First Applicant

FOETA KRIGE

Second Applicant

SUNA VENTER

Third Applicant

KRIVANI PILLAY

Fourth Applicant

JACQUES STEENKAMP

Fifth Applicant

And

**SOUTH AFRICAN BROADCASTING CORPORATION
(SOC) LIMITED**

First Respondent

HLAUDI MOTSOENENG

Second Respondent

MALAKO SIMON TEBELE

Third Respondent



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**FOUNDING AFFIDAVIT IN THE APPLICATION FOR LEAVE TO APPEAL IN
TERMS OF RULE 19(1) OF THE RULES OF THE CONSTITUTIONAL COURT**

I, the undersigned,

HLAUDI GEORGE MOTSOENENG

do hereby make oath and state that:

INTRODUCTION

1. I am an adult male and was dismissed as an employee of the South African Broadcasting Corporation Soc Limited ("SABC"). Prior to my dismissal, I was the SABC's Group Executive for Corporate Affairs. I was also its Chief Operations Officer until my appointment was set aside by the Western Cape High Court. I am the applicant in this application leave to appeal against a judgment of the Labour Court. I revert to this aspect later.
2. The facts herein contained are within my personal knowledge, save where otherwise stated, or otherwise indicated by the context, and to the best of my knowledge and belief, both true and correct. I am not legally trained. Where I make statements of a legal nature or come to any legal conclusion, I do so on the advice of my legal representatives and I accept the advice so given.
3. As alluded to, this is my application for leave to appeal against a decision of the Labour Court by His Lordship Mr Justice Gush ("Gush J") decided on 8 September 2017 under Case No: J1592/16. The reasons for the Court order were subsequently provided on 15 September 2017. I attach hereto duly marked as Annexure "HM1" copy of the court



order. I also attach copy of the reasons therefor as Annexure "HM2". My application for leave to appeal was dismissed by Gush J on 7 November 2017. I attach copy of the order hereto duly marked as Annexure "HM3". My application for leave to appeal to the Labour Appeal Court was dismissed on the papers on and I attach copy of the order as Annexure "HM4" and my petition for leave to appeal to the Supreme Court of Appeal was struck off the roll for want of jurisdiction, with costs on attorney and client scale, on 31 May 2018, also on the papers. I attach copy of the ruling hereto duly marked as Annexure "HM5".

4. The parties in this application are as they were before the Labour Court, except that in this application, I am the applicant for leave for appeal.

RELIEF SOUGHT

5. This is an application in terms of Rule 19 of the Rules of the Constitutional Court for leave to appeal the order of the Labour Court by Gush J already attached hereto as Annexure HM1. In terms of the aforementioned order, I was ordered to pay costs pursuant to a consolidated application, consolidated only for purposes of determining costs, even though I was not a party to any of the consolidated applications when the merits were heard and determined, and even though there was no evidence before the court which implicated me in any wrongdoing that could attract a cost order. I was ordered to pay costs jointly and severally with the SABC (first respondent) and its employee, Malako Simon Tebele ("Tebele") on attorney and own client scale, including the costs of two counsel. The cost order relates to the two separate applications before they were consolidated and after consultation.¹

¹ Orders 1, 2 and 4 of Annexure HM1.



6. The case is unique in that I was mulcted with costs and on punitive scale for that matter even though I was not a party in the two separate applications and related court proceedings determining the merits of the cases, and even though all evidence before the Court exonerated me from any liability for wrong doing. In the absence of any evidence which points to anything wrong that I have done, I can't help it but get the impression that I am being punished merely based media campaigns in which my name has been sullied without any evidence.

7. In the above regard, I seek the following orders:

7.1. That leave to appeal to the Constitutional Court against the order of Labour Court per Gush J under Case No: J1592/16 be granted.

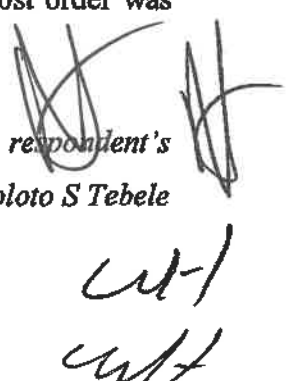
7.2. The order and judgment of the Labour Court per Gush J, under case number No: J1592/16, is set aside, in so far as it directs costs against me.

7.3. Costs to be awarded to me, such costs to include the costs of two counsel where applicable.

BACKGROUND TO THIS APPLICATION

8. In two separate applications, the respondents sought to overturn the decisions of the SABC to take disciplinary action against eight of its journalists for a variety of reasons. In the first judgment of Lagrange J, dated 26 July 2016 (Case No: J1343/16), the SABC decisions to discipline the three journalists were set aside. A punitive cost order was granted with the further order that:

"79.5. *Within five days of this order, Sebolelo Dithakanane, the respondent's General Manager: Radio News & Current Affairs and Moloto S Tebele*

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Acting Group Executive: News and Current Affairs, must file affidavits showing cause why they should not be personally be held liable for all or part of the costs of this application, such costs to be paid on the attorney-own client scale and including the costs of two counsel.

79.6. *The determination of the final apportionment of liability for payment of the applicants costs of the application including the costs of two counsel as between the respondent and any of its officials or employees is postponed sine die, and may be enrolled by any of party for determination once 20 days have elapsed from the date of the order."*

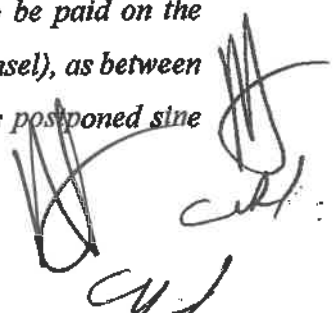
9. As can be gleaned from the above order, my name was not included in the list of officials required to comply with this order. The reasons for this is that I was not a party, either in my personal or official capacity, in that application. I attach a copy of the judgment as "HM6".

10. Two days after the judgment of Lagrange J, a second judgment was handed down by Honourable Mr. Justice Gush dated 28 July 2016 (Case No; J1592/16) also setting aside the decisions of the SABC to discipline five of its journalists but ordering the following:

"7. *Within five days of this order, the respondent shall file an affidavit indicating which its official(s) were involved in the decision to terminate the second to fourth applicants' contract of employment with effect from 19 July 2016 in the case of the fourth applicant.*

8. *Within five further days, the official(s) concerned, referred to in paragraph 7, shall file an affidavit showing cause why he/she/they should not be held personally liable for the costs of this application, such costs to be paid on the attorney-client scale and to include the costs of two counsel.*

9. *The determination of the final apportionment of liability for payment of the applicants' costs of the application (such costs to be paid on the attorney-client scale and including the costs of two counsel), as between the respondent and any of its officials or employees is postponed sine*



die, and may be enrolled by any party for determination once 20 days have elapsed from the date of this over, provided that this matter shall be dealt with together with the matter of Solidarity and Others vs SABC (SOC) J 1343/16"

11. I attach a copy of the judgment as "HM7". I was also not cited in this application as a party, either in my personal or official capacity. I was not mentioned by name in the cost order either. In terms of the aforementioned order the SABC had to indicate the officials that could be held liable in their personal capacities for the impugned decisions.
12. Given that I had not been cited as a party in these proceedings, no order was competent against me. Two further procedural orders were made by the Honourable Court in two different further applications. In one of those procedural orders, I was not cited as a party in any capacity. The first procedural ruling was the consolidation of both applications (the Lagrange J and Gush J orders) for purposes of the determination of costs. I attach a copy of the consolidation order as "HM8".
13. Since I had not been joined or cited as a party, no order was made against me to comply with anything. However, one of the applicants decided that I should be joined as a party for the purposes of determining whether I was the SABC official who should be held personally liable for the punitive cost orders. Such an inquiry could only be made in terms of the order of Gush J – which directed the SABC to indicate which of its unnamed officials could be held personally liable for the punitive cost order. The order of Lagrange J required only two officials to file affidavits in response to the cost order.

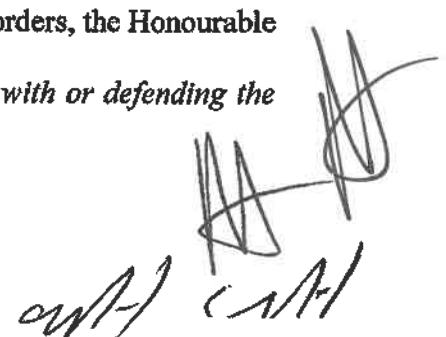
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14. An application to join me as a party was made, for the first time after the both Honourable Justices Lagrange and Gush had determined, in their respective judgments, the merits of the dispute with the SABC. The application to join me was based on allegations that, despite the incontrovertible evidence submitted by the SABC, I should personally be held liable for costs for allegedly championing the so-called Protest Policy. The Honourable Court granted an order directing that I be joined as a party. I attach copy of the order as "HM9".
15. It must be emphasized that the order of Lagrange J did not require me to provide any response or to do anything. It had identified only two officials for the purpose of determining personal liability for costs. The order of Gush J had not mentioned me by name but broadly referred to unnamed officials of the SABC. I was brought within the ambit of these unnamed officials not by the SABC which had been ordered to do so but by the respondent unions, namely BEMAWU and SOLIDARITY. It was not the SABC that named me as an official to be held personally liable for the punitive cost order but the respondent unions. I attach a copy of the affidavit filed by a union representative supporting why I should be joined and held personally liable for the costs as "HM10".
16. After the order directing that I be joined as a party, I filed an affidavit explaining why I should not be held personally liable for costs. Given that my joinder had been ordered after the conclusion of the dispute between the parties on the merits, I could not address any issue on the merits of the application. Those issues were moot and superfluous for me to address the merits of the dispute that the courts had already determined. I confined my affidavit to the issue of costs. I attach a copy of my affidavit attached hereto as Annexure "HM11".

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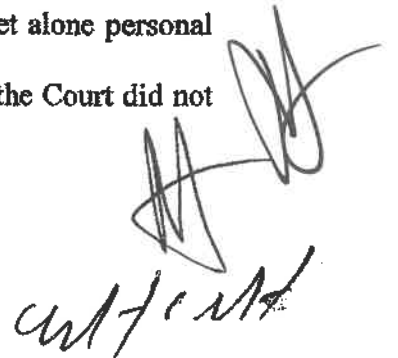
17. The relevant SABC officials also filed their respective affidavits in compliance with the court orders. I attach the affidavits in their sequence, namely "HM12" is a copy of the affidavit of Mr James Aguma, "HM13" is a copy of the affidavit of Sebolelo Ditlhakanane, the SABC's General Manager: Radio News & Current Affairs and "HM14" is a copy of the affidavit of Moloto S Tebele, Acting Group Executive: News and Current Affairs.
18. The Honourable Mr. Justice Gush made the order in terms of which I would be held personally liable, together with the SABC and Mr Tebele, for the costs, already attached hereto as Annexure HM1. The reasons for the order granted are set out in a judgment attached already hereto herein as "HM2".
19. As pointed out in my introduction, my application for leave to appeal this order and judgment was dismissed. The Labour Appeal Court also dismissed my application for leave to appeal to it in an order of Gush J and my petition for leave to appeal to the Supreme Court of Appeal was struck off the roll on the basis of lack of jurisdiction to determine appeals from the Labour Appeal Court.

THE LABOUR COURT BY GUSH J ERRED IN FINDING THAT I WAS RESPONSIBLE FOR DISMISSIN THE JOURNALISTS FROM THEIR EMPLOYMENT AT THE SABC.

20. In exercising judicial discretion to grant the aforementioned cost orders, the Honourable Court considered the *"conduct of the parties: (i) in proceedings with or defending the*
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matter before the court; and (ii) during the proceedings before the court.” (Para [9] of the judgment Annexure HM2.) What should immediately become apparent is that my conduct was not assessed for purposes of determining the merits of the applications. I was not a party to the dispute before the determination of liability for costs. What happened was that the applicants failed to join me as a party to the proceedings for purposes of determining the merits of the application. I was only joined after the merits had been determined and only for the purpose of determining whether I should be held liable for costs. This approach violated my right to defend myself to the extent I was implicated personally in the determination of the merits. My conduct was therefore not an issue when the court determined the merits of the dispute between the applicants and the SABC.

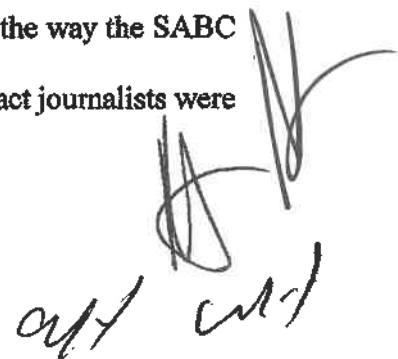
21. The only stage at which my conduct could be assessed was when the issue of my joinder and costs were raised. This was raised not by the SABC but the trade unions to which the affected SABC journalists belonged. The court does not criticise my conduct during the proceedings for my joinder but does so for a matter not even remotely related to the issue of costs. For some unknown reasons, the Honourable Labour Court found that I was in a position to interfere and order that decisions of line managers to subject employees of the SABC to discipline should be stopped. That, as shown through credible evidence, is far from being the true position.
22. The Honourable Court did not criticise my conduct in the proceedings for the determination of liability for costs. I filed my affidavit and nowhere does the Honourable Court find that I acted in a manner that should attract any liability, let alone personal liability on such a punitive scale. I told the truth in my affidavit and the Court did not

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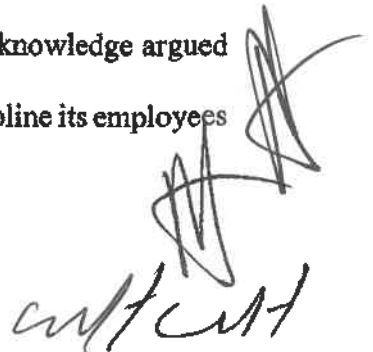
find that I was not telling the truth when I denied being involved in the impugned SABC decisions.

23. The only reason, it appears, for holding me jointly liable for the punitive cost order is that *"there can be no doubt that the second respondent was if not the author, an enthusiastic proponent of the Protest Policy and its application in respect of the employees of the first respondent: So much so that the interdict applied to him personally."* [para 14]. Even if this were to be true, it is unclear why I should be held personally liable for administrative or operational decisions taken by the relevant executives to discipline the employees of the SABC. I did not, and there is indeed no finding, that I took a decision to charge the relevant journalists with misconduct.

24. I was under a duty to support the policies of the SABC and I did so responsibly and within the scope of my duties. It is not accurate that my involvement in promoting a policy against the live reckless broadcast of violent images of people burning down buildings and at times people, should attract a punitive cost order in this matter. Since I was not cited as a party in my personal or official capacity in any of these applications, I did not have any opportunity to answer the charges of involvement in the so-called Protest Policy. This approach failed to take my right to equality before the law and access to courts, both of which are guaranteed in the Bill of Rights, into account. If I had been a party to the dispute, and the issue of my involvement and personal beliefs on the so-called Protest Policy came up, I would have defended myself accordingly. I was only confronted with this charge when the court had already determined that I was to be held liable for costs on account of what it had decided on the merits. By the way the SABC did not burn the live broadcast of images during protests as such. In fact journalists were



cautioned to be sensitive in broadcasting situations where schools or clinics were being burned down as there could be situations where people who were in the clinics or schools were burned alive with the buildings. The aim was for journalists not to show the brutality of people being burned alive. This is, however, irrelevant to the charges which the journalists faced because they were not charged for violating the Protest Policy but effectively for tarnishing the name of the SABC.

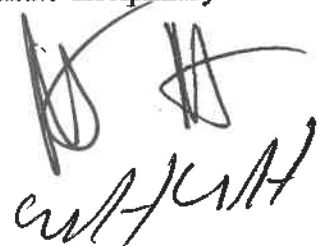
25. My view which remains today, is that violent images of protesters burning down hospitals and schools and at times people should not be broadcast live irresponsibly. There are people who differ with me on that issue but I do not believe that the Honourable Court should have punished me with a cost order on the basis of my views on this policy. Such an order is inimical to and inconsistent with my rights guaranteed in section 16 of the Constitution. For
26. The learned judge then found that I had failed to *"comply with the interdict (thus necessitating that the applicants' were obliged to pursue their urgent applications) justifies an order that he be ordered to pay the applicants' costs jointly and severally."* (Para [19] of the judgment Annexure HM2.) This clearly required that I am a party to the dispute prior to the court making its cost order. I was never found to have acted in contempt of the court order referred to in that judgment. Had I been a party to the dispute from the beginning and my liability in terms of the interdict raised, I would have been in a position to defend myself. The Honourable Court found me guilty of failing to give effect to a court to prevent disciplinary hearings from taking place without affording me the opportunity to deal with that matter on its merits. No-one to my knowledge argued that I was required to stop the SABC from exercising its power to discipline its employees
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in terms of the court order. Such an argument would have required that I am a party to the dispute on the merits and not only for determining liability for costs. The court did not find that I had failed to comply with the interdict in that I had allowed the SABC to proceed with disciplinary hearings in contravention of that interdict. A finding that I was personally ordered, in terms of the interdict, to prevent the SABC from exercising its duty as an employer is wrong and fails to distinguish my personal capacity and official capacity. Even though I had been cited as a party in that interdict application, it was not personal capacity in terms of which I would be interdicted. It was in my official capacity that I was cited. I attach a copy of the interdict referred to by the Honourable Court as "HM15".

Gush J failed to exercise proper judicial discretion

27. The Honourable Mr Justice Gush failed to exercise proper judicial discretion in that he ignored all the incontrovertible evidence that was before him – which was the following:

27.1. I did not take any decision to discipline the affected SABC journalists in conflict with my obligations in terms of the interdict of 20 July 2016. It is clear, having regard to the terms of the order that I did not contravene its terms. The interdict must be read together with the charges against the applicants as set out in their respective charge sheets attached herewith as "HM16" to "HM22". As can be seen from the charges, none had anything to do with the enforcement of the interdict or the policy of the SABC that had been the subject of the interdict in terms of the order of 20 July 2016. Even if it were found that the charges were related to the Protest Policy, the evidence was overwhelming that I was not responsible for the charging decision. The incontrovertible evidence was that the acting Group Chief Executive Officer ("GCEO"), Jimi Mathews, was responsible for giving direct instructions to the relevant executives to institute disciplinary

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proceedings against the affected SABC journalists. I was not at all involved in this disciplinary process and I did not understand the order of 20 July 2016 to require me to stop the acting GCEO from giving instructions that disciplinary action be taken against employees of the SABC.

- 27.2. There was no evidence that I was the author of the so-called Protest Policy. The evidence was that the policy had been unanimously adopted by the Board of the SABC and that it became my responsibility as the then Chief Operations Officer ("COO") to ensure that the policy of the SABC was complied with and implemented within the SABC and its rationale, understood by the public. My responsibility was to communicate to the public the rationale of the SABC Policy and to ensure that, within the SABC, it was implemented. My conduct was neither unlawful nor in contravention of the SABC policies. It is unfair and unjust to punish me for performing my contractual obligations to the SABC by ensuring that its policies were complied with by its employees. In any event, I did not charge the employees of the SABC who defied the policy. At best I would have been a witness to the disciplinary proceedings to give evidence of what the policy required.
- 27.3. There was simply no finding by any court that I had acted in contempt of the court order of 20 July 2016. The applicants in all the applications that they brought against the SABC, never sought to enforce the terms of the order or to hold me to be in breach or in contempt of the court order.
- 27.4. It is simply not correct that the charges brought against the employees of the SABC were brought to enforce or implement the so-called Protest Policy in contravention of the order of 20 July 2016.

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28. In any event, I was not specifically required, in terms of the court orders directing that reasons as to why punitive costs against SABC officials should not be granted, to deal with the High Court order of 20 July 2016. What I was required to do was set out in the two court orders and are reproduced in paragraphs above.

The order of Honourable Mr. Justice Lagrange

29. The order of Honourable Justice Lagrange required two officials of the SABC, Ms Sebolelo Ditlhakanane, the SABC's General Manager: Radio News & Current Affairs and Moloto S Tebele, the then Acting Group Executive: News and Current Affairs to file affidavits explaining why they should not be held personally liable for the punitive cost orders. They complied with the order and filed the said affidavits. I have attached copies of their affidavits as "HM13" and "HM14" above respectively. As can be seen from the order above and the subsequent affidavits filed, I was not identified as the person responsible for the impugned decisions.
30. The SABC's then acting GCEO, Mr Aguma, complied with the order and filed an affidavit which I have attached as "HM12". Mr Tebele confirmed the contents of the affidavit as can be seen in his confirmatory affidavit herewith marked "H12A". Once more I was not identified as the person responsible for the impugned decisions.

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31. A very glaring but missed aspect of both orders is that none of them required me to explain my role in respect of the order of 20 July 2016 which is the only basis on which I have now been mulcted with a punitive cost order.
32. The hearing on the issue of costs had nothing to do with enforcement of the interdict of 20 July 2016 against me. A finding that I should be mulcted with a cost order on any scale because I had failed to comply with the order of 20 July 2016 is not consistent with the orders of the court *a quo*. There is nothing in the court orders that directed me to make submissions on oath as to why I should be held liable for costs on the basis of non-compliance with the order of 20 July 2016. The finding therefore that I should be held liable for costs on any scale because I did not comply with the order of 20 July 2016 misconstrued the true purpose of the applications and the orders that the court had granted. The applications were not brought to challenge the procedural and substantive fairness of the termination of the applicants' contracts of employment.
33. The court *a quo*, with respect, would have had no jurisdiction to enforce interdict orders granted by the North Gauteng High Court in the terms set out in those orders. In any event, there was no High Court order against me compelling me to prevent the SABC from taking disciplinary steps against its employees. I was not responsible for the decisions of the then Acting GCEO and the Human resources department. In essence, the learned judge found that I should be held liable for allegedly failing to comply with a North Gauteng High Court interdict in circumstances where that was neither the complaint nor the issue identified by the two courts for the determination of liability in respect of costs.



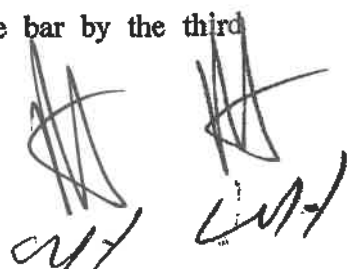
34. The learned judge erred in paragraph 22 of the judgment in finding that the affidavits filed by the third respondent were "*most unsatisfactory and largely evasive.*" In so finding, the Honourable Court did not set out the basis on which the affidavit of the third respondent was unsatisfactory and evasive. This finding with respect is puzzling in that it is so inconsistent with the clear evidence set out succinctly by the third respondent in answer to the specific questions posed by the courts on the issue of the decision maker for the dismissal of the applicants. A careful examination of the affidavits of the third respondent would reveal that the evidence was neither unsatisfactory nor evasive. Properly analysed, the evidence of the third respondent placed beyond any doubt the following issues;

34.1. That the third respondent was the official responsible for the dismissal of the applicants. This fact is not only stated in clear and unambiguous terms by the third respondents in two affidavits, it was corroborated by the affidavit filed by the SABC itself.

34.2. The Honourable Court did not criticise the evidence of the SABC in so far as it identified the third respondent as the person responsible for the disciplinary processes that resulted in the termination of the applicants' employment relations.

34.3. My affidavit (as the second respondent) made it clear that I had nothing to do with the disciplinary actions against the applicants.

34.4. With respect, the Honourable Court should not have accorded the "evidence" offered from the bar by the third respondent's counsel any weight whatsoever. It was irrelevant and simply inadmissible. There is no known legal principle on which the court could rely on the evidence offered from the bar by third respondent's counsel to reach the conclusions that it did on the evidence of the third respondent. In fact the "evidence" offered from the bar by the third



respondent's counsel was inconsistent with the sworn affidavits of the third respondent that such deviation from the evidence should have been condemned as unacceptable professional conduct. Under normal circumstances, the third respondent's conduct in court was egregious that the court should have reprimanded him.

34.5. The learned judge, with respect, failed to accord the relevant evidence sufficient weight which incontrovertibly indicated that I (as the second respondent) was not involved either in the formulation of the specific charges against the applicants or in the process adopted for their dismissal.

34.6. The learned judge failed to have regard to the incontrovertible evidence that the I (as the second respondent) had played no role in the decision to terminate the employment contracts of the applicants (SABC journalists) in both applications. As a consequence of the above, the learned judge failed to properly exercise the discretion he had to order that the respondents be held jointly liable for the costs.

34.7. With regard to the above, the learned judge failed, in light of the orders of the Court in both cases, to have regard to the following incontrovertible evidence regarding the official within the SABC who was responsible for taking the decision to terminate the employment contracts of the applicants.

35. The affidavit filed on behalf of the SABC of Mr James Aguma which identified Mr Tebele as the official that took the decision to dismiss the applicants from their employment. The explanatory affidavit of Mr Tebele dated 2 August 2016 in which he made it abundantly clear that he was directed by the SABC Acting GCEO Jimi Mathews to immediately suspend the applicants from their employment and that he acted in accordance with that directive.



36. The supplementary affidavit of Mr Tebele dated 25 August 2016 in which he makes it clear that he was the functionary within the SABC to make a decision to terminate the employment contracts of the applicants. I attach a copy of the supplementary affidavit of Mr Tebele as "HM23".
37. I filed my affidavit on 23 February 2017 in which I made it clear that I had nothing to do with the decision to terminate the employment of the applicants (SABC journalists).
38. The learned judge, insofar as he found that I should be jointly held personally liable for the punitive costs, acted
- 38.1. arbitrarily; and/or
 - 38.2. irrationally;
 - 38.3. In violation of my right to equal treatment before the law and right to be heard prior to the Labour Court disposing the merits of the application.
39. The learned judge erred in failing to find that the evidence adduced by me established that the impugned decision in respect of the respondent journalists was not taken by me. I was not the line manager. The Court should have dismissed the application for punitive cost orders as against me on the basis that there was no evidence that I had played any role in the dismissal decision.
40. There are a number of further reasons, in law and on the facts, why the court *a quo* was wrong in its exercise of discretion on the issue of costs.

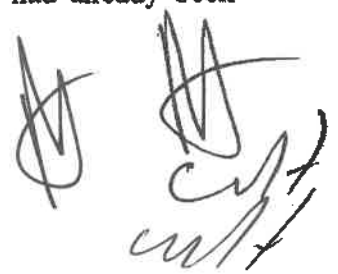
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THE ORDER OF GUSH J DATED 8 SEPTEMBER 2017 IS INCOMPETENT

41. I am advised that on the authority of the Constitutional Court's findings in *MEC for Health, Gauteng v Lushaba 2017 (1) SA 106 (CC)* the order holding me personally liable for costs is "*strange and incompetent*".
42. The Constitutional Court's description of the order as 'strange' is apt. In that case, the MEC complied with the order deposing to an affidavit in which he confirmed that Mr. Jabulani Macheke and Dr Kgoposi Cele were authorised to take decisions on whether to defend actions brought against the department. The MEC further stated that the two officials had followed the proper procedure for taking these litigation decisions. He explained that the decision to defend the actions had been based on the expert opinion of a specialist Dr Mashamba, who disputed that there had been medical negligence by the department. There were affidavits filed by the State Attorney who represented the MEC in the action, explaining the role of each official in relation to the case. Based on the affidavits, the Honourable Court prepared a comprehensive judgment on who should pay the costs of the action *de bonis propriis*. After considering the affidavit of the MEC and that of the state attorney officials, the Court ordered the officials mentioned by the MEC in his affidavit liable for 50% of the costs *de bonis propriis*.
43. On appeal the Constitutional Court found the second order, directing the MEC to identify officials that could be held liable for the costs in their personal capacities, "strange and incompetent" for a number of reasons. It said that the order was strange and incompetent because:

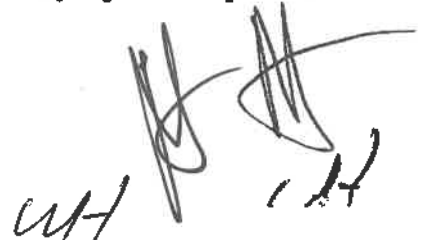


- 43.1. First that *"this is not how parties who were not involved in particular litigation should be joined. Second and more seriously, the order reveals that the court impermissibly authorised one of the parties before it to exercise a judicial power. In its terms the order referred to in the preceding paragraph left it to the MEC to decide whether he was personally liable. But, if he took the view that he should not be personally liable, he should identify persons who should be held personally liable and, significantly, furnish reasons why those persons should be held liable."*
- 43.2. In paragraph 14, the Constitutional Court that *"It was not competent for the High Court to allow the MEC to be the judge of whether he should be held personally liable and, if he should not be held personally liable, to identify who should be. This does not accord with s 165 of the Constitution which declares that judicial authority of the Republic is vested in the courts. Moreover, the order breached a principle entrenched in our law that no one should be a judge in their own case."*
44. The judgment of the Constitutional Court is applicable to the facts of this case and should have been followed by the Labour Court. Under case number J1592/16, the court ordered that the SABC to file an affidavit *"indicating which of its official(s) were involved in the decision to terminate the second to fourth applicants' contracts of employment with effect from 19 July 2016 in the case of the fourth applicant."* This evidently is what the Constitutional Court described as strange, in that it was giving a power reserved for the court to the SABC. It was the SABC who was now tasked with determining who amongst its officials could be held liable for costs for the decision to terminate the applicants' contracts of employment. In a very awkward way, the very question about who took the decision to terminate the employment contracts of the applicants had already been



determined by the Court, when it found that the SABC had unlawfully and unfairly dismissed the applicants. The court's further order was that *"within five further days of being identified as the official responsible for taking the decision to terminate the employment contracts of the applicants, the identified SABC official was required to file an affidavit with the court to show cause why he/she/they should not be held liable for the costs of this application, such costs to be paid on the attorney-client scale and to include the costs of two counsel."* This, the Constitutional Court found strange and incompetent because *"this is not how parties who were not involved in particular litigation should be joined."*

45. On the authority of the Constitutional Court judgment referred to above, this too is *"indeed a strange and incompetent order."* First, this is not how parties who were not involved in particular litigation should be joined. It was incompetent for the court to determine the merits of the applications and thereafter order that I am joined for purposes of determining the costs. Second, and more seriously, the orders reveal that the court impermissibly authorised one of the parties before it (the SABC and Mr Tebele) to exercise judicial power, which is only reserved for the courts in terms of section 165 of the Constitution. While in case number J1592/16, the Court ordered the SABC to identify an official who could personally be saddled with the costs of the application, in case number J1343/16, the Court specifically identified officials, who were not cited as parties to the case, for costs. This, according to the Constitutional Court, is not competent for the High Court to do - to delegate to the SABC the power to identify an official (who was not a party to the case) for the purpose of holding that person or persons liable costs in a matter where they had not participated as parties to the determination of the merits of the case. In terms of the orders, the SABC's duty was to identify a person or persons



responsible for a decision that the High Court had been adjudicated upon and disposed of – the termination of the applicants' contracts of employment. The Constitutional Court found this approach by the High Court to be inimical to the provisions of section 165 of the Constitution which declares that judicial authority of the Republic is vested in the courts.

46. The application to join me as a party after the horses had bolted so to speak does not cure the absurdity of the orders. I should have, at the very least been joined as a party, to defend any actions implicating me prior to the courts making the adverse cost orders.

THE EVIDENCE THAT WAS IGNORED BY THE COURT A QUO

I was not the decision maker

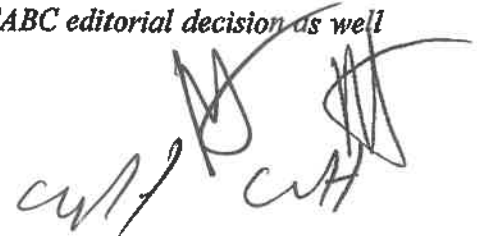
47. The more compelling basis on which the order against me should not be granted is that, I was not the decision maker. I was not identified either by the applicants (SABC journalists) nor the SABC or any of its officials as the decision maker for the termination of the applicants' employment contracts. The persistence to have me held liable for costs in light of the evidence is stranger because the overwhelming evidence before the Court does not support the position tenaciously pursued by the applicants.

The evidence ignored by the Court A Quo.



48. The court *a quo* ignored the incontrovertible evidence regarding my role, giving rise to an inescapable impression it failed to apply its mind to the issues at hand and the evidence necessary to dispose of the issues. The court *a quo* accepted the version of the applicants in the court *a quo*, which evidence comprised of copious newspaper reports of inadmissible factual allegations and inadmissible hearsay evidence of third respondent's counsel given from the bar on the day of the hearing. There was no legal principle on which the court *a quo* could draw the inferences that it did on this inadmissible evidence. There is simply no legal principle to support this unprecedented reliance on inadmissible and irrelevant hearsay evidence for the purpose of determining the two relevant questions: the first being whether I was responsible for the decision to terminate the employment contracts of the applicants and the second being whether, if I were found to be the decision maker, I should be held liable for the costs in my personal capacity.
49. To the extent that the court *a quo* accepted the applicants' version based on inadmissible hearsay evidence, it breached a fundamental principle that only relevant and admissible evidence should be considered by a court to determine and resolve a legal dispute. The court *a quo* failed to do this. There is no basis set out by the court *a quo* for its reliance on inadmissible hearsay evidence to find against me (as the second respondent in that case).
50. In any event, the evidence of Tebele was unequivocal. Mr Tebele specifically identified, on oath, Mr Jimi Mathews as the person who gave the directive that the applicants should be dealt with. For avoidance of doubt, Tebele stated the following;

"The view of the AGCEO was that the journalists who recorded their disagreements at the Line Talk meeting were refusing to comply with an instruction pertaining to the provisions of the SABC editorial decision as well



as the directive not to broadcast visuals / audio of the destruction of property during protest action. I therefore advised the GCEO that this was not a refusal but rather a robust discussion where the journalists were making their objections known. After a robust discussion with the AGCEO, it became clear that he had a different view.”²

51. Furthermore Tebele states under oath in paragraph 22 the following unequivocal and incontrovertible evidence:

“The AGCEO then brought it to my attention that the journalists had been coming to his office and had been writing letters to him which supported his assertion that the journalists were acting in defiance of the editorial decision. This is when the AGCEO issued a directive that the journalists ought to be suspended right away and I implemented the directive.” [My emphasis.]

52. It is clear therefore that on admissible evidence, Mr Jimi Mathews is pertinently pointed out by Tebele as the SABC’s acting GCEO, who issued “a directive that the journalists ought to be suspended right away...” The applicants do not deny this allegation directly implicating the former Acting CEO as the SABC functionary that issued the directive for the suspension of the applicants. They cannot do so because if there was anyone who could give a directive to suspend any employee of the SABC it was the CEO of the SABC.

53. There is a further basis on which the application against me should have been dismissed as being frivolous and without any basis in law or fact. In the Solidarity matter under case number J1343/16, it was specifically found that the persons who authorised the

² Para 21 of Tebele’s Supplementary Affidavit.



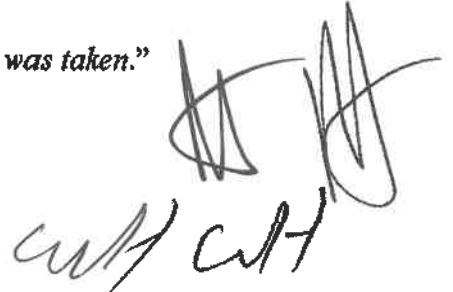
dismissal of the Applicants were Ruth Sebolelo Ditlhakanyane and Simon Moloko Tebele.

54. Mr Tebele and Ditlhakanyane complied with this order. In the Solidary matter, the court did not identify or find that I was the decision-maker. What brought me into the fray was the insistence and persistence of the applicants based on inadmissible newspaper articles and public utterances of Jimi Matthews.

55. The order of 14 August 2016, a copy of which is attached as "HM24", directing that Mr Tebele to comply with further directives is incompetent for the reasons that are set out in the Constitutional Court judgment of MEC referred to above. In that order, despite the SABC having identified the person who took the decision, and despite the person who took the decision having confirmed under oath that he was the decision maker, the Court directed further the following:

55.1. That the SABC must file an affidavit in which it identifies the person or persons who took the decision on behalf of the SABC to dismiss the second to fifth applicants on or about 18 July 2016.

55.2. Despite Tebele having specifically stated that he was the decision maker that the Court had ordered should be identified, the Court, after reading through the judgment and considering the letter addressed to him by the lawyers of the applicants, ordered that he *"must file a supplementary affidavit in which he supplements the details in paragraph 35 of his explanatory affidavit 2 August 2016, as to the identity of the person or persons whom he knows or understands took the decision and whose legal advice the decision was taken."*



56. The orders suffer from the infirmities identified by the Constitutional Court in the MEC judgment is that they placed on Tebele a judicial power that he does not have, which is to identify persons to hold liable for costs. That said, Tebele complied with the order and filed the further supplementary affidavit on 25 October 2016.
57. Having regard to the totality of the affidavits filed by the SABC, Tebele, Ditlhakanyane and I, it is not clear why the Labour Court found that I should be held personally liable for the costs of the application on any scale.
58. The court *a quo* made fundamental error in its analysis of the evidence. The first error is that the court *a quo* failed to have any regard to the evidence in my affidavit; the relevant evidence is in all the affidavits filed by the SABC, Tebele and Ditlhakanyane and I.
59. The Honourable Court failed to have any regard for the following incontrovertible evidence;
- 59.1. The affidavit of Mr James Aguma, the former acting GCEO of the SABC.
- 59.2. My affidavit as the then COO of the SABC.
- 59.3. The affidavit of Mr Tebele, the Acting Group Executive: News and Current Affairs; and
- 59.4. The affidavit of Ditlhakanyane, the General Manager: Radio News and Current Affairs.

The affidavit of James Aguma

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63. In paragraph 7 my affidavit I state the following:

"At paragraph 3 of the Notice of Motion, Bemawu seeks an order inter alia joining me as the Second Respondent in the determination of the final apportionment of liability for the payment of costs in both the Solidarity and Bemawu matters. The reasons offered for the joinder, as far as I have been able to discern from the Du Buisson's affidavit appear to be the following:

- 7.1. My stated position in my interactions with the Applicants and my public utterances at news conferences (which have not been denied on both papers and both applications) leads to an inescapable inference that even if it were Tabele who executed the decision, that such decision was executed on my instructions (at paragraph 18);*
- 7.2. That I was the effective and de facto decision-maker, and that Tabele was merely a functionary assigned to carry out my decisions (paragraph 18);*
- 7.3. That I was the author of, and the primary motivation force behind the protest policy (paragraph 19);*
- 7.4. That the statements attributed to me in the protest policy evidence that I took personal responsibility for the formulation, issuing and implementation of the policy (paragraph 20);*
- 7.5. That the charge of misconduct in the disciplinary notices of 11 July 2016 related directly to the refusal with my instruction to adhere to the protest policy, which I have written, issued, implanted and enforced (paragraph 26)."*

64. In a direct response to the allegations above, I state in paragraph 8 that:

"8. The reasons proffered by Bemawu in support of my joinder as a part to these proceedings have no merit, both in law and in fact. It is an ill-disguised attempt to vary the court orders in both Bemawu and the Solidarity matters. This is a clear denial of the allegations seeking to hold Motsoeneng liable for costs on the basis that he was the decision-maker involved in this dismissal of the applicants."

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65. I thereafter relied on the Solidarity matter which specifically identified Ms Ditlhakanyane and Tebele as the persons responsible for the dismissal of the applicants. In this regard I quote from paragraph 78, which held as follows;

"[78] I am satisfied that there is no question that the Applicants should not bear the costs of bringing this application including the costs of two counsel. I am also concerned that the dismissals were authorised with reckless disregard for the pending applications and with legal regard for the relative costs and benefits to the SABC of doing so. That this should occur during a time of financial crisis makes it more worrying. The only question is whether these costs should be levied on those who took the decision or on the SABC as an entity. Accordingly, I think it is appropriate that the person who appears to have authorised the dismissal when signing the dismissal letters should be given an opportunity to explain why he should not be held liable, at least in part for the costs. The same applies to Tabele who seems to have played an active role in the events."

The affidavit of Mr Tebele

66. Mr Tebele filed two affidavits. The first affidavit, the explanatory affidavit, was filed in compliance with the directive of the Honourable Court in paragraph 79.5 of that order. The affidavit is dated 2 August 2016. If there was any doubt as to the functionary within the SABC who took direct responsibility for the dismissal decision against the applicants, that doubt was or should have been removed as soon as this affidavit was received and perused. It is important to refer extensively to the affidavit of Mr Tebele in order to appreciate what he said in direct response to the question of who took the decision to dismiss the Applicants.

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67. Mr Tabele was Acting Group Executive: News and Current Affairs. In the affidavit of 2 August 2016 in paragraph 5, he said the following;

"The reason this Honourable Court has directed that I should show cause why I should not be held personally liable for the costs appear in paragraph 78 of the judgment. At that paragraph this Honourable Court found the decision of the SABC to terminate the Applicants' employment contracts to have been authorised with reckless disregard for the pending applications, the Constitutional Court and the Labour Court applications and with legal regard of the relative costs and benefits to the SABC."

68. From paragraphs 8 to 36 Mr Tebele makes it abundantly clear that he was responsible for taking the decision to terminate the employment of the applicants. He not only explains why he did it, he also goes into detail as to how he did it and who else was involved, in which meetings and all the details necessary to appreciate how this decision was arrived at. None of what Mr Tebele says in those paragraphs has been denied by the applicants themselves. In other words, the applicants who were dismissed do not deny the processes outlined in the paragraphs that are mentioned from 8 to the end of the affidavit. They could do so if they disputed these allegations.

69. For clarity's sake, this is what Mr Tebele states;

"Mr Motsoeneng issued a public statement to the effect that the SABC would no longer broadcast footage of destruction of property during protests. This statement of the CEO attracted some attention from several quarters, and resulted in demonstrations against the perceived direction of the SABC. One such demonstration was planned by the Right2Know movement for 20 June 2016 and it was to take place at the SABC offices in Auckland Park, Durban and Cape Town. The Applicants do not deny these allegations."

CyT *WH*

70. The applicants also do not deny the allegations relating to the Right2Know movement demonstrations and the Line Talk meeting that was held with the journalists, some of whom are Applicants.

71. The Line Talk is a national newsroom diary meeting, the purpose of which is to discuss events which should receive coverage on a particular day. It takes place every weekend at 08:30, and is held across the provinces. The Line Talk is chaired on a rotational basis by the provincial editors, including the editors that are based at Auckland Park. It is a robust forum where the stories of the day are also being decided. The applicants do not deny the allegations relating to the newsroom diary meeting, its purpose and its objectives. The applicants also do not deny the allegations contained in paragraph 13 in which Mr Tebele said the following:

"As soon as I made the announcement referred to in paragraph 9 above, one of the editors wanted me to provide reasons for not covering the demonstrations. In response thereto, I pointed out that the SABC could not broadcast negative news against itself, and on its platforms. At that point, the chairperson of that week, Mr Jonathan Lungu, ruled that the Line Talk would not further discuss the Right2Know protest against the SABC."

72. The applicants do not deny the allegations contained in paragraph 14 in which Mr Tebele said:

"After that editor's inquiry, the economics editor, Mr Thandeka Gqubule, then informed the meeting that she did not agree with the decision of the SABC not to cover the protest marches, as well as the SABC's directions not to broadcast violent protests. She emphasised the need for the public to access information, and the duty of the journalists to execute their work without fear or favour."



73. Mr Tebele further made allegations regarding the role played by Gqubule whom he alleges said that *"Because this was a matter that would serve before the Constitutional Court in due course, it would be remiss of them not to have registered their displeasure when the announcement was made."* She does not deny that "she requested the chairperson to place on record that she did not agree with the SABC's decision not to broadcast the Right2Know protests."

74. The applicants further do not deny the allegations set out in paragraph 16 in which the following is alleged;

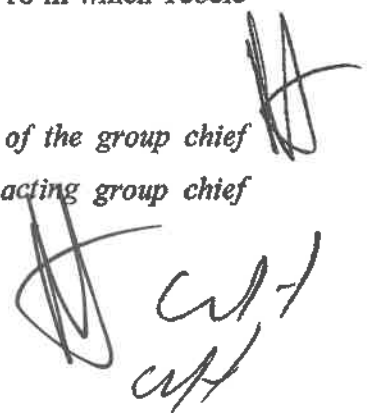
"It is again important to note that the editorial decision was communicated on 26 May 2016 and the SABC holds Line Talks on a daily basis on weekends and would have therefore held 30 Line Talks between then and on the 20th of June 2016, which is the day on which the first objection was noted. I also mention that during this period, the SABC had been covering stories for and against the editorial decision, and that it is the SABC editors that were assigning journalists to cover such stories and preparing them for broadcast."

75. The next allegations that are denied are set out in paragraph 17 where Mr Tebele further said:

"The other Applicants who were present at the Line Talk, Krige and Venter, also placed on record that they did not agree with the SABC's decision not to broadcast the Right2Know demonstrations. I then indicated that I had noted their concerns. After that, nothing about the Right2Know protest was discussed."

76. The applicants also do not deny the allegations set out in paragraph 18 in which Tebele said the following:

"On 21 June 2016, I attended a meeting at the offices of the group chief executive. Present at that meeting, was the erstwhile acting group chief



executive officer, Jimmy Matthews, human resource acting executive manager, Mahlohlo Lebakha, and the labour relations manager, Kobus Potgieter."

77. Mr Tebele describes in paragraph 19 what happened in that meeting in the following terms:

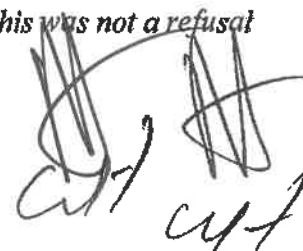
"When the meeting commenced, it became clear to me based on the enquiries of the acting group chief executive officer that he had already received feedback on what had transpired during the Line Talk of the previous day. He informed me that he was concerned with the situation in the newsroom, and the fact that the matter was heading to the Constitutional Court. He had already received a letter from Thandeka Gqubule complaining bitterly about the statement."

78. Mr Tebele further makes the following allegations which are also undisputed in paragraph 20 in which he says:

"I must also mention that on the same day, the Star newspaper had published an article which also alluded to the situation at the SABC. It was clear to me that the meeting was also referring to that article, but also to the events of the Line Talk meeting of the previous day. However, the versions presented to me about the Line Talk meeting were not exactly in accordance with what transpired at that meeting but another matter which the acting group chief executive officer seems to be privy."

79. More importantly, Mr Tebele expressed a view about the attitude of the then Acting Group Chief Executive Officer, Mr Jimmy Matthews. He says so in paragraph 21 in the following terms:

"The view of the AGCEO was that the journalists who recorded their disagreements at the Line Talk meeting were refusing to comply with an instruction pertaining to the provisions of the SABC editorial decision as well as the directive not to broadcast visuals / audio of the destruction of property during protest action. I therefore advised the GCEO that this was not a refusal



but rather a robust discussion where the journalists were making their objections known. After a robust discussion with the AGCEO, it became clear that he had a different view." (Emphasis added)

80. The allegations about Mr Jimi Mathews are not denied. Instead the applicants rely on newspaper reports for an order that I was *de facto* the decision-maker. In paragraph 22 Mr Tebele further states that:

"The AGCEO then brought it to my attention that the journalists had been coming to his office and had been writing letters to him which supported his assertion that the journalists were acting in defiance of the editorial decision. This is when the AGCEO issued a directive that the journalists ought to be suspended right away and I implemented the directive." [My emphasis.]

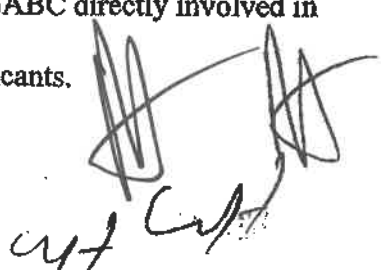
81. Mr Tebele then explained his actions immediately after the directive of the AGCEO referred to above. He does so in paragraph 23 where he says in the following terms:

"Consequently, a decision was taken to suspend Krige, Venter and Gqubule. The labour relations officials, with the help of a senior HR manager were then instructed to draft the charges based on the deliberations of the meeting. The tenure of the meeting, as I have intimated, was that the three journalists were refusing to comply with an instruction pertaining to the provisions of the SABC editorial policy."

82. Mr Tebele further states in paragraph 24 that:

"Three other journalists, Pillay, Steenkamp and Ntuli had addressed a letter to the COO, recording their concerns about the situation at the SABC. However, the letter was published in the print media. The view of the SABC was that they had caused the letter to be published and that such conduct constituted interacting with the media about their employment relations with the SABC without the consent of the GCEO. This was regarded as being in breach of a prohibition of employees to interact with the media without the CEO's consent."

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83. Mr Tebele, states that the journalists had written to Mr Motsoeneng (me) and he disagreed with that attitude, specifically finding it *"discontenting that the journalists had written directly to the COO without first approaching their line managers."* The applicants do not deny that Tebele disapproved of their actions.
84. Mr Tebele then says in paragraph 26 that *"However I regarded the allegations of communicating with the media without the consent of the GCEO, if they were found to be true, as being in breach of the SABC policy."*
85. As a consequence of his view, *"two of the three journalists, Ntuli and Pillay, were subsequently charged with making comments in the media without the consent of the GCEO. Krige on the other hand was charged with insubordination and distancing himself from an instruction not to cover the Right2Know protest marches."*
86. In paragraph 28, Mr Tebele further says:
- "I was present at a meeting where Mr Sizwe Vilakazi, ("Vilakazi"), the Acting Head of Legal Services, was requested to give his advice on the matter. If I understood him correctly, his view was that a mere recording of a disagreement with an instruction is not itself a violation. His view was that an employee violates a policy when he or she takes a positive step against that policy. It is then that an internal disciplinary process was instituted against the journalists for different charges varying from insubordination, insolence and a breach of the disciplinary code of conduct. The nature of the advice given by Vilakazi is dealt with in his affidavit which will be filed in support of herein."*
87. The applicants do not deny these allegations relating to the involving of the late Mr Vilakazi, who was then the Head of the Legal Services at the SABC directly involved in giving advice on how to address the issues relating to the applicants.
- 

88. Mr Tebele states that he did not only accept the legal advice of Mr Vilakazi but obtained external legal advice as well. In paragraph 30 he says:

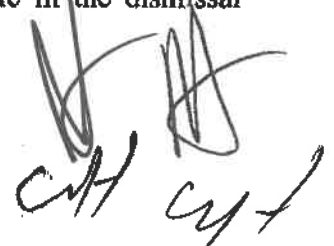
"At the meeting with external legal counsel, the SABC was advised that the Schedule 8 Notices should be issued, giving the affected journalists an opportunity to respond to the allegations of various violations of SABC policies levelled against them. Counsel further advised that should the journalists fail to respond to the Schedule 8 notices within a period stipulated therein the SABC could summarily terminate their contracts of employment. Pursuant to this advice, the SABC issued the Schedule 8 Notices."

89. In paragraph 35 of the explanatory affidavit Mr Tebele, finally gives the process that was followed resulting in the termination of the applicants' employment contracts. He states:

"The affected journalists had failed to respond to the allegations by 15 July 2016 as was required of them. Consequently, on 18 July 2016, upon counsel's advice, the SABC took the decision to terminate the contracts of employment, and the letters of termination were prepared by the labour relations department for Diklaka Nyana's signature."

90. This is the paragraph that was specifically identified by Lagrange J for the further attention of Mr Tebele in a supplementary affidavit.

91. There is nothing in the affidavit of Mr Tebele that can be criticised as being untrue or contrived or fabricated to protect me. Inexplicably, the applicants complained about this rather detailed affidavit, accusing Mr Tebele of not giving the full details as required by the Court without alleging that there was a cover-up of my's role in the dismissal

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decision. This complaint was accepted by the court which then issued the order of 14 October 2016. In that order the court directed Mr Tebele to file a supplementary affidavit in which he had to explain the allegations in paragraph 35 of his explanatory affidavit of 2 August 2016, so as to identify the person or persons whom he knew and understood took the decision, and on whose legal advice the decision was taken. The directive is worth quoting in full and it reads as follows:

"Dear Sirs/Madam,

RE: DETERMINATION OF COSTS ORDER: SOLIDARITY AND FOUR OTHERS v SABC (J1343/16)

(1) Having perused the explanatory affidavit in this matter, the Honourable Judge Le Grange wishes to advise the parties as follows and issues a directive to parties in light of what is set out below:

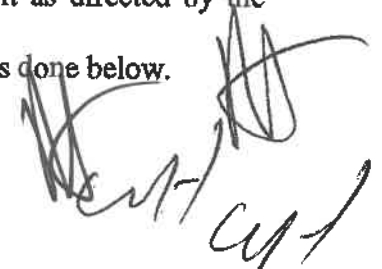
Directive:

- (i) By 25 October the Respondent (South African Broadcasting Corporation) must file an affidavit in which it identifies the person or persons who took the decision on behalf of the SABC to dismiss the Second to Fifth Applicants on or about 18 July 2016.*
- (ii) Similarly, by the same date Mr Tabele must file a supplementary affidavit in which he supplements the details in paragraph 35 of his explanatory affidavit of 2nd August 2016, as to the identity of the person or persons whom he knows or understands took the decision and on whose legal advice the decision was taken.*
- (iii) Mr Tabele must also provide details of how he came to know of the decision.*

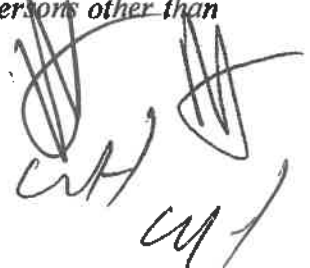
...

(9) Once the directors complied the court will issue further directions and/or orders to finalise the determination of the cost order."


92. On 25 October 2016, Mr Tebele filed the supplementary affidavit as directed by the Court. The relevant portions of the affidavit are worth quoting as is done below.

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- “3. On 2 August 2016, I deposed to an explanatory affidavit in compliance with the directive of this Honourable Court contained in paragraph 79.5 of the Order handed down on 26 July 2016 in this matter.
4. In that Order this Honourable Court directed me to file an affidavit within 5 days of the date on which it delivered its judgment, and that in that affidavit, I should show cause why I should not be held personally liable for all, or parts of the costs of the application which served before it on 22 July 2016.
5. In that affidavit I, *inter alia*, say the following:
- ‘[7] I state at the outset that the decision to terminate the applicants’ employment contracts was a decision taken by me, pursuant to external counsel’s legal advice.
- [37] I respectfully submit that I did not act recklessly and/or with malice against my colleagues. At all material times I acted in the belief that what I did was what was legally correct. In some instances it was clear that or I believed that I was acting in the best interest of the organisation and not in my personal capacity.
- [38] At all material times I was acting and guided by the SABC policies and/or the disciplinary code of conduct.
- [39] I submit further that in these circumstances, the Court ought not to order that I pay the costs occasioned by this application.’
6. On 14 October 2016, this Honourable Court issued a further directive in which it *inter alia* directed me to file a supplementary affidavit in which I supplement the details in paragraph 35 of my explanatory affidavit of 2 August 2016, as to the identity of the person or persons whom I know or understand took the decision, and on whose legal advice the decision was taken. I depose to this affidavit in compliance thereof.
7. I wish to reiterate what I have stated in paragraph 7 of the explanatory affidavit which I have quoted above namely that the decision to terminate applicants’ contracts was a decision taken by me, acting upon external legal advice.
8. I wish to profusely apologise if the reference to ‘the SABC’ in paragraph 35 of my explanatory affidavit creates an impression that the decision to terminate the contracts of employment may have been taken by some other persons other than

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myself. What I intended to convey was that, even though the decision to terminate was taken by me, it remained the decision of the SABC, since when I took the decision I was acting within the course and scope of my employment with the SABC.

9. I wish to state further in this regard that my references to various persons I consulted with in the process of taking the decision should not be understood as implying that someone else, or those persons took the decision. the decision to take the disciplinary measures was mine, and mine alone.
 10. However, I humbly submit that I should not be held liable to pay the costs for the decision I took in the course and scope of my employment. I wish to emphasise further that the decision was not taken recklessly and/or with malice. When I was presented with evidence of the applicants having interacted with the media about their employment relationship with the SABC without the consent of the GCEO, I genuinely regarded their conduct as being in breach of a prohibition of employees to interact with the media without the CEO's consent. My view then was that such conduct constituted a breach of the SABC policies.
 11. In taking the decision as I did, I was acting as a responsible manager in the course and scope of my employment. The fact that this Honourable Court have found that my decision was incorrect, ought not to change the fact that I was doing my job and I acted in the bona fide belief that it was so. It is in this regard that it becomes important that I mentioned having taken counsel's advice: I am employed to take decisions, and can therefore not hide behind counsel's advice. In discharging my responsibilities, I am required to, and I applied my mind, to counsel's advice.
 12. I must further mention that the case itself was complex and unique: the issues of law, policy and discipline were so closely knit together, and as result thereof, the decision I had to make was not a simple decision."
93. It is therefore inexplicable the basis on which the court *a quo* could ignore such extensive evidence exonerating me from the illegal decisions of the SABC to dismiss the journalists. For avoidance of any doubt this is what Mr Tebele says in unequivocal terms:
- "I wish to reiterate what I stated in paragraph 7 of the explanatory affidavit which I have quoted above namely that the decision to terminate Applicants' contracts was a decision taken by me, acting upon external legal advice."
- 

PROSPECTS OF SUCCESS AND INTEREST OF JUSTICE

94. Given the overwhelming evidence that I was not the decision-maker it is clear the court *a quo*'s finding against me reflects a failure to apply its mind to the relevant facts and evidence. In the circumstances, I have more than reasonable prospects of success in the petition for leave to appeal and accordingly prays for the orders as set out in the notice of motion to which this affidavit is attached.

Personal costs not really a labour matter

95. The matter is some considerable importance to me in that, if the matter is not overturned, I stand to suffer considerable financial prejudice for decisions that I should not be held liable for. The decision is also important because it deals with the principles that must guide the determination of personal liability of individuals in state entities for costs incurred for decisions taken or not taken by them in their professional or employment capacities in regard to proceedings in which they were not cited as parties
96. I submit that it is in the interest of justice that I be granted leave to appeal against the decision of the Labour Court which has mulcted me with costs without any factual or legal basis for doing so, and which has also abdicated its responsibilities for making costs orders and left same in the hands of the other parties to the dispute. I submit that although at first glance this looks like a labour matter, it is ultimately a case about circumstances under which a court can grant personal costs against employees for decisions that they have taken or not taken.
97. I accordingly submit that it is in the interests of justice that my application for leave to appeal be granted and I accordingly pray for the order sought in my notice of motion to which this affidavit is attached.




HLAUDI GEORGE MOTSOENENG

Sworn to and signed before me in **JOHANNESBURG** on this the 20th DAY of **JUNE 2018**, the deponent having acknowledged in my presence that he knows and understands the contents of this affidavit, which he regards as binding on his conscience and has no objection to taking the prescribed oath, the Regulations contained in the Government Notice No. R1258 of 21 July 1972, as amended, and the Government Notice No. R1648 of 19 August 1977, R1428 of 11 July 1980 and R774 of 23 April 1992 having been duly complied with.


COMMISSIONER OF OATHS

MOTLATSI CORNELIUS SELEKE
PRACTISING ATTORNEY EX OFFICIO
COMMISSIONER OF OATHS
40 Plet Joubert Street
Monument, Krugersdorp

Full names :

Capacity :

Address :

Official Stamp :



HGM 5

'I warned ANC about Hlaudi'

2016-10-09 06:00

Andisiwe Makinana

City Press



Cape Town - Krish Naidoo stunned not only members of Parliament, but also his SABC colleagues as he turned on the board he served on for three years, branding it amateurish and dysfunctional and calling for its dissolution on Wednesday. Naidoo also resigned during the heated meeting in Parliament, which was held to look into the goings-on at the public broadcaster.

His seven-minute speech sounded the death knell for the SABC board and strengthened MPs' case that all was not well in the top management of the corporation.

Naidoo later told City Press that since September 2013, when the board was appointed by President Jacob Zuma at the recommendation of the National Assembly, "it became very clear to me that Mr [Hlaudi] Motsoeneng, for whatever reason, was the elephant in the room in that organisation".

He confirmed an open secret that he was deployed to the SABC board by the ANC.

"I was asked by the ANC to sit on this board. I went back and said it was pointless. You are not going to get very far unless you deal with Motsoeneng," he revealed a few days ago.

Naidoo, who also works as a consultant in the ANC's legal department, revealed that the party had insisted that he stay on and rectify matters internally.

"But today was the last straw for me," he said on Wednesday.

"There was just no way [forward] after listening to the responses

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He said the public broadcaster also needed the right skills set for its executive positions.

"Some of the people [at the SABC] hold themselves out as executive and they are not executive material. You must find the right skills set to come in."

WHL

and the amateurish presentation of my colleagues and the board and the responses of political parties. It became clear that this board has shown that it is not fit for office," he said.

Naidoo also confirmed that he was one of the board members who objected to the permanent appointment of Motsoeneng as chief operating officer in July 2014.

"I objected to that. I said it was wrong and I voted against it. But it nevertheless it went through on a majority vote."

The DA took Motsoeneng's appointment to court and it succeeded, but Motsoeneng sought to appeal the court ruling that his appointment was irrational and unlawful.

"The minute the Supreme Court of Appeal [SCA] made its decision two weeks ago ... and the board was trying to undermine and subvert that decision by appointing him as acting chief operating officer, I decided it was time to speak publicly, which I did."

He revealed that the board had not met to compile the document that was presented to Parliament. "I'm not sure who put this together, I know it's being done in the name of the board and, as a board member, I suppose I must abide by that. But somebody [else] put this together somewhere.

"Had I been part of that, I would have informed this committee of these issues; coming from a legal perspective," said Naidoo, who is a lawyer by profession.

Naidoo describes as "absolute nonsense" the SABC's argument that the SCA judgment had nothing to do with Motsoeneng as an employee of the SABC.

"Whoever gave the SABC that advice should be shot."

Naidoo claimed that throughout his term at the SABC, he consistently spoke out when he saw poor governance and illegality, but that his views were a minority in the board.

His advice to Parliament going forward is to appoint "quality people" and be more decisive in dealing with corruption.

"I think you must get [board members] who have no material interests in the businesses of the SABC.

"You must find people who work according to their conscience, who have strong ethical principles, and who will work in the best interest of the country and discharge the public mandate of the SABC," he said.

Naidoo suggested that there were board members who may have interests in the businesses of the SABC when he said: "People have their own material interests. For example, we signed off a contract of R250 million now ... surely there is always a temptation to go to the contracting party and say, can I get something?"

craft

HGM 6

ANNEXURE Hgm 6

HGM-131

Special Meeting of the Board 1 July 2011

Dr Ngubane : Good morning everybody.

Ms Melk : Morning Chair.

Ms Vos : Good morning Chair.

Dr Ngubane : I assume that we all have seen the document presenting the appointment of an acting GCEO.

Adv Mahlati : We have.

Dr Ngubane : ...(inaudible).....approval of this resolution.

Comment : Chair....

Dr Ngubane : Yes?

Comment : I was just. No Chair, I was just.

Dr Ngubane : Sorry?

Mr Golding : No, Chair, good morning, it's Desmond.

Dr Ngubane : Good morning Desmond.

Adv Mahlati : Welcome Desmond.

Mr Golding : Thank you guys.

Dr Ngubane : I'm saying that I take it that you all have seen this resolution, there is no need to read it again. Hallo?

Adv Mahlati : Yes Chair we have.

Dr Ngubane : But anyway, let the company secretary read it for us, just for for....

Comment : Records, ya.

Dr Ngubane :for (inaudible).....

Comment : Ya.

Ms Melk : I'm sorry Chair, I'll have to go and get it, I don't have it with me now.
I'm sending somebody to get it.

Dr Ngubane : Is Justice not there?

- Ms Melk : No Chair.
- Dr Ngubane : Is Cedric...doesn't he have it on his system.
- Ms Melk : No he doesn't have his computer with him, but we are getting it now. It will be less than a minute.
- Dr Ngubane : OK.
- Mr Gina : Chairperson, you still remember the wording in the resolution, because it's the one that we tried to do a round robin on.
- Dr Ngubane : Yes, I've just signed it, but if it's nearby and it's not difficult to get, let's just read it for the record.
- Adv Mahlati : OK.
- Dr Ngubane : Hallo Clifford.
- Ms Melk : Chairman I've got it. I got it and I am now reading it.....
- Dr Ngubane : Right.
- Ms Melk : Written resolution appointment acting GCEO.....

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Dr Ngubane : Ya.

Ms Melk :authority given by Article 18 of the Articles of Association. I

undersigned being a director of the company present in the Republic and sufficient to form a const.....to constitute a quorum, resolve the resolution taken by the Board 24th of June 2011, in respect of the extension of the contract of the CFO be and is hereby rescinded. The appointment as Mr P Molefe as Acting Group Chief Executive Officer with effect from the 1st of July, until such time that the Group Chief Executive is appointed, be and is hereby approved. Acting CFO, Mr Lerato Nage be provided necessary support to finalize the audit. The recruitment process for all vacancies at executive level, particularly that of Chief Financial Officer be urgent and commenced with. The Board expresses appreciation to Mr Nicholson for his services to the corporation.

Dr Ngubane : Well, agreed. And you company secretary then record those who say yes. I say yes.

Mr Golding : I say yes.

Ms Vos : Says yes.

Mr Danana : Danana says yes.

Adv Mahlati : I say I.

Mr Gina : Chairperson, Chairperson Cedric here, I support the resolution.

Dr Ngubane : Thank you.

Adv Mahlati : Mahlati does as well.

Dr Ngubane : Thank you.

Prof Green : Uhm.....it's Pippa here, uhm, I'm saying no.

Dr Ngubane : Thank you.

Mr Gina : Danana?

Mr Danana : Danana's answered yes.

Dr Ngubane : Thank you.

Mr Gina : Sekha?

Comment : Who's Sekha?

Mr Gina : Makhesha.

Adv Mahlati : Patricia.

Mr Gina : Patricia.

Handwritten signature and initials, possibly 'M-1'.

Adv Mahlati : Patricia is obviously off.

Comment : Patricia?

Adv Mahlati : Pat?

Comment : Yes.

Adv Mahlati : No, Pat is a lady, Pat?

Comment : Say Patricia.

Adv Mahlati : Patricia.

Ms Melk : Chair, I think Dr Pat.....

Adv Mahlati : We've lost Pat.

Ms Melk :is gone. Suzanne?

Ms Vos : Yes support.

Ms Melk : Desmond?

Mr Golding : I've already sayd yeah.

Ms Melk : Desmond....(inaudible). Lumko are you on? Ok Chair, I'm at five yes and one no.

Dr Ngubane : OK right, how many more people is still outstanding?

Ms Melk : Well, I need three Chair.

Comment : Fine, talk it here.

Dr Ngubane : Yes, can't you raise the other people.

Ms Melk : Yes Chair, we are trying.

Mr Danana : Hello Thelma?

Ms Melk : Yes Mr Danana?

Mr Danana : I think the counting is wrong mama.

Adv Mahlati : Yes.

Ms Melk : I think there is six now here.

Ms Melk : I beg your pardon.

Mr Danana : I think six guys.....

Adv Mahlati : Sembie, can you just hold your thought, we are trying to get Lumko on the phone in his hotel room in Brazil. We'll come back to the counting.

Comment : Hallo secretary, are you able to find Clifford?

Ms Melk : Lumko?

Adv Mahlati : Can I please be reconnected?

Ms Melk : Lumko?

Mr Mtimde : Hallo.

Ms Melk : Ya, please hold on ne. I phoned you because it seems Telkom, between Telkom and the hotel there's a problem. What's happening now, we've actually read the resolution and everybody is expressing the opinion in terms of the voting. We still don't have a quorum, but the Chair wants to proceed and then we will circulate the decision.

Dr Ngubane : What does Lumko say?

Mr Golding : Lumko?

Ms Melk : Lumko?

Mr Mtimde : (inaudible)

Ms Melk : Sorry, I will have to speak for him. Lumko the board wants to know if
you, whether it's yes or no for you?

Mr Mtimde : (inaudible)

Ms Melk : Ok let me read it for you. It's the round robin. Yes. Lumko says he's
recording exactly as he did on the round robin and he said yes.

Adv Mahlati : We are quoreed.

Dr Ngubane : OK.

Dr Makhehsa : I'm back on the line, it's Patricia. Thank you.

Ms Melk : Thank you Pat. We would need you to record your(inaudible). Dr
Pat?

Dr Ngubane : What does Patricia say?

Ms Melk : Pat?

Dr Makhesha : Hello?

Ms Melk : Would you please for the record....uhm....your.....your decision. Yes or no in terms of the written resolution that was

Adv Mahlati : Hold on.

Ms Melk :was circulated. Dr Pat?

Dr Ngubane : Yes.

Ms Melk : No, Patricia. Patricia?

Adv Mahlati : She's.....we've lost her again, let's just call her. Let's do the same thing. Lumko has said yes.

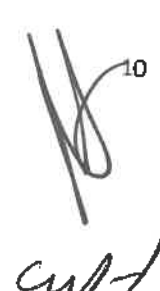
Comment : Get hold of her on cell.

Adv Mahlati : Just get hold of her on the cell and..... Hallo?

Dr Ngubane : Patricia?

Adv Mahlati : Hallo Chair, we.....

Dr Ngubane : We are deciding on the resolution to appoint an acting GCEO. Do you

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say yes or no?

Adv Mahlati : Chair, I believe that we have lost Pat.....sorry Patricia. Can I suggest that we proceed in this particular fashion. We've got Lumko on the phone and he says yes. And I'm suggesting that we call Patricia, we read the resolution to her.....(inaudible)....continually trying to call her, so that we can move on.

Dr Ngubane : Ya, sure. Sure.

Adv Mahlati : Thanks, we can..... Hi Lumko? Done. Done with Lumko, we are done with Lumko.

Ms Melk : Yes but why is he cut off now?

Adv Mahlati : He went off(inaudible).

Mr Gina : OK, let's use another phone, it's fine. Keep on.....use my phone to phone Patricia.

Comments : (talking in background)

Mr Golding : Chairperson can I assume that because Dr Patricia has been on and off that we are quorading as a matter of fact.

Adv Mahlati : Yes. Exactly. That is the point.

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cut

Dr Ngubane : Sure.

Mr Golding : Sir can we then, for the record ya.....

Adv Mahlati : Yes Desmond, we concur.

Mr Golding : Thank you ma'm.

Dr Ngubane : Thelma? Thelma?

Ms Melk : Yes Dr. Dr Ngubane.

Dr Ngubane : Once we have a quorum, let's take the vote.

Ms Melk : That's what we are trying to do Dr. As soon as we get Dr Pat.....

Adv Mahlati : Again.

Ms Melk :to express her vote.

Mr Gina : Just, just, bring her.....

Adv Mahlati : Bring her here. She's here we've got her.

Mr Gina : Just open your thing and put it here.

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Comments : (inaudible)

Mr Motsoeneng : Hi Thelma.

Ms Melk : Hlaudi?

Mr Motsoeneng : Chair, just send her an sms that we need to try her again.

Adv Mahlati : OK thank you.

Dr Ngubane : Well Desmond said we should take her as present, Pat.

Mr Golding : Yes.

Prof Green : I don't think thatwe then.....we need to try and get her again, Chair,
I don't think we can do that.

Mr Gina : OK, we are getting her. We're gonna get her.

Adv Mahlati : And wena, why don't we get..... Is he the only one that we haven't
got? Who else haven't we got?

Comment : Clare.

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- Adv Mahlati : Do we have her numbers?
- Dr Ngubane : The doors of this plane is going to close just now and I can't talk.
- Adv Mahlati : Let's proceed.
- Comment : (inaudible)
- Ms Melk : OK, Dr Ben.....
- Dr Ngubane : Yes?
- Ms Melk : The resolution was read. Six directors expressed their favour and
- Dr Ngubane : Right.
- Ms Melk : And so far I have Pippa who said no. So we are at seven.
- Dr Ngubane : Right.
- Ms Melk : So, I'm.....what we will do, we will try to solicit responses from the others.
- Adv Mahlati : Who are the others? Who is outstanding?

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- Dr Ngubane : Ya but we are quoreed for this meeting, are we?
- Adv Mahlati : Exactly.
- Comment : Yes we are.
- Dr Ngubane : Sorry? We are? If we are, then that's fine, then you can(inaudible).
So I take it then the resolution is carried? Are we all agreed?
- Adv Mahlati : Yes.
- Mr Golding : We are agreed Chair.
- Adv Mahlati : We are agreed.
- Dr Ngubane : Thank you. Ok. Thank you very much.
- Comment : Sorry to have worried you.
- Dr Ngubane : OK.
- Mr Gina : Thank you Chairperson....
- Adv Mahlati : Thank you Chair.

Handwritten signature and initials in black ink, located at the bottom right of the page.

Ms Melk : Thank you Chair.

Dr Ngubane : Thank you very much. Goodbye.

Mr Gina : How are you counting Thelma?

Adv Mahlati : Exactly.

Mr Gina : I mean if....

Adv Mahlati : Your counting.....

Mr Gina :we are just waiting for advocate Pat to come in and then we are quoreed, but then you're counting.....

Adv Mahlati : Then you are counting seven people.

Mr Gina :seven.

Ms Melk : Lumko said yes. Did he not?

Adv Mahlati : OK, so Lumko, yourself, Cedric, Desmond.....

Adv Mahlati : The Chair.

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- Mr Gina : Suzanne.
- Adv Mahlati : Oh, Suzanne ya. But it really doesn't matter if we were nine and we only have one person who hasn't counted, then it should be eight to one. It can't be six.
- Ms Melk : I still didn't get it from Pat, because she was off the line.....
- Adv Mahlati : OK.
- Ms Melk : That's what I meant.
- Adv Mahlati : Ah, OK.
- Ms Melk : That's what I was trying.....
- Adv Mahlati : No it would be seven to two. Ya, that's what....she's right.
- Ms Melk : What I wanted was for Pat to say.....
- Adv Mahlati : To pronounce.
- Ms Melk :fine with Lumko. He already said it, but I wanted Pat to say it.
- Adv Mahlati : And Pat needs to say it, because I have just, she needs to say what her(inaudible)... is, so that we can put it..... Is that Patricia?



Comment : (discussion about whereabouts of Dr Makhesha)

Adv Mahlati : But where is she physically Patricia?

Ms Melk : I need it for it to be nine, otherwise there is no resolution.

Adv Mahlati : So if somebody sms's, like Clifford, sms's his thing.....

Ms Melk : No I'm not taking Clifford.

Adv Mahlati : We are taking the people that were here.

Ms Melk : (inaudible)

Adv Mahlati : (non related conversation)

Adv Mahlati : Now, do I rush to Pretoria or am I excused.....(inaudible).....so I don't necessarily want to go.

Ms Melk : Don't want to be dissolved.

Adv Mahlati : I don't want to be dissolved. I don't want to be in a meeting that's dissolved. (.....non related conversation.....)

Comment : Are we finished?

Adv Mahlati : Not yet, we are just.....give us two seconds.

Mr Gina :(inaudible)....., because she was on and off. If we agree that she was in the meeting.....

Adv Mahlati : So let's presume she voted against and does it really matter?

Ms Melk : It does.....(inaudible).....

Adv Mahlati : Yes.

Ms Melk :when I write and I say.....


Adv Mahlati : But the motion was carried for all intents and purposes.

Ms Melk : When I write, I have to say eight.....

Adv Mahlati : Yes, yes.

Ms Melk :and it was carried. You know.....

Adv Mahlati : Yes, yes we know that, but as we sit here, we know that it was carried, because her vote is not gonna change the outcome.

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- Ms Melk : ...(inaudible)....she says yes.
- Adv Mahlati : It's not gonna change the outcome either. It still would be carried. The majority of the people voted for it. It's not gonna change the outcome. It is not a material change, it's not going to change that.
- Ms Melk : I understand that, but look I just wanted to be correct.
- Adv Mahlati : No, no, no, don't worry, it shall be correct. I'm sure we'll be able to get her and we don't have to announce...there's no pressure of saying that it was six to seven, six to eight. The most important
- Ms Melk : ...(inaudible).....
- Adv Mahlati : The most important thing is for whether it was carried or not and it was, so let's presume on that and we'll get her on and we'll do that. There is somebody. Is that her? Hello? Yebo?.....(inaudible).....
- Comment : (inaudible)...to get the statement.
- Adv Mahlati : Statement?(inaudible)....we don't write statements. It's you trade union people that write statements. I can edit it.
- Comment : (inaudible)
- Adv Mahlati : Ya, we are.....(inaudible).....that's what Hlaudi said. Cedric.....(inaudible).....



Comment : (inaudible)

Adv Mahlati : So let's go. The people are here.

Comment : Ya...(inaudible)

Comment : (non related conversation)

Comment : Lumko's phone....his cell phone is not going through.

Adv Mahlati : So sms maybe....or I can sms him.

Comment : (non related conversation)

Adv Mahlati : And wena, what is your view about Hlaudi? I don't want Hlaudi to sit in our meetings. He must not be there. We must not give him an authority....to arbiter between us....(inaudible)....we don't do that....(inaudible)....opportunity....(inaudible).

Mr Gina (??) : Ya.

Adv Mahlati : Cause we should....we should be the one if the president wants to talk to the board he must pick one board member. (don't understand language)....we can't allow that Hlaudi situation, mina I disagree fundamentally, utini?

Mr Gina : Now, let's talk about it.

Adv Mahlati :(don't understand language).....Hlaudi and Robin, look at me.....
 (don't understand language).....uHlaudi, no-Robin(??) tight. Tight as thieves. I'm telling you. Joh! And also when we asked to fill uHlaudi, Hlaudi has spread his tentacles. So we must clip them so that we can get into position. I'm talking from self interest.

Mr Gina : (laughing)

Adv Mahlati : He? I'm talking from.....(don't understand language)..... Cut off ama conduit.....(don't understand language).....Cedric. You make interests, you make decisions as self interest. I mean, but actually I don't mind him, I like him. And you know what, these newspapers, we can control them from here Cedric. Do you understand me? I don't want our people....(don't understand language).....when they are in control of the largest communication media. (don't understand language).....

Mr Gina : Ya.

Adv Mahlati : And also these things of ama comradeTwetu(can't hear name properly) doing these things, we must do a conduit so that we can give them money and be comfortable....(inaudible).....(don't understand language).
 (Answers telephone – non related)

Adv Mahlati :(inaudible).....I was saying to you that in meetings....(inaudible)..... I

don't know how to do that.....(inaudible).....they don't. They haven't exercised their right, it's not in my understanding of company rules. They all have to, because it.....

Comment : ...Kaiser....

Adv Mahlati : No, no, no, no, I want us to agree.....

Mr Gina : Ya, OK.

Adv Mahlati :(inaudible).....

Ms Melk : (inaudible)....everybody's not here.

Adv Mahlati : No, I hear you, but....(don't understand language)....it's impossible. For instance if somebody stands up and they leave, it's impossible for you to be able to do so. Whilst that might be a desire.
Where does one get the(inaudible).....?

Mr Gina : I just want to say SABC....(inaudible).....

Mr Molefe : Good morning.

Adv Mahlati : Good morning Phil.

Do you know what I wanted to say to you.....(inaudible)...., we haven't yet.....(inaudible).....mina I'm not, I don't agree that(inaudible)..... say we have changed....meeting because they are unavailable. When you



haven't asked us whether we are available on the dates that...(inaudible).

Mr Gina : You can start afresh.....

Adv Mahlati : No, no, no, but before you cancel we need to know who is unavailable, so that we proceed....(inaudible).....

Comments : (inaudible)

Ms Melk : Why I sent the meeting request is to get the answers, after that.....

Adv Mahlati : No. You don't get me. I'm saying to you that you should say that five board members are unavailable, because it seems.....(inaudible).... to the guys that are available...(inaudible).....(don't understand language). I must change my agenda. I may very well be doing a favour, but (don't understand language)....who owes it to me.....(don't understand language). No, no, no, can I tell you something, this is the difficulty...(wispers).

Comment : I got no issue with you, I'm just saying: Cawe stop now.

Adv Mahlati : OK, no, I'm just also saying that there is....there's got to be a parameter....

Comment : (inaudible)

Ms Melk : All of you need to agree as it were, how you would like to be.....

- Adv Mahlati : To be....to beyes.
- Ms Melk : That's why we have an induction, so that I get from everybody, you know, what you.....you know.....I don't
- Adv Mahlati : Sure you wouldn't.
- Ms Melk : Just you know, how you want your issues to be.....
- Adv Mahlati : No but the issue is why....on their rules, because when you come into a board there must be.....
- Ms Melk : These ones do have views. The way I've done, that's what they agreed.
- Adv Mahlati : Is the way they do it. Oh. OK.
- Ms Melk : Yes, that's why I say.....the induction take from you now.....the new board and the new board is twelve, not four. From the new board, do we continue that way, or.....
- Adv Mahlati : Or do we do it a different way?
- Ms Melk : ...do we do it a different way?
- Adv Mahlati : No, indeed. All I know is that with risk board, knowing some of those

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people there's gonna be a higher level of.....(inaudible).....(don't understand language). There's also a particular manner in which we have been brought up and a tradition that stretches three hundred and fifty years. (don't understand language)

Ms Melk : Even though, I would be very honest, on the day of the board meeting, Lumko said it: you know, OK put in the dates, but check with our offices that.....

Adv Mahlati : They make the diary.

Ms Melk :come back. I did exactly that.

Adv Mahlati : (non related conversation)

PREPARING FOR ANNOUNCEMENT

Dr Ngubane : OK, guys, ready. There is an announcement that is going to be made by the Chairperson of the board.

Mr Gina : Good morning everyone. On my extreme left is Adv Cawe Mahlati, board member of SABC Corporation and my name is Cedric Gina, also the board member of the SABC Corporation. On behalf of Mr Ngubane, the Chairperson of the South African Broadcasting Corporation Board, who is currently in transit, he's leaving Japan, going to Vancouver, who could not be here to conduct this.....to make this announcement. We would like to make an announcement on behalf of the South African Broadcasting Corporation Board, that as from today, Mr Phil Molefe has been appointed to act as an acting Group Chief Executive Officer for the

Corporation, until such time that the process of appointing a permanent Group Chief Executive Officer of the Corporation is completed. And that Mr Nicholson's contract as a Chief Financial Officer of the Corporation expired yesterday, on the 30th of June 2011 and that we would like to wish him well in his future endeavors. Thank you very much. There's an announcement.

Comment : Can we ask questions?

Mr Gina : Can they ask?

Comment : Who then is gonna take over the Head of News?

Mr Gina : Uhm, obviously as a Board we said that because the Head of News, you all know that.....the subcommittee of the Board needs to decide, but we would want to give an opportunity to the acting GCEO, Mr Phil Molefe, to make a recommendation to the Board. Which the Board will consider and an announcement will be made in due course.

Comment : Thank you. Thank you very much.

Mr Gina : Thank you very much.

Comment : Could we ask you to do that in another language please?

Mr Gina : Oh, the announcement.

Comment : Everything.

Mr Gina : I think it's for HR, let Justice....HR will do that one. OK. No, can I just add this part that says: we would like SABC employees to work with Mr Phil Molefe and assist him in his new responsibility. We have confidence that he will be able to hold the fort until such time that we complete the process of appointing the permanent GCEO.

Do you want me to talk in Zulu now?

Comment : Please?

Mr Gina : (Zulu announcement)

I can't say it in Sotho unfortunately.

Comment : (inaudible)

Mr Gina : I did say it.

Comment : Yes he did.

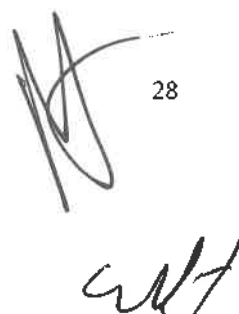
Comment : OK, great.

Mr Gina : OK, guys, thank you very much.

Comment : Alright. Thank you.

Talking : (inaudible)

Adv Mahlati :chief financial officer.....no, he needs to go.

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- Comment :(inaudible).....extend the contract.
- Adv Mahlati : For how long?
- Comment :(inaudible).....
- Adv Mahlati : So have they signed a contract.....(inaudible)....(don't understand language).....
- Comment :(inaudible).....
- Adv Mahlati : No, but there's a German guy.....who are to advise us....(inaudible)
- Adv Mahlati : But you and I are gonna talk. You know that I, in my interview I said the stuff about News and Morning Live....I said that...(inaudible)....and not because I was.....(inaudible).let's start a strategy we allow every person in the(inaudible).....Special Assignment is a dead horse. Yes. No absolutely(don't understand language)
- Mr Gina : (inaudible).....outsource.....(inaudible).....company secretary.....
- Adv Mahlati : Secretariat as a separate and from a corporate....can I tell you something from a corporate governance.....(inaudible)....we must institute that. But we can take Anand for this.....(inaudible).....
- Mr Gina : No that's my preference, because of the.....(inaudible)



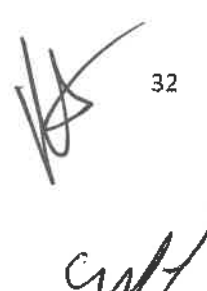
- Adv Mahlati : (inaudible)....in fact there's a grievance procedure that is.....
- Mr Gina :(inaudible)....this morning I ask her to make sure.....
- Adv Mahlati : Because...(inaudible)
- Mr Gina : Now he goes there....(inaudible)
- Adv Mahlati : Now watch, as she keeps on saying we are not quoried. Reading into the record, which is not true. OK.....
- Mr Gina : No we need a ...(inaudible).....cause she's not.....(inaudible).....especially when we got this(inaudible).
- Adv Mahlati : But the problem.....(inaudible).....so I'm not worried about it, the issues that she's going.....(inaudible).....
- Comment : (inaudible)
- Comment : (inaudible).....so at one minute past twelve I sent in my submission(inaudible)....
- Adv Mahlati : Yes.

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- Comment : Then it falls off because we had not signed this delegation of authority.
- Adv Mahlati : (inaudible)
- Comment : And then no, just, she advised me.....(inaudible).
- Adv Mahlati : So then you keep the...
- Comment : Cause I asked Dr Ben to send it back. So he signed.....he's just signed.....
(inaudible).
- Comment : (inaudible).....so now....
- Adv Mahlati : So how do we do it from a legal perspective? Can we....can we suspend her?
- Comment : (inaudible)
- Mr Gina :even the minister can't.....
- Adv Mahlati : So how do we.....
- Comment : (inaudible)
- Adv Mahlati : Shhh, listen to me, can't we disable this.....(inaudible).....




- Comment : Not if she's in the position.
- Adv Mahlati :the same answers from a technical perspective.....
- Comment : Oh, yes ya, I can do it now. That I can do.
- Adv Mahlati : (don't understand language)
- Mr Gina : (inaudible)
- Comment : (inaudible)
- Comment :(inaudible)....that is why she is able to say is able to even have things,
because....(inaudible)....to work out, because even when he is
outside,.....(inaudible)...and we know that.
- Comment : (inaudible)
- Mr Gina : I....I will send and email.....
- Adv Mahlati : Kaizer.
- Mr Gina : (inaudible)
- Comment : It's decisions.....

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

Comment : (inaudible)

Comment : He's very effective, if we are gonna support that. Even your minutes, your.....(inaudible).....

Comment : Which guy is that?

Adv Mahlati : Anand.

Comment : (inaudible)

Adv Mahlati : Cheers guys.

Comment : (inaudible)

Comment : Justice.....(don't understand language).

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

HGM 6B

SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

Aguma, REGISTRATION NUMBER 2003/023915/30

MINUTES OF A GOVERNANCE AND NOMINATIONS COMMITTEE MEETING OF THE BOARD OF DIRECTORS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED HELD IN THE 28TH FLOOR BOARDROOM, RADIO PARK, HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG

AT 10:15

ON 19 AUGUST 2016

MEETING NUMBER 2016/06

PRESENT

Prof M O Maguvhe
Ms L T Khumalo
Prof N A Tshidzumba

Chairperson (via Teleconference)
Member
Member (via Teleconference)

BY INVITATION

Mr J R Aguma
Mr G H Motsoeneng
Ms M A Raphela

Acting Group Chief Executive Officer (AGCEO)
Chief Operations Officer (COO)
Acting Chief Financial Officer (ACFO)

IN ATTENDANCE

Ms T V Geldenhuys
Ms L V Bayi

Group Company Secretary
Deputy Company Secretary

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1. CONSTITUTION OF THE MEETING

The Chairperson Prof M O Maguvhe welcomed everyone present and declared the meeting properly constituted.

1.1 OBSERVATION OF A MOMENT SILENCE

A moment of silence was observed.

1.2 SAFETY AND EMERGENCY PROCESSES

In accordance with the Board's resolution, Members agreed to dispense with the security briefing processes until a new Member was appointed to the Committee.

1.3 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.4 APOLOGIES

Apologies were received and noted.

1.5 DECLARATION OF INTEREST

The Declaration of Interest document was circulated and signed as required by legislation. No interest was declared in items on the agenda.

1.6 APPROVAL OF THE AGENDA

The agenda was unanimously adopted with the following additions:

- Company Secretary's Position; and
- Success Fee for Raising Funds;

2. APPROVAL OF PREVIOUS MINUTES**2.1 MINUTES OF MEETING 2016/03 HELD ON 22 APRIL 2016**

The minutes of Meeting 2016/02 held on 19 April 2016 were considered.

Resolution Number: 19/08/16 – GN90 RESOLVED that:

The Minutes of the Meeting 2016/02 held on 22 April 2016 be and are hereby approved for signature by the Chairperson.

2.2 MINUTES OF MEETING 2016/04 HELD ON 30 MAY 2016

The minutes of Meeting 2016/03 held on 30 May 2016 were considered.

Resolution Number: 19/08/16 – GN91 RESOLVED that:

The Minutes of the Meeting 2016/04 held on 30 May 2016 be and are hereby approved for signature by the Chairperson

3. MATTERS ARISING FROM MINUTES OF THE MEETINGS UP TO 30 MAY 2016**3.1 SOURCING OF A CAR FOR THE CHAIRPERSON**

It was reported that this matter had been completed.

3.2 EX-GRATIA PAYMENT TO NON-EXECUTIVE DIRECTORS

It was reported that this matter had been completed.

3.3 2016/17 TERMS OF REFERENCE

It was reported that this matter had been completed.

3.4 BOARD OPERATIONS MANUAL

It was reported that this matter had been completed.

3.5 RATIFICATION OF THE ROUND ROBIN APPROVAL TO APPOINT THE CHAIRPERSON AND PROSECUTOR FOR THE DISCIPLINARY HEARING OF THE GCEO

It was reported that this matter had been completed.

3.6 APPROVAL TO MANDATE MANAGEMENT TO APPOINT LAWYERS TO REVIEW THE PUBLIC PROSECUTOR'S REPORT

It was reported that this matter had been completed.

3.7 DEMOCRATIC ALLIANCE VS SABC CASE NUMBER 12497/14

It was reported that the matters relating to Resolution (1) had been completed

After a brief discussion, it was agreed that, in view of COO's position being sub-judice, the GNC could not take a resolution in this regard. Consequently, it was recommended that Resolution (2) be rescinded.

Resolution Number: 19/08/16 – GN92 RESOLVED that:

The following resolution taken at the Governance & Nominations Committee meeting of 30 May 2016 be and is hereby rescinded:

- (1) Approval be and is hereby given to mandate the Acting Group Chief Executive Officer and the Chief Financial Officer to establish a vacant position that would be suitable for the Chief Operations Officer and report to the Governance and Nominations Committee by 17 June 2016.

3.8 DISCIPLINARY HEARING OF THE CHIEF OPERATIONS OFFICER

It was reported that this matter had been completed.

3.9 COMMISSION AND REWARDS

It was confirmed that the SABC Policy on Commission had been circulated to Members and that this matter would be included in the discussion under Item 4.4 below.

3.10 DISCIPLINARY HEARING OF THE GCEO

It was reported that this matter had been completed.

4. MATTERS FOR APPROVAL/NOTING/DISCUSSION

4.1 FEEDBACK ON MATTERS RELATING TO THE SUSPENSION OF THE GCEO

Mr J R Aguma reported that, pursuant to the Disciplinary Hearing of the Group Chief Executive Officer, Mr F L Matlala, the parties had reached a full and final settlement in the matter, which included a confidentiality clause. It was highlighted that the agreed settlement was payment of one year's salary including his leave and benefits, which amounted to an approximate sum of R5 million before tax deductions.

In response to a Member's query regarding the alleged R18 million settlement as reported in the, Mr Aguma pointed out that those allegations were incorrect, and that the people responsible for leaking the information must have based their calculation on the GCEO's annual package and the remaining period of his contract. He stated that the Portfolio Committee on Communications (PCC) would be informed that the Settlement was one year's salary and that, due to the Confidentiality Clause, the details would not be disclosed. However, the 2016/17 Annual Financial Report would include the details of the Settlement.

Resolution Number: 19/08/16 – GN93 RESOLVED that:

- (1) Feedback on the Settlement with the Group Chief Executive Officer, Mr F L Matlala, must be provided at the Board meeting scheduled for 19 August 2016;
- (2) This matter be removed from the agenda of the Governance & Nominations Committee.

4.2 REVIEW OF THE APPOINTMENTS OF BOARD MEMBERS AS TRUSTEES OF THE BOARDS OF THE MEDICAL AID AND PENSION FUND

Ms T V Geldenhuys informed Members that Mr K Naidoo, who had been appointed as a Trustee on the Board of the SABC Medical Aid Fund, had requested that the appointments of Board Members to the SABC Medical Aid and Pension Fund Boards be reviewed to determine the role

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that they were required to play on these Boards and to make a recommendation to the SABC Board in this regard.

Ms L T Khumalo concurred with the request and added that, as a Trustee of the SABC Pension Fund, she required the SABC Board to empower her with the necessary instructions and expectations in order for her to play a meaningful role and to protect SABC's interests in this regard. She recommended that, as the Pension and Medical Aid Funds was non-core to the SABC business and had been outsourced in the past, Management must review the Policies and Regulations of these Funds in order to advise the GNC regarding the definition of benefits, the strategy regarding the role of the Trustees and the viability of outsourcing these functions.

Mr Aguma suggested that, considering that the SABC had on its balance sheet over R1 billion liabilities on the Pension and Medical Aid Funds, it would be prudent to invite the Principal Officers of the SABC Medical Aid and Pension Funds to provide a presentation to the GNC. It was pointed out that, to the extent that the SABC did not have enough assets to cover its liabilities, it would need to call cash from its reserves, hence an overview presentation was key in order for the SABC Board to be cautious of its responsibilities to these Funds.

Ms Geldenhuys pointed out that the Pension Fund was regulated by the Financial Intelligence Centre Act, which required it to be independent hence they could not be governed by the SABC, but, they were required to account to the SABC as the owner.

Resolution Number: 19/08/16 – GN94 RESOLVED that:

- (1) Management must review the Policies and Regulations of the Medical Aid and Pension Funds in order to advise the Governance and Nominations Committee at its meeting scheduled for 21 October 2016 regarding the definition of benefits, the strategy regarding the role of the Trustees and the viability of outsourcing these functions;
- (2) The Principal Officer of the Medical Aid and Pension Funds must be invited to provide a presentation at the Governance and Nominations Committee meeting scheduled for 21 October 2016.

4.3 POSITION OF THE COMPANY SECRETARY

AT THIS STAGE MS TV GELDENHUYS WAS RECUSED FROM THE MEETING

Mr Aguma informed Members that the employment contract of the Company Secretary, Ms T V Geldenhuys was due to expire within a period of eight months. Given the challenges in the co-ordination between the Risk, Internal Audit and Compliance Divisions within the SABC, and given her understanding of governance matters, experience, expertise, training, skill and institutional knowledge, the Executives were of the opinion that she be appointed as the responsible GE: for Governance, reporting directly to the Board and administratively to the GCEO. The rationale behind this thinking was due to the abnormalities within the SABC, where different functions would talk across each other on the same topic.

A benchmarking exercise had been conducted with other SOEs and the Rand Water model, which had a Group Executive responsible for Governance who reported directly to the Board and administratively to the GCEO, had been identified as a model that could work for the SABC. Whilst filling the role of GE Governance, she would identify two or three people whom she would guide and train with the understanding that one of them would take over at the end of her contract as the GE Governance. He mentioned that this was part of the Corporation's re-alignment and that the proposal would ensure the independence of the roles of Risk, Internal Audit and Compliance remained, whilst being co-ordinated and reporting to the GE Governance.

Mr Motsoeneng pointed out that, historically the SABC did not have a Succession Plan, which resulted in people leaving the Corporation with their skills and expertise and on recruitment re-join the SABC to perform the same job as Freelancers, which did not benefit the Corporation. He stated that the tabled proposal was part of Succession Planning, which had also been implemented in the News and Sports Divisions in order to avoid training new people who had no understanding of the SABC business. He mentioned that it was within the delegated authority of the Executive Directors to appoint GEs, but, as the Company Secretary reported to the Board, it would be prudent to engage the Board in order to release the Company Secretary and allow her to conduct a hand over process to the Deputy Company Secretary. This would ensure continuity and preservation of the Corporation's historical information.

In response to a Member's query regarding the timing, Mr Aguma stated that the Audit Improvement Project had been phased in, in such a way that the basic issues would be addressed immediately and what remained was to reformat the structure to ensure enforcement of internal controls, which could only be done through a coordinated and capacitated structure.

He proposed that the hand over process commence by no later than 01 September 2016 as most of the audit projects would be commencing at that time.

Ms Khumalo raised a question regarding the process and technicalities around the movement of people in order to ensure that there was no vacuum within the Secretariat Division.

AT THIS STAGE MS L V BAYI WAS RECUSED AND THE MEETING WENT IN-COMMITTEE

Mr Motsoeneng stated that, if the Board was comfortable he recommended that the Board appointed Ms Bayi in the Company Secretary position since she was experienced in doing the work, due to the politics of the Board and the need for consistency.

Ms Khumalo supported the proposal tabled by the Executives and added that, in order to avoid delays and to avoid tainting the process, the hand over process had to commence with immediate effect. For consistency purposes, she recommended that same Talent Search that would be used to assist with the recruitment of the GCEO be used to assist with the recruitment of a Deputy Company Secretary as they were already familiar with the SABC environment.

AT THIS STAGE MESD TV GELDENHUYS AND L V BAYI RE-JOINED THE MEETING AND MEMBERS COMMUNICATED THE COMMITTEE'S RESOLUTION AS FOLLOWS:

Resolution Number: 19/08/16 – GN95 RESOLVED that:

- (1) It be and is hereby recommended to the Board to approve the release Ms T V Geldenhuys as the Company Secretary and to commence with a handover process to the Deputy Company Secretary, Ms L V Bayi, with immediate effect;
- (2) Professor M O Maguvhe in his capacity as the Chairperson of the Board and Governance and Nominations Committee must make a recommendation to the Board to appoint Ms L V Bayi as the Company Secretary with effect from 01 September 2016;
- (3) Approval be and is hereby given to commence with the internal, and external recruitment of a suitably qualified and experienced Deputy Company Secretary;
- (4) Approval be and is hereby given to appoint Talent Africa (Pty) Ltd with immediate effect, as an Executive Search Company to assist the Board with the external recruitment of a suitably qualified and experienced Deputy Company Secretary.

4.4 SUCCESS FEE FOR RAISING OF FUNDS

AT THIS STAGE MRG H MOTSOENENG WAS RECUSED FROM THE MEETING

Mr Aguma informed Members that the SABC relied on two main sources of funding to run its operations, these being 12% from TV Licences and 85% from advertising revenue and the remaining 3% from Government funding and other revenue streams. Over the years, the cost of public mandate activities imposed on the SABC by the ICASA Regulations had not been funded by the fiscal, which implied that the SABC had to find other alternatives of funding. The SABC Encore and 24 Hours News Channel had been funded from funds raised by Mr Motsoeneng and, if the SABC recognised that it had to raise money outside of the two main revenue streams, then it ought to consider rewarding people for raising funds. He provided the following analysis of the R1,19 billion funds that had been raised by Mr Motsoeneng, which was outside of his job description:

- R387 million for the 24 Hours News Channel;
- R359 million for SABC Encore;
- R60 million for the Afcon games;
- R210 million for the volume deals on the Sale of SABC programmes to Africa;
- R15 million for the 2016 Local Government Elections;
- R5 million for the contributions the gratuitous payment to the Music Legends;
- R100 million extra revenue negotiated in the First Quarter;
- R30 million for subscription video demand deal with MultiChoice;
- \$2 million for negotiating savings on Afcon Sports Rights.

Mr Aguma mentioned that, although Mr Motsoeneng had raised all the above-mentioned funds, the Corporation had not recognised him for such performance. He cautioned that, if the Corporation did not incorporate the principle of paying a Success Fee to the COO and employees

who went beyond the call of duty to raise funds for the Corporation, channels like SABC Encore and the 24 Hours News would close down.

In response to Prof Maguvhe's query whether there were no other negotiators in the Corporation, Mr Aguma pointed out that the nature of the negotiations were about the individuals. The fact that a previous Chairperson of the Board had negotiated a contract with MultiChoice for R90 million and yet Mr Motsoeneng had managed to renegotiate the same contract for R730 million was testimony to that statement. He confirmed that there were records to support his statement and that the SABC was already receiving the monies from these negotiations.

He requested the GNC to consider these sources of funding because, for example, if the 24 Hours News Channel were to close about 140 people would lose their jobs. Assuming that Mr Motsoeneng was not within the SABC, the alternative would be to borrow R1,19 billion with an average interest rate of not less than 9,5% because of the SABC's negative Return on Investment on activities included in its public mandate, the Bank would either inflate the interest rate or reject the application to borrow the funds.

He stated that, in terms of the research that had been conducted on banks, the results had shown that a Success Fee for raising capital of R10 million and below would be between 4% and 5%, whilst the fee for raising billions would be 0,5% to 3%. In essence, the higher the transaction fee, the lower the percentage rate for Success Fee. He recommended that the GNC recognise these funds as a definite required source of revenue and the fact that they were different from revenue derived from sales of advertising rendered them as raising capital to fund the activities of national interest.

In response to Prof Maguvhe's query whether a benchmarking exercise had been conducted with other SOEs besides Rand Water and the Banks, Prof Tshidzumba referred to Eskom's financials, where it had been depicted that the current CEO had been paid R9 million for saving South Africa from load shedding, within a period of six months of his employment. Mr Aguma added that the SABC was peculiar in the sense that it was required to raise funds, which ought to have been funded by the fiscal, which amounted to raising capital, and should be compensated by paying a Success Fee.

Ms Khumalo enquired whether the Success Fee was paid as remuneration, commission or a bonus, how often it was paid, to who was it limited; what evidence had to be relied upon prior to payment and who would be paid (for instance if the entire Sales Team claimed to have contributed to the transaction). She enquired further if the Succession Fee principle currently existed within the Corporation or if the existing Commission Policy would be amended to include a Succession Fee clause.

In response, Mr Aguma stated that the Succession Fee principle should apply to the entire Corporation except for those areas where commission was already earned. It was noted that the Sales Division earned commission, but, the TV Licence Division did not even though they generated revenue for the Corporation. He informed Members that investigations on ways to incentivise the TV Licence Division for revenue generation were underway. He mentioned that the Success Fee would cover the revenue generated by employees who went beyond the call of duty either through the innovation of tools, creativity, cost saving or raising capital and that a Policy would have to be developed and clearly communicated to all employees within the Corporation.

AT THIS STAGE MR J R AGUMA WAS RECUSED FROM THE MEETING

At the request by Members, Ms Raphela appraised them on the affordability for Corporation to pay the Success Fee and how it amount would be explained in the Annual Financial Statements (AFS). She informed Members that the amount had to be disclosed separately in the AFS and, in the event that it was defined as a bonus, it would have to be linked to the overall performance of the Corporation. On the issue of affordability, the question would be whether the amount would be a once off payment or if it would be made in tranches. She pointed out that, currently the Corporation had R400K in the bank and that the R100 million raised by the COO had not yet been received.

AT THIS STAGE MS M A RAPHELA WAS RECUSED FROM THE MEETING

Resolution Number: 19/08/16 – GN96 RESOLVED that:

- (1) Approval be and is hereby given to amend the current Commission Policy as follows:
 - (a) the Policy must be renamed the Commission and Success Fee Policy;
 - (b) a clause to cater for the claiming of a Success Fee for Stakeholders responsible for raising capital on behalf the Corporation must be included;

- (c) the 2,5% of the Success Fee and the Scope of the band must be reviewed whenever a payment was made;
 - (d) the Success Fee would be paid when the Corporation received the actual funds and on the availability of funds (the Fee could be paid as a once off fee or over a period of time depending on the availability of funds);
 - (e) the payment of the Success Fee must be made retrospectively and the period for which it is covered must be stated in the Policy;
 - (f) the Policy must be reviewed by the Governance and Nominations Committee on an annual basis;
 - (g) the Policy must state that the procedure and the triggering action upon which a claim could be submitted, for example, upon receipt of a letter from the funder that the funds had been raised solely and exclusively by the individual claiming the fee and if there was a second individual then the Success Fee would be made on a pro-rata basis;
- (2) In lieu of the capital funding of R1,19 billion raised by Mr G H Motsoeneng in favour of the SABC, and the fact that R100 million had not yet been received by the SABC, approval be and is hereby given to pay him a Success Fee of 2,5% on R1,19 billion less R100 million, in instalments, over a period of three years;
 - (3) The Acting Chief Financial Officer, Ms M A Raphela, must provide the Governance and Nominations Committee with the Corporation's Financial Accounts in order to establish if the Corporation could afford the payments stated in Resolution (2) above;
 - (4) Resolution (2) above must be a standing Agenda Item for the Governance and Nominations Committee to enable Members to monitor the payment and to ensure that the financials of the Corporation were not negatively affected by such payments.

4.5 RECRUITMENT OF GROUP CHIEF EXECUTIVE OFFICER

In view of the report provided in under Item 4.1 above, it was agreed that the Corporation embark on the recruitment of a Group Chief Executive Officer (GCEO). It was recommended that, as Talent Africa (Pty) Ltd were familiar with the SABC environment and its requirements for a GCEO, they be appointed to assist in the search.

Resolution Number: 19/08/16 – GN97 RESOLVED that:

Approval be and is hereby given to appoint Talent Africa (Pty) Ltd with immediate effect, as the Executive Search Company to assist the Board with the recruitment of a suitably qualified and experienced Group Chief Executive Officer (GCEO) on the same Terms of Reference that had been used to appoint the previous GCEO.

5. DATE OF THE NEXT MEETING

The next scheduled meeting will be held on **FRIDAY 21 OCTOBER 2016**

6. CLOSURE

There being no further business to transact, the Chairperson terminated the meeting at 11:30.

APPROVED AS A TRUE RECORD OF THE PROCEEDINGS

PROF M O MAGUVHE
CHAIRPERSON

DATE



HGM 7



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TA131

4 August 2015

TO WHOM IT MAY CONCERN

**CERTIFIED EXTRACT OF THE SUCCESSFUL ROUND ROBIN APPROVAL
CONCLUDED ON 31 JULY 2015 TO APPROVE A DEVIATION FROM
PROCUREMENT PROCESSES TO ACQUIRE A MULTI-PURPOSE SET AND
STUDIO BUSINESS CASE**

**DEVIATION FROM PROCUREMENT PROCESSES TO ACQUIRE A MULTI-
PURPOSE SET AND STUDIO FOR SABC SPORT AND THE NEWS DIVISION**

RESOLVED that:

- (1) Approval be and is hereby given for the SABC Sport and News Divisions to deviate from normal procurement processes in order to appoint Vision View, for the construction of a multi-purpose Set and Studio (including all technological components) to service SABC Sport and the News Divisions, at an amount of R39 380 000,00 (exclusive of VAT);
- (2) The Head of Sport and the GE: Technology be and are hereby mandated to conclude and sign all contract documentation outlined in Resolution (1) above on behalf of the SABC.

Certified a true extract of the minutes

**THERESA GELDENHUYS
GROUP COMPANY SECRETARY**

Vision View 1 Presented to the Ops Com
HGM-174
HGM 7



SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED
REGISTRATION NUMBER 2003/023915/30

**MINUTES OF A SPECIAL MEETING OF THE OPERATIONS COMMITTEE HELD IN THE 27TH
FLOOR BOARDROOM, RADIO PARK, HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG**

AT 10:30

ON 4 MARCH 2015

MEETING NUMBER 2015/04

PRESENT

Mr H Motsoeneng
Mr J R Aguma
Ms V Duwarkah
Mr A Heunis
Mr S Molaudzi
Mr L Ntloko
Mr J van Rooyen
Mr D Herold
Ms S Motsweni
Ms B Tugwana

Chairperson (until 11:52)
Member (until 11:52)
Member (until 11:52)
Member
Member
Member (From 11:10)
Member
Member
Member
Member

APOLOGIES

Mr P Mashamba
Mr J Matthews
Mr Z Rawoot

Member
Member
Member

BY INVITATION

Mr L Lekgotho
Mr M Molete
Ms N Maseko
Mr M Mpuru
Mr L Mansfield

GM: Broadcast Technology
SABC News
SABC News
Vision View Productions
DTT Advisor

IN ATTENDANCE

Mr A Clayton

Assistant Company Secretary

1. CONSTITUTION OF THE MEETING

The Chairperson Mr H Motsoeneng welcomed all present and declared the meeting duly constituted. A special welcome was extended to Mr M Mpuru from Video Vision Productions. The Chairperson pointed out that he had another meeting to attend and requested in his absence, Mr Heunis chair the meeting on his behalf.

1.1 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.2 APOLOGIES

Apologies were received and noted.

2. MATTERS FOR DISCUSSION/NOTING/APPROVAL

2.1 STUDIO UPGRADE/DESIGN

Mr Mpuru provided an overview on the Business Plan for the Studio Upgrade/Redesign Project and highlighted the salient features. He stated that this Project would result in the SABC having multi-purpose studios with augmented reality of an international standard for News, Sports and Drama productions, with special emphasis on low-cost lighting and customised graphics.

The proposed operational system would include customised graphics and updated software and would be different to the current SABC operating system. Furthermore, Video Vision Production would install the operating system and provide training to the SABC employees and operational support for a period of one year post the studio upgrade/redesign project. It was noted that in the event the SABC no longer required the operational support from Video Vision Production post the Project, the SABC would have to license the intellectual property of the graphics operating system. The software that was envisaged to be installed would allow for interaction with social media platforms.

It was pointed out that the Project should be an inclusive process which incorporated the individual requirements of each platform. A price breakdown per studio was provided and it was stated that the estimated price did not include import costs which were required to be paid up front and that the Project excluded all matters in relation to the building structure.

Members requested that the Business Case must include a cost for a fire suppression system and a breakdown of technical equipment that would be supplied. It was stated that virtual reality was best suited for weather programmes and that it would be made available in Studios 1 and 2.

The roll-out of the proposed Project was briefly discussed, which highlighted that all studios would be upgraded from scratch with Studio 4 being prioritised. In addition, all studio equipment would be operated on high definition. It pointed out that Studio 4 must be efficiently utilised and that live and preproduction components of a production must be managed and integrated professionally.

It was emphasized that a draft Studio Maintenance Plan as well as a Back-up Studio would be required. It was pointed out that in order to eliminate costs and avoid any possible fruitless and wasteful expenditure, throughout the Project due care must be exercised with regards to the movement of employees and preservation of assets.

AT THIS STAGE MR H MOTSOENENG, MR J AGUMA AND MS V DUWARKAH LEFT THE MEETING

It was concluded that the draft quotation might change due to individual platform requirements.

Resolution Number: 04/03/15 – OC94 RESOLVED that:

- (1) Approval be and is hereby given for Platforms to engage with Video Vision Productions in order to present specific requirements for each platform for the Studio Design/Upgrade Project so that a comprehensive quotation may be finalised.
- (2) The Studio Upgrade/Redesign Project must include a cost for a fire suppression system and a breakdown of technical equipment that would be supplied.

3. CLOSURE

There being no further business to transact the meeting was terminated at 12:13.

APPROVED AS A TRUE RECORD OF THE PROCEEDINGS

MR A HEUNIS
CHAIRPERSON

A handwritten signature in black ink, consisting of a stylized 'A' or 'H' shape with a long horizontal stroke extending to the right, and a cursive signature below it.

HGM 7



B U S I N E S S P L A N

DATE: 23 JULY 2015

TO: GROUP EXCO

FROM: HEAD OF SPORT

RE: DEVIATION FROM NORMAL PROCUREMENT PROCESS
TO ACQUIRE A MULTI PURPOSE SET AND STUDIO

THE APPROVAL OF MULTI PURPOSE SET BUSINESS PLAN

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Annexure B



SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED
REGISTRATION NUMBER 2003/023915/30

SUBMISSION TO THE GROUP EXCO MEETING SCHEDULED FOR 29 JULY 2015

1. DEPARTMENT REQUESTING SUBMISSION:

SABC SPORT AND TECHNOLOGY

2. TITLE OF SUBMISSION:

Deviation from normal procurement process to acquire a multipurpose set and studio

3. PURPOSE OF SUBMISSION:

The purpose of the submission is to request the Group EXCO to grant approval to the SABC Sport and technology to finalise the procurement process to acquire a multipurpose set, studio and contract with the supplier.

4. BRIEF INTRODUCTION AND BACKGROUND:

The reason for the deviation is that processes followed to provide the SABC with reliable, modern and cost effective studios have not yielded positive results to date. Note that these processes have been highlighted in the background. In addition, there is insufficient time to follow the normal tender processes and implement a solution, prior to the start of the Rugby World Cup in September 2015. Further to this, Vision View has presented a set solution that was innovative, cost effective and the delivery timelines were more favourable (considering the September deadline to be met).

5. DECISIONS REQUIRED FROM THE GROUP EXCO:

Approval from Group Exco to continue to procure the multi-purpose set and studio

6. PRESENTATION

No

7. ESTIMATED TIME REQUIREMENT

8. ATTACHMENTS

Deviation from normal procurement process to acquire a multipurpose set and studio

9. RESPONSIBLE EXECUTIVE


Ms B Tutwana GE: SPORT



1. PURPOSE

The purpose of the submission is to seek approval from the Operations Committee to deviate from the procurement process, for the construction of the multipurpose set and studio (including all technological components) to service SABC Sport and News. The requested budget is R39 380 000.00.

2. BACKGROUND

SABC has been looking at providing a long-term solution to the challenges imposed by the deterioration of the existing facilities, to ensure that the broadcast infrastructure will be able to deliver the required quality standards in an HD environment making use of modern techniques and features.

The current studio facilities (Studio 1 and 2) were destroyed during the Henley fire many years ago. The procurement and insurance claim processes were followed to replace Studio 1 and 2. However, neither has yielded positive results to date.

In the interim:

- Sports productions continued to be broadcast from Studio 1 and 2 utilising inefficient and undesirable processes e.g. utilizing an OBVAN as a control room for the studio, in the absence of the destroyed control room equipment.
- A tender process was followed to replace the technical equipment in Studio 1 and 2. The budget for the tender was approximately R100m. However, the tender has been stopped because the costs outlined were exorbitant (refer to resolution).
- The equipment in studio 2 has become unusable, inefficient to such an extent that management and audience have complained gravely about the quality of the broadcasts, when compared to Supersport, despite the fact that both platforms are carrying the same feed.

SABC (Sport and News) could no longer afford to compromise on the quality and reliability of the broadcast service. Therefore an urgent solution had to be sought to mitigate these challenges, comply with broadcast delivery standards as well as deliver future-proof programming in an HD environment, using the latest technology and features.

A company called Vision View has presented a multi-purpose set solution that was innovative, cost effective and the delivery timelines were more favorable (considering the stringent timeline to be met). The solution satisfied both SABC Sport and News live

content production requirements to ensure reliability and compatibility with the other SABC facilities. The scope includes the set design and construction; lighting; graphics; technological equipment; video wall comprised of multiple screens; furniture and wall padding; and system integration. The system integration will include all necessary broadcast equipment such as cameras, technical control and galleries and analysis tools among other features.

In addition, the SABC Operations Committee resolved that 3 potential suppliers of studios and sets be identified, to present a solution and costing to the SABC (refer to resolution). However, the presentations content, date and time is still in the process of being finalised.

This has resulted in SABC Sport and News being required to broadcast the 2015 Rugby World Cup in September with no reliable studio solution in place. Further to this, there are other major productions of national interest to follow e.g. SA Local Municipal Elections and the 2016 Olympic Games.

3. REASON FOR DEVIATION

We are requesting that the SABC deviates from normal procurement practices and appoints 'Vision View' to implement a multi-purpose set and studio.

The reason for the deviation is that processes followed to provide the SABC with reliable, modern and cost effective studios have not yielded positive results to date. Note that these processes have been highlighted in the background.

In addition, there is insufficient time to follow the normal tender processes and implement a solution, prior to the start of the Rugby World Cup in September 2015.

Further to this, Vision View has presented a set solution that was innovative, cost effective and the delivery timelines were more favorable (considering the September deadline to be met).

4. VENDOR SELECTION

We are requesting that the SABC deviates from normal procurement practices and appoints 'Vision View' to implement a multi-purpose set and studio.

5. FINANCIAL IMPLICATION

Once off CAPEX/ OPEX cost:

Description	Cost
System Integration (2/07/2015 @R19.12 = R28 680 000)	*£1500 000.00
Set Design	R3 200 000.00
Lighting	R1 600 000.00
Technological Developments	R2 100 000.00
Multiple Screens (incl Video Wall)	R1 500 000.00
Furniture & Wall Padding	R300 000.00
Total cost	R37 380 000.00
Project Management Fees (5.35%)	R2 000 000.00
GRAND TOTAL	R39 380 000.00

• Cost Adjustments

- The initial cost for Studio 4 was R34 800 000.00, however with further discussions with the supplier, the cost was then reduced to R30 000 000.00. However the SABC Group Executive Operations Committee interrogated the rationality of the reduction and requested that the initial cost quoted is reinstated.
- Considering the time that lapsed from the initial quote to date, the Rand Pound currency fluctuations on the systems integration components have

4 THE APPROVAL OF MULTI PURPOSE SET BUSINESS PLAN

further exacerbated the cost, from R17 to R19.12. While the cost in Pounds remained the same (£1 500 000.00), however the fluctuations in currency have increased by nearly 20%

- o Ever since, the supplier also added a project management fee of 5.35% of the total cost of the project, which was not included in the initial quote
- Gearhouse Broadcast UK is providing the system integration equipment and features. The £ currency is used as per the recommendation from SABC Treasury, to mitigate the currency fluctuations.

6. LEGAL IMPLICATIONS

We do not envisage any legal implications because the SABC does not have an agreement with any supplier to deliver sets and studios. In addition, we are following the necessary processes to approve the request.

7. IMPLEMENTATION PLAN/DELIVERABLES

The following were considered when developing the implementation plan and deliverables:

- A high level assessment of the SABC television production facilities was performed (refer to assessment). The outcome of the assessment is that studio 11 is the best location for the multipurpose set.
- The major risk that the set and studio may not be completed prior to the Rugby World Cup in September. To enable a successful broadcast within these stringent timelines, we will:

- o Prioritise the development of the set i.e. everything in front of the camera.

Note that this will be designed as per the specifications of Studio 11. However, if we cannot complete the technology components and integration prior to the Rugby World Cup, then the multipurpose set will temporarily be housed in Studio 7. The reason is that we can utilize an OB Van as the control room in Studio 7 to ensure the broadcast continues uninterrupted.

- o Continue implementing the technology components and integration in Studio 11.

- Once the Rugby World is completed, the multipurpose set will be moved from Studio 7 to Studio 11.
- Below is the high level overview of the key activities that need to occur within the specified timelines:

Week	Month	Date	Key activity
1	Jun	8 - 14	OPS meeting where original case was tabled for approval
2	Jun	15 - 21	Arranged with supplier sent documents to supplier, to address ops concerns identified alternate plans, to meet the short timelines
3	Jun	22 - 28	met with supplier to confirm price Discuss plan and the way forward in the short timelines Awaited feedback from supplier
4	Jun - Jul	29 - 5	Supplier is revisiting quote and commitment Final meeting with supplier Special TIC Rework business case Procurement feedback
5	Jul	6 - 12	Presentations and evaluation Special OPS Special BAC
6	Jul	13 - 19	Awarding and contract signing (subject to obtaining approvals)
7	Jul	20 - 26	Build set and install temporary in studio 7
8	Jul - Aug	27 - 2	Build set and install temporary in studio 7
9	Aug	3 - 9	Build set and install temporary in studio 7
10	Aug	10 - 16	Build set and install temporary in studio 7
11	Aug	17 - 23	Build set and install temporary in studio 7
12	Aug	24 - 30	Build set and install temporary in studio 7
13	Aug - Sep	31 - 6	Testing for the World Cup
14	Sep	7 - 13	Testing for the World Cup
15	Sep	14 - 20	Start: 2015 Rugby World cup broadcast - opening ceremony on 18th

8 THE APPROVAL OF MULTI PURPOSE SET BUSINESS PLAN

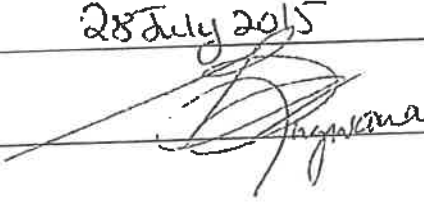
8. CONTACT PERSON

Requestor Name: Bessie Tugwana

Designation: GE: SABC SPORT

Telephone no.: 3311

Date: 28 July 2015

Signature of Requestor: 

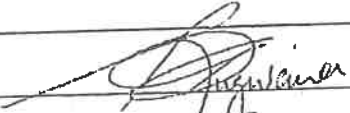
9. ACCOMPANYING / SUPPORTING DOCUMENTS

- Studio 1 and 2 HD upgrade with resolution
- Resolutions from OPS committee
- High level assessment of SABC television facilities for suitability
- Quotation from Vision View
- Equipment to be supplied by Vision View
- Confirmation that the equipment meets SABC technical standards

10. RECOMMENDATION BY BUSINESS UNIT:

SUBMITTED BY:

Group Executive (Name): SPORT **BESSIE TUGWANA**

Signature: 

Date: 28 July 2015

9 THE APPROVAL OF MULTI PURPOSE SET BUSINESS PLAN

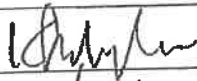


Group
Executive
Acting (Name):
Technology

KUBENDHRAN PADAYACHEE

KUBEN PADAYACHEE

Signature:



Date:

29/07/2015

- The deadline for BAC submissions is 10 working days prior to the actual Meeting. Any submission not duly signed by the Group Executive and not received by the set date, will not be included on the Agenda. The onus rests with the Requestor in the Business Unit to find out the date of the next BAC meeting, thus ensuring that the deadline is met. Contact Ms Fahmida Valla on 011 714 2152
- Procurement Division has a 5 working day turnaround time to finalise the submissions. Please plan accordingly by handing in your submissions early in advance.

10 THE APPROVAL OF MULTI PURPOSE SET BUSINESS PLAN



Annexure HGM 7

HGM7



SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED

REGISTRATION NUMBER 2003/023915/30

MINUTES OF A MEETING OF THE OPERATIONS COMMITTEE HELD IN THE 28TH FLOOR
BOARDROOM, RADIO PARK, HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG

AT 10:35

ON 5 MAY 2015

MEETING NUMBER 2015/12

PRESENT

Mr GH Motsoeneng
Ms S Motsweni
Mr J R Aguma
Ms V Duwarkah
Ms N Philiso
Mr S Molaudzi
Mr L Ntloko
Mr J van Rooyen
Mr D Herold
Mr J Matthews
Mr P Mashamba
Ms B Tugwana
Mr Z Rawoot

Chairperson
Member
Member
Member
Member
Member
Member
Member
Member
Member
Member
Member

APOLOGIES

Mr A Heunis

Commercial Enterprises Advisor

IN ATTENDANCE

Mr Mabaso

GE: Human Capital

A handwritten signature in black ink, located at the bottom right of the page. The signature is stylized and appears to be written in a cursive or semi-cursive script.

1. CONSTITUTION OF THE MEETING

The Chairperson, Mr GH Motsoeneng welcomed all present and declared the meeting duly constituted.

1.1 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.2 APOLOGIES

Apologies were received and noted.

2. MATTERS FOR APPROVAL/NOTING/DISCUSSION

2.1 STUDIO UPGRADE PROJECT

Mr Motsoeneng pointed out that the Studio Upgrade Project, which was a key operational deliverable, had to be completed within the current financial year and for improved efficiency had to be completed in a phased approach and commence with the upgrade of Studio 4. The upgrades to Studio 1 and 2 would be undertaken as part of the phased Studio Upgrade Project. It was noted that the Studio 1 and 2 tender process be cancelled. It was discussed that the initial quotation received from Vision View be finalised to ensure that the appropriate approvals were obtained. Members discussed the initial quotation received from Vision View and highlighted that the initial recommendations stood and must be included in the final quotation to be tabled at the Committee.

It was pointed out that the Studio Upgrade Project would be separated by technical and structural components and that a process was underway to appoint service providers who would structurally prepare studios prior to the installation of new operational equipment and studio sets. In addition, Studio Upgrade Providers would provide operational equipment and designed sets. The process to identify three companies which specialised in studio upgrades had been identified and would be scheduled to provide appropriate presentations to the Committee.

It was pointed out that approval for a new organisational structure was imminent and as such it was imperative that GE's of affected Divisions ensured the finalisation and implementations of individual structures and engage and inform Mr Mabaso on the aforementioned.

Resolution Number: 5/05/15 – OC125 RESOLVED that

- (1) The Head of Sports be and is hereby mandated to co-ordinate the finalisation of the Vision View quotation for the Studio 4 upgrade and on consulting affected and interested platforms table a Business Case which included the finalised quotation at a meeting of the Operations Committee;
- (2) Approval be and is hereby given to the procurement Division to cancel the tender process for the Studio 1 and 2 upgrades.

3. CLOSURE

There being no further business to transact the meeting was terminated at 10:08

APPROVED AS A TRUE RECORD OF THE PROCEEDINGS

MR GH MOTSOENENG
CHAIRPERSON

HGM 8

Broadcasting during elections is a testing time for the SABC. This is because it is during elections in particular that our commitment to objectivity, accuracy, fairness, impartiality and balance is scrutinised closely and evaluated assiduously. Election broadcasts are regulated by the Independent Broadcasting Authority Act and ICASA's regulations. During an election period, the SABC is bound to comply with additional ICASA guidelines on equitable coverage of political parties, which are only applicable during an election period. Notwithstanding these additional requirements, news decisions during election periods have, as is the case between elections, to be driven by the news judgement of our news staff, and take account of the need to ensure that attention is given to thorough examination of the views, policies and campaigns of all the main political parties.

This is also a trying time for our editorial staff, who may experience pressure from political parties seeking to influence our editorial decisions. While remaining courteous, staff should always refer complaints to the appropriate offices.

News staff are required to study, understand and observe the statutory provisions on election broadcasts in the Independent Broadcasting Authority Act (see Sections 58, 59 and 60) and ICASA's regulations. These requirements include the limitations on party election broadcasts, the time to be made available to political parties, the duration and scheduling of party election broadcasts, and political advertising during election periods. News staff should also familiarise themselves with any internal guidelines developed for election coverage, including policies such as the Policy on Election Advertising.

The SABC shall, in compliance with the Independent Broadcasting Authority Act, cease party election broadcasts 48 hours before the polling period begins.

RESTRICTIONS ON SPONSORSHIP OF NEWS, CURRENT AFFAIRS AND INFORMATION PROGRAMMES

The SABC's approach to the sponsorship of news, current affairs and information programmes takes into account our public and commercial services' programming responsibilities, applicable legal and regulatory requirements as stipulated from time to time by ICASA, and the overall performance and well-being of our stations and channels.

Our overriding concern, shared by ICASA, is to preserve the editorial independence and integrity of the programmes concerned. Like ICASA, the SABC seeks to ensure that editorial control of programmes remains with the broadcaster. Accordingly, it is the responsibility of broadcasters to ensure that editorial independence and integrity are not influenced by the presence of advertising and sponsorship, and to demonstrate this to ICASA's satisfaction.

Sponsorship of television news and current affairs has been prohibited by ICASA, and is therefore not allowed by the SABC. For radio, ICASA has allowed a window period for sponsorship of news, but has encouraged the industry to phase it out. In line with the fact that it is currently permitted by ICASA, the SABC's policy is to allow for the sponsorship of radio news and current affairs programmes. Weather forecasts and sports bulletins that form part of TV news bulletins may be sponsored. Any product placement within news and current affairs programmes is strictly forbidden.

REVIEW

This policy is reviewed by the SABC Board every five years.



HGM 9 HGM-190

ANNEXURE HGM 9

HGM-191



FIRST DEED OF ADDENDUM TO AGREEMENT

MADE AND ENTERED INTO BY AND BETWEEN

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LTD

And

TNA MEDIA (PROPRIETARY) LIMITED

Ref: 00005606

GE: Legal Services (Acting)
MBULI NEPFUMRADA



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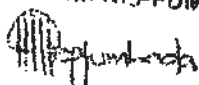
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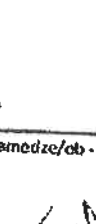

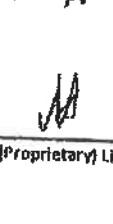
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5. REMAINING TERMS AND CONDITIONS	6

GE: Legal Services (Acting)
MBIRI NEPFUMBADA



5606 - N. Gamedze/ob - TNA Media (Proprietary) Limited - April 2013

1. THE PARTIES

This Addendum is made and entered into between:

- 1.1 **THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED**, a state-owned company registered in terms of the company laws of the Republic of South Africa, under registration number 2003/023915/06 and constituted in terms of the Broadcasting Act; No. 4 of 1999, as amended, and having its place of principal business at corner Henley and Artillery Roads, Auckland Park, Johannesburg, Republic of South Africa; and
- 1.2 **TNA MEDIA (PROPRIETARY) LIMITED**, a private company with limited liability and incorporated in terms of the company laws of the Republic of South Africa, under registration number 2010/006569/07 and having its principal place of business situated at 52 Lechwe Street, Corporate Park, Midrand, Republic of South Africa.

2. DEFINITIONS AND INTERPRETATION

- 2.1 In this Addendum, the following expressions shall bear the meanings assigned to them below:
 - 2.1.1 "Addendum" means this first deed of addendum to the Main Agreement and any annexure hereto;
 - 2.1.2 "Effective Date" means the date on which this Addendum will become of force and effect, which for the avoidance of doubt is 1 May 2013 notwithstanding the Signature Date hereof;
 - 2.1.3 "Main Agreement" means the agreement entered into between the Parties which commenced on 1 March 2012 and which remains in effect for 36 (thirty six) months;
 - 2.1.4 "New Event" means a series of events known as Face the People a solution based public engagement with political leaders brought to you

by the SABC, with a guest agreed to jointly by the Parties, held at various venues throughout the Republic of South Africa, and on dates agreed to by the Parties;

- 2.1.5 "Parties" means the SABC and TNA Media collectively and "Party" shall be a reference to either of them;
- 2.1.6 "Sunday Live" means a current affairs news programme broadcast on Sundays from 18:00 until 18:30 on SABC 1;
- 2.1.7 "SABC 1" means a public service broadcasting television channel operating under a television broadcast license granted to the SABC by the Independent Communications Authority of South Africa (ICASA) in pursuance of the provisions of the Broadcasting Act No.4 of 1999, as amended, and the Independent Broadcasting Authority Act No. 153 of 1993, as amended, and the Electronic Communications Act No. 36 of 2005, as amended, and may also mean SABC as the context requires;
- 2.1.8 "SABC" means the Party described in clause 1.1 above;
- 2.1.9 "Signature Date" means the date of signature of this Addendum by the Party signing last in time;
- 2.1.10 "TNA" means the Party described in clause 1.2 above;
- 2.1.11 "Term" means the period commencing from the Effective Date and terminating on the Termination Date of the Main Agreement;
- 2.1.11 "Website" means the internet webpage known as: www.tnafacethepeople.co.za.

- 2.2 In this Addendum unless the contrary appears from the context, the provisions contained in the Main Agreement relating to its interpretation shall apply mutatis mutandis.

5606 - N. Garnerize/cb - TNA Media (Pty) Ltd, 11 April 2013

GE: Legal Services (Acting)

NO

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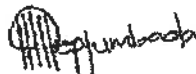
3. INTRODUCTION

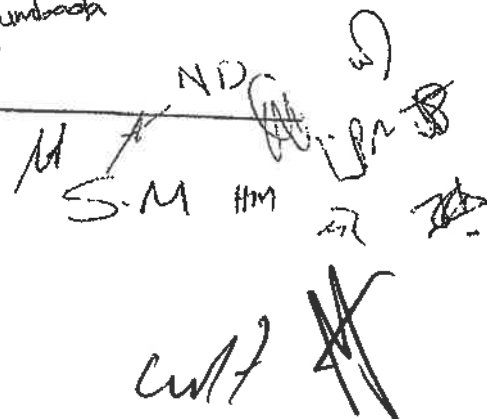
- 3.1 It is recorded that the Parties entered into the Main Agreement as defined in clause 2.1.3 above.
- 3.2 The Parties enter into this Addendum to amend the Main Agreement.

4. VARIATION OF THE MAIN AGREEMENT

- 4.1 The Parties hereby agree to amend the Main Agreement on the terms and conditions as set out in this Addendum.
- 4.2 The Parties further agree to amend the Main Agreement in the following terms:
- 4.2.1 TNA Media will host the New Event once a month;
- 4.2.2 TNA Media hereby grants to the SABC the right to broadcast the New Event live at the Venues on an exclusive basis as the host broadcaster and/or broadcast partner of the New Events;
- 4.2.3 the SABC accepts the grant of the right referred to in sub clause 4.2.2 above and will broadcast the New Event live on Sundays Live once every month;
- 4.2.4 the New Event will be broadcast by the SABC for the remaining term of the Main Agreement;
- 4.2.5 the Parties agree to regulate their relationship with regard to the hosting of the New Event in accordance with the terms and conditions of the Main Agreement;
- 4.2.6 TNA will establish and maintain a Website to serve as a forum and gateway to the events;

GE: Legal Services (Acting)
MBULU NEPFUMBADA





- 4.2.7 the Parties further agree to enter into a separate concurrent commercial commitment agreement for classical airtime for an amount of not less than R 4 500 000.00 (Four Million and Five Hundred Thousand Rand Only).

5. REMAINING TERMS AND CONDITIONS

- 5.1 Save for the amendments to the Main Agreement as set out in this Addendum, the remaining terms and conditions of the Main Agreement shall remain of full force and effect and bind the Parties according to its terms.
- 5.2 No variation, alteration, addition or consensual cancellation of or to this Addendum or the waiver of any rights shall be of any force unless it is reduced in writing and duly executed by the Parties' duly authorized representatives.
- 5.3 If there is any conflict between the provisions of this Addendum and the provisions of the Main Agreement, then the provisions of the Addendum shall prevail.

GE: Legal Services (Acting)
MBULU NIDFUMBADA

THUS DONE AND SIGNED AT JOHANNESBURG THIS 12th DAY OF APRIL 2013

AS WITNESSES

1. [Signature]

(Signature on behalf of The South African Broadcasting Corporation SOC Ltd, who warrants his/her authority)

Full Name: Lulama Makhobo

2. [Signature]

Designation: Group Chief Executive Officer

THUS DONE AND SIGNED AT JOHANNESBURG THIS 12th DAY OF April 2013

AS WITNESSES

1. [Signature]

(Signature on behalf of The South African Broadcasting Corporation SOC Ltd, who warrants his/her authority)

2. N. Motsoeneng

Full Name: Hlaudi Motsoeneng

Designation: Chief Operations Officer - Acting

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SIGNED AT Midrand THIS 15th DAY OF April 2013

AS WITNESSES

1.

[Signature]

(Signature on behalf of TNA Media (Proprietary) Ltd who warrants his/her authority)

Full Name: NAZUKA HOWA

Designation: CEO

2.

[Signature]

THUS DONE AND SIGNED AT JOHANNESBURG THIS 12 DAY OF April 2013

AS WITNESS

1.

[Signature]

(Signature on behalf of South African Broadcasting Corporation SOC Ltd, SABC Legal Department, who warrants his/her authority)

Full Name: Mbulu Nephumbada

Designation: Group Executive: Legal Services (Acting)

and [Signature]

HGM 10

ANNEXURE

H9M10

HGM-200

Chief Corporate Affairs Officer

The Job Purpose

The Chief Corporate Affairs Officer is key to ensuring the SABC achieves its business objectives internally and externally, building the corporation's impact and reputation and ensuring its future success.

The post holder will head up the corporation's over-arching policy and communications function and will also establish and manage strategic business processes, including business planning, governance and performance management.

The role requires a strategic thinker with the ability to be hands-on and highly results-orientated, with proven leadership and successful management experience, able to manage complex projects and high-level stakeholder relationships.

This role reports to the Group Chief Executive Officer, sits on the corporation's Executive Management Team and may attend meetings of the Board as support to both Company Secretary, the Board and GCEO.

The Chief Corporate Affairs Officer herein referred to as CCAO is responsible for the coordination of all corporate related functions that previously reported to the Group Chief Executive Officer (GCEO). These functions are:

Procurement, legal, strategy, human capital, technology & communication.

In other words the following Group Executives and Heads will form part of the direct reporting lines of the CCAO:

Group Executive: Human Capital, Services, Group Executive: Technology, Head: Strategy, Head: Procurement, Head: Legal Services and Head: Communication.

One of the critical functions of the CCAO is to assist in reducing the span of control of the GCEO which comprises of 13 direct reports and free her to concentrate on the more strategic issues of enhancing the corporation's bottom line and driving it to better performance within the context of the competitive nature of the broadcasting industry.



What Are the Duties of the Chief Corporate Affairs Officer?

The post holder will work closely with the Board, Chairman, Group Chief Executive Officer, and Executive Management Team, leading on defined programmes to ensure that the SABC has:

- ☑ Developed a strategy to raise the profile of corporation and its contribution to informing, educating and entertaining the South African citizenry and to improving outcomes for viewers and listeners.
- ☑ Effective governance arrangements.
- ☑ Robust business plans for its operation, sustainability and future development.
- ☑ Effective communications strategy
- ☑ Effective policy role and function.

Business planning and development:

- ☑ Working with the Group Chief Executive Officer to manage the business planning process, facilitating the development and implementation of integrated work programmes for the corporation.
- ☑ Overseeing key performance indicators and outcome specifications for the organisation through liaison with Group Chief Executive Officer and the preparation of quarterly progress updates for the Executive Management Team, the Board and other major stakeholders like the shareholder and Parliamentary Committee on Communication.
- ☑ Managing systems to facilitate successful delivery of projects and programmes including project planning mechanisms, monitoring and evaluation systems, budget management systems, quality assurance systems and contract management systems.
- ☑ Providing information to enable effective financial accounting and management.

The Chief Corporate Affairs Officer is responsible for all internal corporate and strategic functions that are geared towards ensuring that there is greater synergy and cohesion in providing the necessary support to the GCEO and other business units within the corporation.

In today's highly competitive business world, maintaining a positive corporate reputation both between the shareholder and circle of internal stakeholders can be critical to an organization's commercial and public success. Ordinarily the Chief Corporate Affairs Officer work hard to keep the corporation in the good graces of internal and external forces by providing both with timely, accurate and honest

information about the organization and details about the values that influence the way it does business. Most importantly, making sure that the resourcing of business units is linked to their success.

Governance:

- ☑ Supporting the corporation's Company Secretary in respect of the Board's key deliverables.
- ☑ Maintaining a sound, overarching corporate governance and risk management strategy for the corporation to ensure the highest level of accountability in the corporation's decision-making processes.
- ☑ Working with providers of the corporation's professional services (e.g. legal and audit).
- ☑ Keeping under review all corporate governance arrangements that might affect the corporation and ensure that both the Executive Management Team and the Board are fully briefed on these matters and the implications.
- ☑ Ensure that the organisation is compliant with data protection, freedom of information and human rights matters.

Policy

- ☑ Initiating and maintaining a policy role and function reflective of the aims and objectives of the corporation and of its constituent bodies
- ☑ Producing thought leadership and other policy direction reports and initiatives
- ☑ Responding to a wide range of consultations and reports within the context of the policy of the corporation and its aims and objectives

SABC Board:

- ☑ Contribute to the delivery of the Board's financial and legal responsibilities and objectives.
- ☑ Producing annual work plans and budgets linked to the corporation's strategic objectives.
- ☑ Contributing towards advising and guiding the Board on its corporate and governance responsibilities.
- ☑ Produce the corporation's corporate business plan and associated budget and assist in the compilation of annual and other statutory reports and returns in liaison with the Chief Financial Officer, the Chief Operations Officer and other related officials as appropriate.

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Communications:

- ☑ Initiating, managing and delivering a corporate communications strategy to develop the corporation's reputation, brand and relationships, ensuring we have a clear identity and high levels of goodwill and understanding amongst the various stakeholder groups and wider audiences.
- ☑ Developing and ensuring the strategic management of our stakeholder relationships and strategies for influencing the Government, Parliament, wider stakeholders and the media.
- ☑ Providing a strategic advisory communications function to the Chairman, Group Chief Executive Officer, and members of Board and Executive Management Team, supporting them in their roles as ambassadors for the corporation.
- ☑ Accountable for reputation management for the corporation; identifying and prioritising emerging issues and handling in a timely fashion.

Internal Communications

Keeping employees abreast of the corporation's values, mission and initiatives involves developing an internal communications protocol that is both consistent and frequent. The Chief Corporate Affairs Officer is responsible for producing employee newsletters and other materials that keep employees connected to their industry-linked developments, colleagues and supervisors. Given the global nature of the broadcasting industry, this correspondence is helpful in keeping all employees up to speed, regardless of their geographic location whether in provinces, in the bureaux out of the country or at Head Office.

External Communications

The Chief Corporate Affairs Officer also serves as the voice and image of the corporation when interacting with the public, media outlets and other competing or related organizations. From writing press releases to representing the company's position on various public policies, the CCAO requires a proactive approach to establishing and maintaining a high-profile external presence. To be successful, the CCAO has to enforce an external communications strategy that results in an improved corporate reputation, a higher share price for the public offering, and a high number of battles won as a broadcaster of choice.

Shareholder, Parliamentary and Treasury Relations

The CCAO will be required to work closely with the Chief Financial Officer to prepare documents, annual financial reports and press releases regarding the corporation's financial performance. These materials are often used internally at board meetings and may need to be served to the Shareholder for information and as part of the corporation's fiduciary responsibilities, Parliamentary Portfolio Committee on Communication in respect of public accountability and national Treasury for financial reporting and performance and any related requirements in terms of the requisite legislation.

Events Coordination

The function includes Stakeholder Relations and has to be filtered through to the CCAO as part of Strategy. It is also responsible for planning any events hosted by or involving the corporation in conjunction with Stakeholder Relations. This duty can include designing a strategy that will incorporate corporate branding and key messaging with a logistics plan that ensures high visibility for the corporation and an event is executed flawlessly.

Relationship with the GCEO

The nature of the relationship between the Chief Corporate Affairs Officer and the Group Chief Executive Officer is critical. They require frequent access to each other and work in close partnership. The CCAO must understand the GCEO's appetite for communications, and find the best method for maximizing the GCEO's effectiveness. Employees are a critical audience because morale can be greatly affected by the leadership's response to circumstances and its communication of changes in direction.

PERSON SPECIFICATION:

- ☒ Educated to Degree level.
- ☒ Qualifications in communications, business strategy and/or project management.
- ☒ Evidence of continuous professional development.
- ☒ Strong intellectual skills, track record of innovative thinking, analysis and practical activity.
- ☒ Management experience in a complex organisation, experience of organisational change.
- ☒ Proven ability in communications and stakeholder relations.
- ☒ Knowledge of government policy issues, politically aware and an in-depth understanding of PMFA, PSA, Broadcasting Act, Independent Communications Authority of South Africa Act, Electronic Communications Act and Companies Act.



- ☑ Capable of innovating and developing business growth and quality improvement.
- ☑ Creativity and a flair for new initiatives.
- ☑ Experience of delivering high-level and complex projects.
- ☑ Budget and financial management skills.
- ☑ Comfortable presenting content to a range of audiences, including policymakers academics, public and the media.
- ☑ Skilled at networking and network-building; a strong commitment to partnership-working.
- ☑ An open and participative style with excellent leadership/communication skills and commercial acumen.
- ☑ Resilient and able to work under pressure.

Determinants for consideration (This is just food for thought)

Given the nature and extent of the regulatory environment in which the corporation finds itself, it is increasingly necessary to have the CCAO appointee to be a person who comes from the world of government and public affairs. Indeed, the impact of former government advisors in corporate affairs emphasizes the value more and more companies are placing greater capital on policy backgrounds and a strong understanding of the world of politics. In the United Kingdom in the past couple of years, BAA and British Airways have both hired senior people who were previously advising the Prime Minister.

On the whole, prior experience of a sector is not necessarily the most important factor; the best Chief Corporate Affairs Officer should possess a strong intellect and the ability to get up to speed quickly, establish contacts and build trust in almost any environment. Connections to and knowledge of the sector may be an advantage for the suitable incumbent but a more rounded person with a plethora of varied skills may be an advantage..

In the current environment many organizations appear to be opting for heavyweight candidates with serious influence who are comfortable heading up change management, for example, or leading integration in a complex enterprise like the SABC.

I would appreciate if you were to include a component that refers to the CCAO as a person who would perhaps deputise the GCEO in the absence of both the CFO and COO. Remember that the two positions



above are part of the Board as executive directors in terms of legislation. The CCAO is a new post and accordingly is not in the legislation and therefore may not necessarily stand in for the GCEO in her absence or incapacitation

A handwritten signature in black ink, consisting of stylized, overlapping letters, likely initials or a full name, located in the bottom right corner of the page.

HGM-207

HGM 11

ANNEXURE

HGM 11

HGM-208



**HUMAN RESOURCES
BOX 563
BLOEMFONTEIN
9300
TEL: 051 503 3205
FAX: 051 503 3264**

5 September 2000

To Whom It May Concern:

RE: G H MOTSOENENG : 8398

This is to confirm that Miss Helena Botes at the time when above-mentioned staff member was appointed, was the Line Manager of Radio News in Bloemfontein and did appoint Mr G H Motsoeneng on 01/03/1995.

As I am the HR Administrator in Bloemfontein and was instructed to do the appointment letter by Miss Helena Botes, the General Manager had to sign the appointment letter, which he did, because I am/was not to sign any appointments because of my designation.

Miss H Botes was aware of the fact that Mr Motsoeneng did not hand in his matric certificate, which I just wrote on the application form "outstanding matric certificate March 1995".

Mr Motsoeneng there after went to Pretoria to see if he can get a matric certificate to combine his symbols. He informed me on the date of appointment that he was not sure of the symbols of his subjects and I informed him that it was fine.

Yours truly,

A handwritten signature in cursive script, appearing to read 'Mari Swanepoel', is written over the typed name.

**MARI SWANEPOEL
HUMAN RESOURCES ADMINISTRATOR : BLOEMFONTEIN**

Pulse and Creative
A handwritten signature is written over the 'Pulse and Creative' stamp.

nexture 11

HGM-209

02 Jul 2012 02:18 PM sabc 0515033260



SUID-AFRIKAANSE UITSAAIKORPORASIE
SOUTH AFRICAN BROADCASTING CORPORATION

Cor. Markgraaff &
Kellner Straete
BLOEMFONTEIN
9301

(051) 470481 / 479211
Fax (051) 478120 / 471817
Broadcast/Uitsaai
583 Bloemfontein 9300

BLOEMFONTEIN
H/v. Markgraaff- &
Kellnerstrate
BLOEMFONTEIN
9301

CO/ms

17 February 1995

Mr G H Motsoeneng
P O Box 5020
PHUTHADITJHABA
9866

Dear Mr Motsoeneng

The SABC has pleasure in offering you the following position:

DESIGNATION	: TRAINEE JOURNALIST
DEPARTMENT	: RADIO NEWS
PLACE	: BLOEMFONTEIN
POST NUMBER	: *ROAZZB1B003
GROSS PENSIONABLE	
REMUNERATION	: R22 884
SALARY SCALE	: R22 884 - R39 948
SALARY CODE	: 407
DATE OF COMMENCEMENT	: 01 MARCH 1995
PERSONNEL NUMBER	: * 8898

Your appointment is also conditional upon a satisfactory medical certificate and X-ray report. Attached is a medical questionnaire to be completed by a medical practitioner. It would be in your own interest to undergo the medical examination before you commence service. The Corporation will make arrangements for the X-ray examination after you have been appointed.

Membership of the pension fund, group life assurance scheme and non contributory medical benefit fund (except in the case of a married woman whose husband is a member of a medical fund) is compulsory and the regulations of these, as amended from time to time, will apply to you.

2/

02-Jul-2012 02:18 PM sabc 0515033260

2/2

* 2 *

Please report to Mr C Olivier, General Manager : Broadcasting Services : OFS, at 08:00 on 1 March 1995.

Documents relating to your appointment, including a copy of the Corporation's Disciplinary Code and Grievance Procedure, which form part of your conditions of service, will be handed to you on commencement of service. In accordance with the Personnel Regulations, you are requested to submit the following documents when you report for duty :

✓ Birth certificate or National identity document.
 Educational certificates.
 Unemployment insurance card.
 Income tax reference number.
 Valid driver's licence.
 Bank/building society account number.

Kindly inform me, within 15 days of the date of this letter, whether you accept the appointment. This is done by completing the declaration at the end of the original of this letter, initialing the bottom of each page, and returning the original letter to me.

Please note that you are solely responsible for transport to and from your workplace, and the SABC is under no obligation to assist you with this.

We look forward to welcoming you at the SABC, and trust that you will be happy in our service.

Yours faithfully


 C OLIVIER
 GENERAL MANAGER : BROADCASTING SERVICES : O F S

* Will be submitted at later stage

I accept the position as offered on the conditions stated in this letter, and will assume duty on

If you are under the age of 21, this acceptance must be countersigned by your parent or guardian.


 S. H. M. T. P. E. N. S.
 APPLICANT

21/03/95....
 DATE



**HUMAN RESOURCES
BOX 563
BLOEMFONTEIN
9300
TEL: 051 503 3205
FAX: 051 503 3264**

5 September 2000

To Whom It May Concern:

RE: G H MOTSOENENG : 8398

This is to confirm that Miss Helena Botes at the time when above-mentioned staff member was appointed, was the Line Manager of Radio News in Bloemfontein and did appoint Mr G H Motsoeneng on 01/03/1995.


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Mr Motsoeneng there after went to Pretoria to see if he can get a matric certificate to combine his symbols. He informed me on the date of appointment that he was not sure of the symbols of his subjects and I informed him that it was fine.

Yours truly,


**MARI SWANEPOEL
HUMAN RESOURCES ADMINISTRATOR : BLOEMFONTEIN**


The
Pretoria
Office
of
the
Director
of
Public
Relations
and
Community
Relations
of
the
Department
of
Education
and
Training
of
the
Republic
of
South
Africa

Team 11

25 October 1995

Mr G H Motsoeneng
Radio News
SABC
BLOEMFONTEIN

Our Ref. 8398/250868

Dear Mr Motsoeneng

As you have successfully completed your probationary period, I have pleasure in confirming your appointment to the permanent staff.

We wish you every success for the future.

Yours sincerely



M S. Geyser (Mrs)
SNR. PERSONNEL OFFICER: RADIO
/mjw



HGM 11

8398

26 May 1995

(363)
(407)

Mr G H Motsoeneng
SABC
BLOEMFONTEIN
9300

Dear Mr Motsoeneng

I have pleasure in advising that from 1st May 1995, your annual salary will be adjusted to R30 000 in the 407 salary scale, R25 284 to R44 220. This follows after a parity study that was done by News Head Office Johannesburg. Your present post code, scale and designation remain unchanged.

We wish you everything of the best for the future.

Yours faithfully



CHRISTO OLIVIER
GENERAL MANAGER: BROADCASTING SERVICES: O F S

c.c H J Botes: Report Editor Radio News
~~De Ferreira: Human Resources~~

WJ

Keobokile Mosweu

From: Hadifele Mofokeng <HadifeleM@armscor.co.za>
Sent: 31 October 2014 12:14 PM
To: Keobokile Mosweu
Subject: RE:

Dear Mr Mosweu

Requested clarification - Letter by Ms HM Mofokeng dated 12 October 1999:

Mr Motsoeneng was appointed as a Trainee Journalist with a condition that he will complete his Matric Certificate as agreed (having written the outstanding course in October 1996, he should have been in possession of the certificate during 1997). It is procedural that HR, from time to time, audit the Personnel files to ensure that all required documents are correctly filed. Hence my follow-up on Mr Tati's letter to Mr Motsoeneng.

The expectation by the employer was that Mr Motsoeneng would have written the outstanding subjects as per his discussion with Mr Tati and should have handed in the certificate - which was a requirement for the job.

Regards

Hadifele Mofokeng | Senior Manager Human Resources ARMSCOR | 370 Nossob Street | cor Delmas Avenue & Nossob Street | Erasmuskloof Ext 4 | Pretoria
 Tel: 012 428 2120 | Fax: 012 428 2118 | Cell: 082 561 3802
 E-mail: hadifelem@armscor.co.za web www.armscor.co.za

-----Original Message-----

From: Keobokile Mosweu [mailto:MosweuKE@sabc.co.za]
Sent: Friday, October 31, 2014 10:21 AM
To: Hadifele Mofokeng
Subject: FW:

Good Day Hadifele

I have attached the documents for your attention as per your conversation with Mr Motsoeneng.

Based on the urgency of the matter, we would, without unduly putting pressure on you, request that you respond by not later than 13h00 this day.

Regards

Keobokile Mosweu | SABC Limited
 GM: HR Business Partner
 Landline: (011) 714-2118
 Private Bag X1, Auckland Park, 2006, Gauteng, South Africa
 E-mail: Mosweuke@sabc.co.za

<http://xfactor.sabc1.co.za/>

Disclaimer: Everything in this email and its attachments relating to the official business of the SABC is proprietary to the SABC. If the email is used other than for official business of the SABC or the views and opinions expressed in the email are not authorised by the SABC, the views and opinions expressed are those of the individual sending the email.

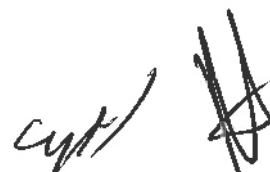
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Whilst all reasonable precautions are taken to ensure the accuracy and integrity of the information, and that this email and its attachments are free from any virus, the SABC accepts no liability however arising or responsibility whatsoever in this regard, and in keeping with good computing practice, the scanning of files and attachments is advised.

--

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For more information please visit <http://www.symanteccloud.com>



HGM 12

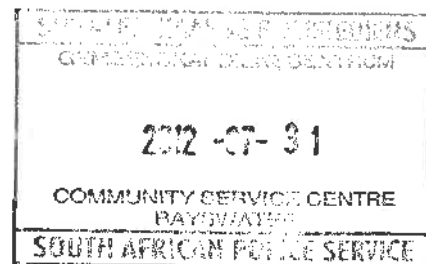
ANNEXURE HGM 12

AFFIDAVIT

I, the undersigned,

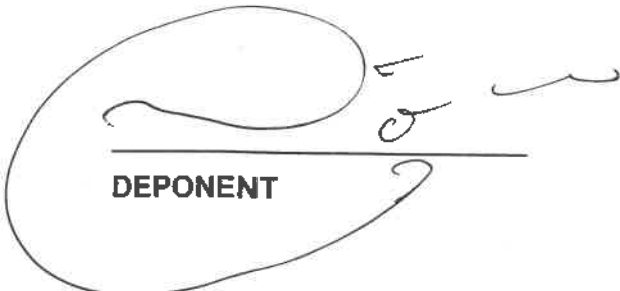
PULAPULA MOTHIBI

do hereby make the following statement under oath:



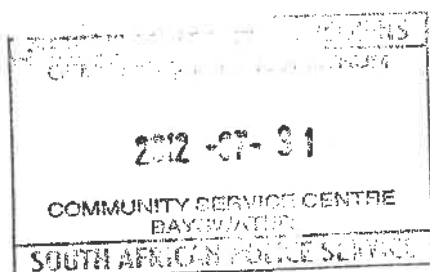
1. I am an adult male employed by the South African Broadcasting Corporation as Station Manager: Lesedi FM.
2. The facts herein contained are, save where otherwise stated or the contrary appears from the context, within my personal knowledge and are, to the best of my knowledge and belief, true and correct.
3. In 1980, I was employed by Radio Sesotho of the SABC as an announcer, translator, producer and presenter respectively. In 1993, I was promoted to a senior position of Specialist Announcer. As such, I was part of management and was always consulted on major issues of governance.
4. In March 1995, Mr. Hlaudi Motsoeneng ("Mr. Motsoeneng") was appointed as part of the SABC's Current Affairs team. Before he joined the SABC, he used to be a freelance (stringer) for the station where he corresponded regarding sport and other happenings in Qwa-qwa. As a station, we had to decide on who was to go on air for better quality. We never doubted the ability of Mr Motsoeneng and his voice was approved.
5. During the consultations with the News Department in regard to Mr Motsoeneng's appointment, it was a known fact to all in attendance that he had no matric. He did not lie about this and the SABC was not misled in this regard. We endorsed his appointment and I was part of the decision making process which came to the conclusion that the matric certificate would not be a requirement or concern for the SABC.

6. To date I do not regret the decision that was taken to appoint Mr Motsoeneng and his progress within the SABC is proof of his capabilities. I am very proud of his vision, innovation and contribution aimed at the improving the quality of service and operations at the SABC.


DEPONENT

The deponent has acknowledged that s/he knows and understands the contents of the affidavit, which was signed and sworn before me at Bloubaan on this the 31 day of **JULY 2012**, the Regulations contained in Government Notice No R1258 of 21 July 1972 as amended, and Government Notice No R1648 OF 19 August 1977, as amended, having been complied with.


COMMISSIONER OF OATHS



NAME: VENLE JOE NOTKE
CAPACITY: Warrant Officer
ADDRESS: 99 Witteboord
8798 Bayview



HGM 14

ANNEXURE HGM 14

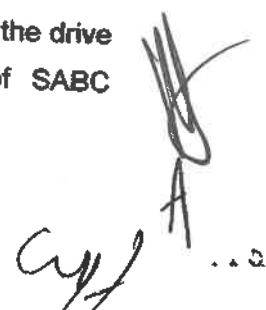
AFFIDAVIT

I, the undersigned,

ALWYN KLOPPERS

do hereby make the following statement under oath:

1. I am an adult male employed by the South African Broadcasting Corporation ("the SABC") as its Manager: Regional Resources, SABC News.
2. The facts herein contained are, save where otherwise stated or the contrary appears from the context, within my personal knowledge and are, to the best of my knowledge and belief, true and correct.
3. During 1994, I was tasked by the then Head of Radio, Mr. Govin Reddy ("Mr Reddy"), to assist with the appointment of staff to make the SABC's newsroom and political desk more representative. At the time I was the Managing Editor of SABC Radio News. Mr. Reddy pointed out that the staff should reflect the language needs of the SABC's audiences in the country and that reporters, news bulletin writers and current affairs staff were required to file editorial content in all languages.
4. Most newsrooms obliged and staff members were appointed over a period of a few months. However, the Free State newsroom expressed reservations about the drive to transform the SABC Radio News to reflect the demographics of SABC


...2


audiences. Several discussions were held with the then Regional Editor of the Bloemfontein newsroom, to convince him to appoint staff. His main reason not to appoint staff was that he could not find Sesotho speaking journalists.

5. I pointed out to the Regional Editor that he had only one Sesotho speaking person in the newsroom and that it would be impossible for that person to file for news bulletins and current affairs. I advised him that more staff members were needed to gather news, to produce bulletins on the hour and to fill the current affairs slots of Lesedi radio station.
6. I reminded the Regional Editor that some months earlier I had provided him with contact details of his Eastern Free State freelance (stringer), Mr. Hlaudi Motsoeneng ("Mr. Motsoeneng"), who was in regular contact with the Bloemfontein newsroom and provided quality news for broadcasting. He said that Mr. Motsoeneng did not have matric and as such, he would not appoint him.
7. The matter was subsequently discussed with Mr. Reddy to whom I explained the difficulty I had with the Regional Editor in Bloemfontein and how he was not co-operative to make the newsroom representative. I informed him of Mr Motsoeneng, who had been filling content for the Bloemfontein newsroom and that I had suggested that he be appointed by the SABC as a reporter. I explained that in light of the difficulty faced by the Regional Editor to find candidates, it would make sense to appoint Mr. Motsoeneng, who had shown a commitment and passion to work in the news environment.
8. Mr. Reddy asked me whether or not I had met Mr. Motsoeneng. I informed him that I had met Mr. Motsoeneng when I was on a visit to QwaQwa. I said that I would not hesitate to appoint him and that in relation to his qualifications, the SABC should encourage him to further his studies.
9. During these discussions, which occurred before Mr Motsoeneng was appointed by the SABC, I and Mr. Reddy were fully aware that he did not have matric because he had declared this to us. However, given his skills and capabilities, we thought this was not an obstacle in appointing him. The SABC was also committed to assist him further his studies.



Handwritten signature and initials, possibly 'WJ' or 'WJH', with a large 'A' or 'H' below it.

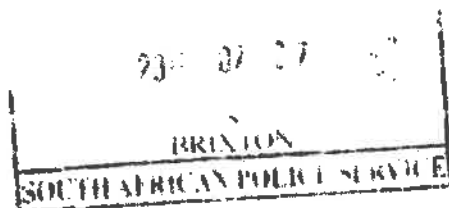
10. Mr. Motsoeneng never lied to or misled the SABC about his qualifications as the SABC was fully aware that he did not have a matric certificate when it employed him. In fact, he declared this from the outset.
11. Mr. Motsoeneng was eventually appointed by the SABC in March 1995. Since then, he has shown strong leadership qualities and moved up the ranks within the SABC. Today he is occupying the position of the Acting Chief Operations Officer at the SABC.


 DEPONENT

The deponent has acknowledged that s/he knows and understands the contents of the affidavit, which was signed and sworn before me at BRIXTON SAPS on this the 27 day of JULY 2012, the Regulations contained in Government Notice No R1258 of 21 July 1972 as amended, and Government Notice No R1648 OF 19 August 1977, as amended, having been complied with.

MPHO NEKHONGO-31
MPHO NEKHONGO-31
 COMMISSIONER OF OATHS

NAME: MPHO NEKHONGO-31
 CAPACITY: CONSTABLE
 ADDRESS: CNR HIGH 8 MERUEN
BRIXTON,
JHB



HGM 15



Remuneration
26th Floor, Radio Park, Henley Road
Auckland Park, 2094
Private Bag X1, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-4372, Fax +27 11 714-5363
Email: vanstadenj@sabc.co.za

Memorandum

Sensitivity:	Confidential
Priority:	High
Attention:	Group Executive: Human Capital Services
Re:	Job Title – Executive Assistant, Personal Assistant & Senior Secretary
Date:	13 May 2012
From:	Remuneration Systems Specialist

<input checked="" type="checkbox"/> For Authorisation	<input type="checkbox"/> For Your Information
<input type="checkbox"/> For Action	<input type="checkbox"/> Please Revert
<input type="checkbox"/> For Your Comments	<input type="checkbox"/> Returned With Thanks


The current approved salary scales and job titles of Secretaries reporting to Top & Senior Management (scale 110 – 120) in the SABC are as follows:

Executive Job Title & Scale	Secretary Designation	Secretary Scale
GCEO (110)	Executive Assistant	320
COO & CFO (110)	Personal Assistant	401
Other Executives (110)	Personal Assistant	401
Other Executives (115)	Senior Secretary	402
Senior Management (120)	Senior Secretary	403 - 404

Despite the above structure, a number of anomalies developed over the past number of years (e.g. individuals reporting to a scale 115 position with Job Title Personal Assistant on scale 401).

The SABC will embark on a parity exercise where the scales and salaries of individuals would be corrected to the correct or new scales and salaries during the current fiscal. In order to correct *job title anomalies* prior to this exercise, the following is recommended with immediate effect:

- The job titles of the PA's to the COO & CFO should be changed to Executive Assistant in order to standardise the job titles for assistants to Executive Directors.
- The job titles of assistants to the remainder of Executives (Scale 110 & 115) should be changed to Personal Assistant in order to standardise job titles for assistants to Executives other than Executive Directors.
- Where an individual's job title and/or scale is currently not aligned to the above it should be corrected with immediate effect.

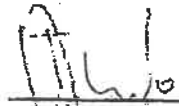


THABISO LESALA

GROUP EXECUTIVE: HUMAN CAPITAL SERVICES

19/6/12

I accept the above mentioned amendments under the conditions as stipulated. The copy of this letter is returned herewith.



MS KHUMALO

19/06/2012

DATE



Mr Hlaudi Motsoeneng

Chief Operating Officer (COO)

Leadership Development Programme, Gordon Institute of Business Science (GIBS): NQF Level 7-Bachelor's Degree; National Certificate in Generic Management, (Prodigy): NQF Level 5-Higher Certificate; The Thompson Foundation Foundation Certificate in Radio Journalism; Analysis of Contemporary Social Issues (University of Witwatersrand).

Mr Hlaudi Motsoeneng has proven to be a leader of note, who has overcome challenges and focused on supporting the national agenda as prescribed by the Broadcasting Act and other relevant prescripts. He rose from a Trainee Journalist to Chief Operating Officer (COO). He has played an important role at various organisations, for example being Board Member of the SABC, SABC Foundation and Local Organising Committee (AFCON). While serving on the Board at AFCON, he went on to further participate as a member of the Marketing and Communications Sub Committee of the said Board. Mr Hlaudi Motsoeneng also serves as a member of the Regenesys Business School Advisory Council.

SABC Annual Report 2016

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.



EXHIBIT CC 30.2

SUPPLEMENTARY AFFIDAVIT & ANNEXURE

OF

**HLAUDI GEORGE
MOTSOENENG**



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651
Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

INDEX: EXHIBIT CC 30.2

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Annexure "HGM18"	257 to 259
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Annexure "HGM22"	291 to 292
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**IN THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE
CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING
ORGANS OF STATE**

Held at Johannesburg

In RE:

HLAUDI GEORGE MOTSOENENG

SUPPLEMENTARY AFFIDAVIT OF HLAUDI GEORGE MOTSOENENG

I, the undersigned,

HLAUDI GEORGE MOTSOENENG

do hereby make oath and state that:

INTRODUCTION

1. I am an adult male and was dismissed as an employee of the South African Broadcasting Corporation SOC Limited ("**SABC**"). Prior to my dismissal, I was the SABC's Group Executive for Corporate Affairs. I was also its Chief Operations Officer until my appointment was set aside by the Western Cape High Court¹.

¹ & 8 Others 12497/2014 per Davis J



2. The facts herein contained are within my personal knowledge, save where otherwise stated, or otherwise indicated by the context, and to the best of my knowledge and belief, both true and correct. I am not legally trained. Where I make statements of a legal nature or come to any legal conclusion, I do so on the advice of my legal representatives and I accept the advice so given.
3. I deposed to the supporting affidavit on request of the Judicial Commission of Inquiry into allegations on State Capture, Corruption and Fraud in the Public Sector including Organs of State, dated 02 September 2019.
4. Notwithstanding the above, I wish to supplement the said affidavit based on recent developments at the Inquiry, with the purpose of clarifying some of the testimonies made by the executive officials of the SABC.

**RESPONSE TO THE TESTIMONY OF THE SABC BOARD CHAIRPERSON & GROUP
CHIEF EXECUTIVE OFFICER**

5. From the onset, I wish to categorically deny all the allegations testified against me at the Commission, and submit that such testimonies made by the SABC officials are not a true reflection of the decisions, actions and outcomes, which transpired during my tenure at the Broadcaster.
6. The SABC has willfully misled the Commission by stating that it is a requirement that the Broadcaster must invest in advance for content before airing same, wherein they made an example about a telenovela named UZALO, which was one of my pilot



projects and of which yielded immediate and positive results after its viewing, and still continues.

7. Whilst I noted a backlash on my stance of 90/10 music and the content in the local media same was accepted internationally and I was invited to address international broadcasters at their conference wherein I elaborated the reasons for my stance on local content and further that should they wish us (SABC) to buy their content they must ensure that they also source our talent in the form of actors, musicians, etc. I must note that same was well received by them to the extent that our talent which was abroad was able to return to home soil, but unfortunately the SABC reneged.
8. I believe that our actors and/or actresses are also capable of acting on international platforms. In support of this, I was due to sign a contract with international content providers for our own actors and/or actresses to be included to act on their various platforms. Unfortunately I was dismissed before I could implement that.
9. The SABC officials displayed a lack of understanding of the nature of the Broadcasting business, and simply relied on advice of other people, which advice I submit is incorrect.
10. They have also misled the Commission by stating that they have implemented the Public Protector's ("PP") remedial action. However, in my case, as I have correctly explained in my supporting affidavit, that the relevant disciplinary proceedings were never allowed to run their course and as it stands, I remain tainted by the findings of the PP, which was supposed to be subjected to a test in the normal course of a disciplinary hearing as recommended by herself in her report.



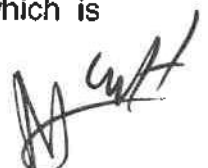
11. I must pause and state that this remains glaring and against my integrity as I believe and I am convinced that the most generous findings she made against me, will have been proven wrong, incorrect and malicious in the disciplinary inquiry, had same proceeded accordingly.
12. As a matter of fact Diphoko and Koma ultimately distanced themselves from the assertion that they had laid any complaints with the PP and as such any information contained in the PP's Report to the contrary is false and misleading.
13. Another interesting matter is the one of Ms Charlotte Mampane and others who according to the PP's report, was the main complainant against myself. Regrettably, this is incorrect as her position had been removed from the corporate structure and rendered redundant and as such by way of resolution, the Board approved for an amicable separation. See attached Annexures "HGM16".
14. The remedial action from the PP was quite clear. A disciplinary inquiry was to be held against me, and that never transpired.
15. As such, the SABC has not complied with the remedial action which is binding and enforceable unless set aside and/or varied by agreement or by a court of law.
16. I respectfully submit that the remedial action has neither been implemented and/or set aside and in this regard the SABC has once again derisively "pulled the wool" over the eyes of the State Capture Commissions.



17. The SABC had initially challenged other issues detailed in the PP's report, to the exclusion of the issues related to me and subsequently withdrew its application. Additionally the two judgments of Davis J and also Le Grange and Rogers JJ which I referred to in my preceding affidavit also ordered them to proceed with the said disciplinary inquiry against me and they failed to do so.
18. I cannot be faulted for such inactions of the SABC and the media continuously and abrasively continue to besmirch my name and issue defamatory news about my integrity and reputation.
19. I am glad Ms Lulama Mokhobo has proffered the correct explanation pertaining to my salary.
20. The PP further alluded to the fact that Ms Phumelele Ntombela-Nzimande also complained against me, which is far from the truth. I have attached her complaint to the PP and nowhere in that affidavit does she raise any complaint against me. (See Annexure "HGM17").
21. What is striking and interesting is that she was in fact my superior and as such I would not have been in a position to perpetuate any acts against her.
22. During my time at the Broadcaster, I proposed to the then Board to pay the government guarantee, which resulted in the SABC saving approximately 40 Million Rand in interests.



23. Furthermore, I encouraged the Board not to depend on funding from the government, as is evident from the minutes of the Board meetings.
24. I submit that in order to ensure proper elections coverage, I had to raise money and personally so. This is also contained in my preceding affidavit in the annexures thereof.
25. I am of the view that education, whilst important and essential for the creation of opportunities, is not a measure of one's capabilities. I take education very seriously and have even assisted children from poor and disadvantaged communities by paying their tuition and academic fees, buying uniforms, computers and other educational requirements including paying for their student accommodation. Some have completed their grade 12 (matric) and some have attended tertiary institutions including universities wherein I used my own money to fund same.
26. Unfortunately the educational system of our country is not able to assist all students to achieve the task at hand. In my political party when it comes to education I have focused on using both theory and practice because we believe skills, expertise and experience will assist our children.
27. Paramount to the performance of one's duties and obligations is in the use of one's skills and expertise required in their role, as well as the knowledge of how to perform effectively and efficiently.
28. However, education has been of great importance to me, as is evident in how I have prioritized it as one of the key focuses of my political party's missions, which is



supported by my interest in training and my history in presenting lectures to students and other members of society at different universities and other platforms upon invitation throughout the years. (See Annexure "HGM18")

29. During my employment at the SABC as a COO, one of my focuses was to transform and empower women, previously disadvantaged people and people with disabilities in the SABC workforce and the service providers including actors, production houses and other contractors (including cleaners and security personnel). I may add that I am disappointed with myself as far as empowerment of people with disabilities is concerned as I did not achieve the intended empowerment levels for them.
30. However, I managed to stabilize the Broadcaster and raise funds through numerous projects. Due to my capabilities and capacity as a leader, I have even been invited to FICCI FRAMES in recognition for my role at the SABC. (See Annexure "HGM19").
31. There was the proposed agreement with the international broadcasters which sought to ensure the inclusion of South African actors and actresses in their soapies or dramas and in exchange the SABC would flight such content. Unfortunately it never came to fruition as I was subsequently dismissed.
32. Furthermore, the SABC intended to embark on a process of retrenching 800 of its employees, however, I assisted in saving those employees from being retrenched, and now in my absence the guillotine of retrenchments is looming once again.
33. I have been duly appraised and informed that as result of the lack of funding from the Ministers of Communication and Finance, the SABC has nicodemously tried once again to cull the number of employees by bringing an application to set aside



irregular appointments allegedly made whilst I was still with the broadcaster. This is incorrect as some of the appointments they seek to set aside were made long after I had left the employ of the SABC.

34. The irregular appointments application is a veiled disguise to purge staff deemed to be disloyal to the SABC executives. The list of irregular appointments also names the likes of Jonathan Thekiso, who was irregularly appointed as the Group Executive Human Resources and fingered in the Public Protector's PIKITUP Report. The names of employees who are said to have been appointed irregularly include but are not limited to Ntuthuzelo Vanara and Thandeka Gqubule-Mbeki who are missing from that list. Given that I am no longer at the SABC, I respectfully submit that the relevant information in this regard should be obtained from the SABC itself.
35. I am reliably informed that about six former employees form part the list of respondents and my first question would be to ask why include their appointments to be set aside, when they are no longer employees as the SABC had dismissed them in unlawful misconduct hearings or dismissed them without even holding disciplinary inquiries.
36. I have been furthered reliably informed that Mr. Hannes du Buissoin leader of BEMAWU has written a letter to Mr Madoda Mxakwe raising issues that the SABC employees have "never been so disillusioned and demoralised as a result of full blown disciplinary inquiries for the slightest transgression often not willful and thus causing extreme fear and anxiety".



37. It appears that Werksmans Attorneys are involved in the discipline of all employees who have allegedly misconducted themselves. It would seem that Werksmans have benefited greatly from this task given that it is said that the SABC is being invoiced around R2 million per month by Werksmans Attorneys.
38. A number of newspapers were prohibited from writing anything positive about the Former President Jacob Zuma or myself and the resultant backlash was the claiming of the scalp of Mr Steven Motale the former editor of the Citizen.
39. In August 2015, Mr Motale was charged with misconduct for authoring and publishing an apology to President Zuma for what in his professional opinion was an onslaught against him by the South African media . By way of example he pointed out that in the reported decision of Squires J (since deceased), who found Shabir Shaik guilty of several counts of corruption, the media reported that the judge found that President Zuma and Shaik had a 'generally corrupt relationship', when this in fact was not a finding of the court. Judge Squires had to take to the media to correct the sad misinformation peddled by newspapers.
40. So misleading were the reports on his judgment, that Squires J himself, in an unprecedented move, took to the media by writing a column in the Business Day clarifying that the suggestion of a generally corrupt relationship was a submission made by the prosecutors in the matter, and not a finding in his judgment.
41. It is surprising and sad that a certain negative narrative needs to be portrayed by the media and not the truth.



42. On the SABC 8 matter which I have alluded to in my preceding affidavit, they sought direct access to challenge the constitutionality of the decision of the SABC on glamorising violence by improper reporting; such application was duly dismissed by the Constitutional Court. With respect the chair of this Commission Deputy Chief Justice, Mr Justice RMM Zondo was part of the quorum of the court that made that decision.
43. The right to freedom of expression comes with great responsibility and this has become very apparent in the last days of protest and community unrest. It is still my respectful submission that the current situation in this country is being fueled by the media. This in my view is in direct contravention of the requirement of broadcasting content that is in the interests of the community.
44. That narrative is never portrayed in the media and if anyone dares to raise it, in harsh tones it is deliberately not attended to in this present inquiry nor in any other fora.
45. It has also become evident as reported earlier in the news that reporters for the Sunday Times were being paid to tarnish other people's names and I believe I am one of those people.
46. It is respectfully submitted that the Commission should investigate the role of SIU within the SABC although the president signed the proclamation with good faith. The SIU is abusing taxpayer's money by investigating issues that are obvious. The reason why the SIU is taking long and being dilatory in their investigations is because the SABC is paying it a fortune and my view is that one entity of government cannot charge another entity with the use of private parties in a manner that is effective and



unbiased to the benefit of certain individuals. Under the circumstances they are merely prolonging the investigation. I am also concerned that the SIU is using private consultants for these investigations and thus being captured by private influences and needs of those who want a certain narrative to be portrayed and mislead this Commission. I refer the Commission to an extract of the Auditor General's audit opinion is attached from 2008/9 until financial year 2015/16 (see Annexure "HGM20")

47. The Head of SIU has been misleading the public including portfolio committees in parliament about the situation at the SABC and even tarnishing my name on the basis of false information. I also want to put to the Commission that I am in court with the SIU, where I believe the SIU is abusing its power knowing some of the issues they are putting in court papers are untrue. (see Annexure "HGM21")
48. What is surprising in all the SIU investigations is that they have never tried to get my side of the story. I have a perception that they came to me after realizing that the Commission is going to call me. I attached the letter from the SIU and my response. For me to respond properly the Commission should assist to get the report from the SIU about the SABC investigation. (see Annexure "HGM22 to "HGM23").
49. The SABC presented hearsay evidence premised on conjectures, mistruths on its own findings on governance and financial issues. I regard what they represented to the Commission devoid of truth as no evidence was put to the commission but rather hearsay.

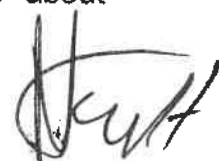


50. I want to take the Commission into the real SABC during my time by playing a few video clips. I was informed that the SABC has not yet signed the financials because they are running away from a disclaimer, they want government to give them a guarantee first. When I left the SABC was on an upward climb. However the audit findings of the 2017/18 financial year show the results of a negative audit which led to a disclaimer being recorded under the current Board.
51. Even if they can be given money by government they will never be able to sustain SABC financially because they are oblivious to the issues concerning the SABC and the true state of the organisation.
52. The former Public Protector Advocate Thuli Mandonsele should also be called to answer why she ignored critical information on my matter. I also believed she abused her powers as a public Protector.
53. On the issue of the Auditor General Report, wherein the SABC officials testified that as one of its strategies, it is currently involved in processes of recovery of money from its employees and former employees who have irregularly benefited at the expense of the Broadcaster.
54. I submit that same cannot be a strategy and further it is not viable, given the manner in which the SABC, under the direction of the new Board, has embarked on costly litigation. Furthermore, there is no certainty that the SABC will manage to recover all those monies, nor is there any indication of just how long this recovery process would take, without destabilising the Broadcaster any further. I note that I introduced




partnerships at the SABC and the current Board and management are furthering my strategy in this regard and evidence to prove same is available.


55. The testimony presented by the SABC before the Commission is misleading in relation to governance. With regards to the issues of governance audit, I submit that same was identified a long time ago, as it is evident from the Auditor General reports, which had already raised governance issues as far back as in 2009. This serves as proof that the PP was not responsible for identifying same.
56. When I arrived at the SABC I established a task team focusing primarily on the governance issues raised by the Auditor General and the Special Investing Unit ("SIU"). The SABC must provide the Commission with the relevant reports therein failing which I will provide them to the Commission.
57. As a result of my actions, I was applauded by the then Board Members and Portfolio Committee after successfully setting up the said task team. I may add that at the time when I left the SABC had one qualified audit finding (2015/2016). The Board and the management which took over after I had left have received worse audit findings.
58. I am finding it difficult to understand the reasons why the SABC is seeking a government cash bailout, wherein it was stated at the Commission that the Broadcaster has saved 1 Billion Rand. Not only is there no evidence to support this claim, but if indeed this were true the SABC would not need government assistance.
59. At the time when I left the SABC, it had around R881 000 000. 00 (Eight hundred eighty one million Rands) in the bank account. From my experience and understanding at the SABC, I can confirm that the Broadcaster needs about



R600 000 000.00 (Six hundred Million Rands) to operate. If the current SABC officials claim to have saved about 1 Billion Rand, such would be sufficient to operate and sustain the institution. (see Annexure "HGM24")

60. Prior to my unceremonious departure , I had been mandated by the Board to train other executives on how to raise additional funding for the SABC. This was done after they noted and were extremely grateful in steps I had taken to procure additional funding, without placing the begging bowl under the Government. The SABC Board and Shareholders acknowledged that in my absence, the SABC would collapse. This is happening at the moment. I am not even surprised as they are taking the wrong approach and strategy in seeking funding for the Broadcaster.
61. For the Commission's attention, I hereby attach correspondence regarding Set-Top-Box Annexures "HGM25 to "HGM27"
62. I continue to confirm that I will make myself available to assist the Commission when called upon to do so in the near future.


HLAUDI GEORGE MOTSOENENG



THUS SIGNED AND SWORN TO AT **KRUGERSDORP** ON THIS THE 8th DAY OF **SEPTEMBER 2019**. THE DEPONENT HAVING ACKNOWLEDGED THAT THE DEPONENT KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT THE OATH WHICH THE DEPONENT HAS TAKEN IN RESPECT THEREOF IS BINDING ON THE DEPONENT'S CONSCIENCE, AND THAT THE CONTENTS OF THIS AFFIDAVIT ARE BOTH TRUE AND CORRECT. I CERTIFY FURTHER THAT THE PROVISIONS OF REGULATION R1258 OF 21 JULY 1972, AS AMENDED, AND GOVERNMENT NOTICE NO R1648 OF 19 AUGUST 1977, AS AMENDED, HAVE BEEN COMPLIED WITH.



COMMISSIONER OF OATHS

NAME: MOTLATSI CORNELIUS SELEKE
PRACTISING ATTORNEY EX OFFICIO
ADDRESS: COMMISSIONER OF OATHS
40 Piet Joubert Street
CAPACITY: Monument, Krugersdorp



Ms O'Neil stated that the report from Spencer Stuart had been submitted to the Chairperson of the Board and that copies would be circulated to members subsequent to the presentation.

Prof Green made the presentation, stating that the interview panel comprised the Chairperson of the Board, Mr Gina, Mr Danana, Acting COO, the consultant from Spencer Stuart and herself. Mr Motsepe was not able to attend, though invited.

She took the members through the job specifications as generated by Spencer Stuart and SABC HCS. She stated that 4 candidates had been interviewed in January 2012 and one candidate had been recommended to the Minister who had in turn requested for 3 names.

She reported that the position had been advertised in the Sunday Times and internally and there were 17 internal applications and 2 external applicants. The 2 external applicants were found to be suitable whilst 11 of the applicants were not suitable.

Prof Green read the CV's of the 3 candidates who were to be recommended to the Minister and sought Board's approval to submit the names.

Mr Motsepe was of the view that the Board should recommend to the Minister the preferred candidate noting that recruitment was highly regulated process and cautioned that a high scoring candidate if not appointed could challenge the decision in court.

Ms O'Neil stated that the 3 names were to be submitted to remain consistent with the GCEO recruitment process where 3 names had been submitted to the Minister.

Mr Gina stated that all the candidates had been interrogated and the panel had applied its mind and was satisfied with the recommendations made.

Mr Golding supported the submission of three names.

THE BOARD RESOLVED THAT the following shortlist of preferred candidates : Mr Msulwa Daka, Ms Gugu Duda and Mr. Patrick Malaza be and are hereby recommended to the Minister of Communications (Shareholder) for selection and appointment of her preferred candidate to fill the position of Group Chief Financial Officer of the South African Broadcasting Corporation SOC Limited.

HCS MATTERS

CHARLOTTE MAMPANE - the GCEO stated that Ms Mampane's job title had been removed from the Corporate Plan and she was therefore redundant and sought Board approval for an amicable separation.

"ACT 2"

3

SABC

Vuka Sizwe!

Group Executive Human Capital Services
Radio Park, Henley Road
Auckland Park, 2094
Private Bag X1, Auckland Park, 2006
Johannesburg, Gauteng, South Africa
Tel +27 11 714-4711, Fax +27 11 714-4820
www.sabc.co.za

20 MARCH 2012

Mrs. CHARLOTTE MAMPANE

Group Executive

SABC

JOHANNESBURG

Dear Mrs. Mampane

RE : SABC / MAMPANE

1. The above matter has reference.
2. As you are aware, you are employed by the SABC on a fixed term basis and your fixed term contract of employment with the SABC will expire by effluxion of time on 31 October 2013.
3. The SABC will not be renewing or extending your fixed term contract of employment.
4. Please note that the SABC has, in terms of its prerogative, resolved to waive its right to the provision of services and/or rendition of work by you to it for the remaining term of your fixed term contract of employment. Accordingly, with effect from 20 March 2012, you shall not be required to enter the premises of the SABC and/or attend work and/or provide services to the SABC and the SABC will be under no obligation to and it will therefore not, provide or assign any work or services to you.

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
Non-Executive Directors: Dr Ben Ngubane (Chairperson); Mr Thami ka Pisoje (Deputy-Chairperson);
Mr Semble Danang; Mr Cedric Gira; Mr Desmond Golding; Prof Philippa Green; Advocate Cassie Mahlati; Dr Patricia Makheshe; Mr Clifford Motsepe,
Mr Lutho Mfundo; Ms Clare O'Neill; Ms Suzanne Vos
Executive Directors: Ms Lulama Mokhebe (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlengiwe Molekeng (Acting Chief Operations Officer)
Acting Company Secretary: Ms Jane Mboja

4

5. Subject to paragraph 6 & 7 below, the SABC will, in relation to the Remaining Contract Period, pay you the following:
- Remuneration as provided for in your fixed term contract of employment, payable as a once off lump-sum; and
 - Payment in lieu of accrued annual leave, if any.
6. The SABC will, within the next 5 (five) business days following the date of this letter, apply for a tax directive from the South African Revenue Services ("SARS") for the amount of tax to be deducted from the abovementioned payments. Kindly, when requested to do so by the SABC, furnish such information as the SABC may require for purposes of applying for the abovementioned tax directive.
7. The SABC will deduct and/or set-off from the amounts due to you, the value of any outstanding loans and/or debts that are repayable and/or due to the SABC.
8. The SABC will make payment of the aforementioned amounts (less the tax as per stipulation in terms of the abovementioned tax directive and loans/debts) within 10 (ten) business days of receipt of the tax directive from SARS into your banking account as per the SABC's records.
9. Because the SABC is discharging its full payment obligations to you upfront, you will, from 23 March 2012, be responsible for your own pension fund and medical aid arrangements. The SABC will inform the administrators of the pension fund and medical aid scheme in which you and the SABC participate of the relevant terms of this letter for the necessary adjustments to be made. Kindly cooperate with any requests that you may receive from the SABC and/or the administrations of the pension fund and/or medical aid scheme in this regard.




5

10. In light of paragraph 4 above, you will no longer require use of or access to the SABC's property, premises and assets. Please handover all SABC property and assets back to the SABC on 22 March 2012 prior to departing the SABC premises. This includes your access card, medical aid card, laptop computer and 3 G card, etc.
11. Please note that the provisions relating to confidentiality in your fixed term contract of employment are and remain applicable. We request that you comply therewith, which includes keeping this letter and the terms contained herein confidential.
12. We would like to take this opportunity to wish you everything of the best in your future endeavors.

Please do not hesitate to contact us if you have any queries in this regard.

Yours faithfully



THANDO LURALA

GROUP EXECUTIVE: HUMAN CAPITAL SERVICE



Handwritten initials and signature, possibly reading 'WTH'.

6

SABC

Total Cost to Company Information

Name	Ms TCC Mampane
Position	GE : Office Of The GGCE & Regions
Scale	115
Start Date	01-Oct-96
Date of Birth	12-Oct-50
Contract Period	01 November 2003 - 31 October 2013
Months Remaining	20 Months

Item	Annual Amount	Monthly Amount
Basic Salary	1 694 256.00	141 188.00
Car Allowance	168 000.00	14 000.00
Housing Allowance	20 400.00	1 700.00
Other Allowances	168 676.56	14 056.38
Pension Fund	237 196.08	19 766.34
Medical Aid	37 389.60	3 115.80
Group Life	17 403.48	1 450.29
Total Cost to Company	2 343 321.72	195 276.81

Potential Settlement

1 Month Total Cost to Company	195 276.81
1 Year Total Cost to Company	2 343 321.72
Remainder of Contract	3 905 536.20

20 March 2012, Confidential

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COMPLAINANT'S AFFIDAVIT

I, the undersigned,

Phumelele Ntombela-Nzimande,

Identity Number 580109 0819 08 3

duly authorised, do hereby make oath and state as follows,

1.

I,

1.1 am an adult female person,

1.2 am duly authorised and competent to depose to this affidavit,

1.3 confirm that the facts deposed to herein are, save where the context clearly indicates otherwise, within my personal knowledge and belief,

1.4 confirm that the facts deposed to herein are both true and correct.

2.

BY WAY OF BACKGROUND

2.1 The South African Broadcasting Corporation (hereinafter referred to as the 'SABC'), is a major public entity;

2.2 The SABC is partly funded out of a shallow public purse, and principally fulfils a public mandate;

2.3 The Constitution of the Republic of South Africa, 1996 (hereinafter referred to as 'The Constitution'), the Public Finance Management Act No. 1 of 1999 (hereinafter referred to as 'The PFMA') and Public Policy impose strict



standards of ethical conduct in respect of the management of the affairs of Public Entities ;

2.4 A person in the position of a Chief Executive Officer (hereinafter referred to as the 'CEO') of a Public Entity such as the SABC suffers under strict duty of skill and care;

2.5 Detours by such CEO from statutory and/or sound Governance and/or sound Compliance standards are viewed in a serious light;

2.6 In turn, Accounting Authorities, such as the Board of the SABC, are statutorily enjoined to act swiftly in dealing with misconduct and remedial steps. To a point where failure to do so constitutes not only misconduct, but a criminal offence attracting a prison sentence.

3.

THE LEGAL FRAMEWORK

3.1 The SABC, its Accounting Authority (being its Board) and its officials (including the Acting CEO) are bound by the provisions of the PFMA (See Section 3(1) (b) read with Schedule 2 to the PFMA, and further read with Chapter 6 to the PFMA);

3.2 The Acting CEO, over and above the responsibility arising from any delegations from the Board (see Section 56 to the PFMA) is bound by the provisions of Section 57 to the PFMA without limitation;
For the sake of convenience, the provisions of Section 57 of the PFMA are set out below:

An official in a public entity--

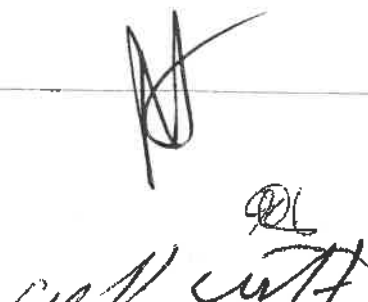
- a) *must ensure that the system of financial management and internal control established for that public entity is carried out within the area of responsibility of that official;*

[Handwritten signatures and initials]

- b) *is responsible for the effective, efficient, economical and transparent use of financial and other resources within that official's area of responsibility;*
- c) *must take effective and appropriate steps to prevent, within that official's area of responsibility, any irregular expenditure and fruitless and wasteful expenditure and any under collection of revenue due;*
- d) *must comply with the provisions of this Act to the extent applicable to that official, including any delegations and instructions in terms of section 56; and*
- e) *is responsible for the management, including the safeguarding, of the assets and the management of the liabilities within that official's area of responsibility.*

3.3 The Board of the SABC in its capacity as Executive Authority has a statutory duty of skill and care, which is clearly set out in Section 50 of the PFMA. Further the general responsibility of the SABC board appears plain from the provisions of section 51 to the PFMA, as set out hereunder:

- 1) *An accounting authority for a public entity--*
 - a) *must ensure that that public entity has and maintains--*
 - i) *effective, efficient and transparent systems of financial and risk management and internal control;*
 - ii) *a system of internal audit under the control and direction of an committee complying with and operating in accordance with regulations and instructions prescribed in terms of sections 76 and 77; and*
 - iii) *an appropriate procurement and provisioning system which is fair equitable- transparent, competitive and cost-effective;*



- iv) a system for properly evaluating all major capital projects prior to a final decision on the project;
- b) must take effective and appropriate steps to--
 - i) collect all revenue due to the public entity concerned; and
 - ii) prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the public entity; and
 - iii) manage available working capital efficiently and economically;
- c) is responsible for the management, including the safeguarding, of the assets and for the management of the revenue, expenditure and liabilities of the public entity;
- d) must comply with any tax, levy, duty, pension and audit commitments as required by legislation;
- e) must take effective and appropriate disciplinary steps against any employee of the public entity who--
 - i) contravenes or fails to comply with a Provision of this Act;
 - ii) commits an act which undermines the financial management and internal control system of the public entity; or
 - iii) makes or permits an irregular expenditure or a fruitless and wasteful expenditure;
- f) is responsible for the submission by the public entity of all reports, returns, notices and other information to Parliament or the relevant provincial legislature and to the relevant executive authority or treasury, as may be required by this Act;

[Handwritten signatures and initials]

- g) *must promptly inform the National Treasury on any new entity which that public entity intends to establish or in the establishment of which it takes the initiative, and allow the National Treasury a reasonable time to submit its decision prior to formal establishment; and,*
 - h) *must comply, and ensure compliance by the public entity, with the provisions of this Act and any other legislation applicable to the public entity.*
- 2) *If an accounting authority is unable to comply with any of the responsibilities determined for an accounting authority in this Part, the accounting authority must promptly report the inability, together with reasons, to the relevant executive authority and treasury.*

The specific provisions of section 51(e) are specifically drawn to the attention of the Board.

- 3.4 Failure by the Board to satisfy its responsibility in terms of section 50 and section 51 to the PFMA constitutes financial misconduct (see section 83 of the PFMA);
- 3.5 Financial misconduct referred to in Paragraph 3.4 above constitutes a criminal offence attracting liability, on conviction, to a fine or to imprisonment (See section 86(2) to the PFMA);
- 3.6 Any delegations by the Board cannot in terms of section 56 excuse the Board from its roles and responsibilities imposed by the PFMA;
- 3.7 Governance and Compliance International Best Practice does not conflict with or constitute any inconsistency with the provisions of the PFMA, see:
- 3.7.1 Corporate Governance Policies – Council of Institutional Investors;



Handwritten signature and initials, possibly reading 'M. R.' and 'A. H. W.'.

3.7.2 Global Corporate Governance Principles – International Corporate Governance Network London Conference;

3.7.3 Principles for Corporate Governance – Association Francaise de Entreprises Privees (AFEP); and the Mouvement de Entreprises de France (MEDEF) reports;

3.7.8 Guidelines on Principles for Corporate Governance in the Commonwealth – Commonwealth Association for Corporate Governance; and

3.7.9 King Reports – all versions for that matter.

4.

COMPLAINTS AGAINST THE CHIEF EXECUTIVE

The following complaints are hereby formally lodged for investigation by the Board. These complaints are accompanied by an indexed and paginated bundle of exhibits in support of such complaints. Great care has been taken to make cross reference in respect of specific complaints to assist the investigation.

Further, I am available to submit myself to any investigator appointed by the Board at the time of such investigator's choosing for purposes of any consultation deemed necessary for purposes of such investigation.

4.1 COMPLAINT 1:

Dishonesty/Recklessness in that Mr. Nicholson, the SABC Acting CEO, failed to disclose to the Board one or more or all of the following material facts prior to extracting the Resolution constituting Exhibit "NN1" from the Board:

- 4.1.1. I had not been consulted on the contents nor basis for the Resolution;
- 4.1.2. I was directly and adversely affected by the passing and implementation of the Resolution;

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- 4.1.3. The passing of the Resolution was improper in that it would result in an unfair labour practice against me, or at the very least, shut the door to constructive engagement and resolution short of Fruitless and/or Wasteful Expenditure;
- 4.1.4. That the passing of the Resolution would circumvent the SABC Policy on Recruitment and Selection (see Exhibit "NN8");
- 4.1.5. No authority or basis existed for the circumvention or deviation from the SABC Policy on Recruitment and Selection (see Exhibit "NN8"); and
- 4.1.6. That the person recommended for assuming the portfolio apparent from Exhibit "NN7" was not academically qualified at all, not even at a level of Matriculation and/or Senior Certificate.

4.2 COMPLAINT 2:

Fruitless and/or wasteful and/or reckless expenditure in that Mr. Nicholson, instead of engaging honestly with myself, in respect of the so called severance package, in view to motivating for the twelve (12) months settlement offer, increased such offer to fourteen (14) months without any rational basis, thereby exposing the employer to what would otherwise have been avoidable costs (See Exhibits "NN2"- "NN6").

Frankly speaking my concern was not at all about fourteen (14) months compensation but more about Due Process. All he had to do was provide a reasonable explanation to me in order for me to have accepted the twelve (12) months offer instead of throwing public funds at me.

4.3 COMPLAINT 3:

Financial Misconduct and/or Inefficiency and/or Maladministration, in that circumstances where the employer was fully entitled to, and required proper handover from myself including the filing of my report as would enable

smooth handover, Mr. Nicholson improperly waived such right without any rational basis and to the prejudice of the Employer.

This is a man who waives a right by a Corporation to an exit and/or handover report by a Group Executive for no justifiable reason. As matters stand, SABC Stakeholders, for whom my former portfolio is the anchor, are stumbling over me with severe and material adverse effects to the SABC because of the above inefficiency and maladministration. (See Exhibits "NN9"- "NN13").

This is an Accounting Officer who pays up for a service and immediately relinquishes what his Employer is at the very least entitled to in relation to any paid up service without any sound basis.

4.4 COMPLAINT 4:

Abuse of authority and dishonesty in that:

- 4.4.1 when Mr Nicholson communicated with me in respect of my position in the Organisation; he did not disclose the fact that he had already extracted a Resolution effectively terminating my services. On the contrary he in fact misrepresented the Employer by stating that no decision had been taken yet (See Exhibit "NN2"); and/or
- 4.4.2 he sought to contravene section 189(A) to the Labour Relations Act No 66 of 1995 (hereinafter referred to as the "LRA") by attempting to terminate my services unilaterally and under the pretext of Organisational Requirements (see Exhibit "NN2") and/or;
- 4.4.3 when reasonably required to provide a rational basis for seeking to terminate my services on account of Organisational Requirements, he failed and/or refused and/or neglected to do so (see Exhibit "NN4" and "NN5");
- 4.4.4 when reasonably required to provide a rational basis for seeking to terminate my services on account of Organisational Requirements, he

immediately sought to terminate my services on grounds mutually exclusive with the original reasons provided, let alone the now misrepresentations referred to in clause 4.4.1 hereof and/or;

- 4.4.5 when reasonably required to provide a rational basis for seeking to terminate my services on account of Organisational Requirements, he summarily terminated my services without appropriate reasons as is required by section 189 of the LRA (See Exhibit "NN5" and "NN6").

5.

GENERAL:

5.1 It has come to my knowledge that there are several current and former Senior employees of the SABC who have distinctively similar experiences in relation to the above heads of Complaints and with reference to the Acting CEO, Mr Nicholson;

5.2 The Identity and contact details of such are as follows:

5.2.1 Mr R. Morobe – 082 561 3858

5.2.2 Mr S Silinga – 084 925 8084

5.2.3 Mr T Ntenti – 083 256 3586

5.2.4 Mr C McKenzie – 082 312 8951

5.3 The central and further question required to be resolved as a result of investigations into this Complaint and any further information from co-complainants or other witnesses is why an Accounting Officer of a Public Entity would conduct himself in a manner that clearly has the intent or effect of:

5.3.1 Ceasing the existence of the SABC at worst; or

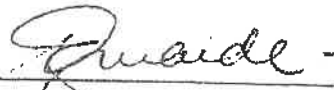
5.3.2 disarming the Organisation, thereby ensuring paralysis and inequality of arms in relation to maintaining or enhancing its competitive edge in this critical digital era and with devastating consequences to the continued capacity of the SABC to deliver on its mandate, let alone its continued relevance; or

5.3.3 betray the Constitutional mandate and the Broadcasting Charter, thereby depriving the South African public of the rights and/or benefits attaching to Public Service Broadcasting; or

5.3.4 undermining the Statutory Framework separating the Public Service division from the Commercial Service division (see

Section 9 of the Public Broadcasting Act 4 of 1999 as amended from time to time) by collapsing the Public Service division into the Commercial Service division in both radio and television, thereby undermining the Constitutional and Statutory imperatives of separation; or

5.3.5 misconducting himself in the manner complained of above.


 PHUMELELE NTOMBELA-NZIMANDE

Thus signed and sworn to before me at SANDTON on this 23rd day of MARCH 2011, the Deponent having acknowledged that she knows and understands the contents of this affidavit, that she has no objection to taking the prescribed oath and that she considers the prescribed oath/solemn affirmation to be binding on her conscience, as required by Government Gazette Nos. R1258 of 21 July 1972 and R1648 of 19 August 1977.


 COMMISSIONER OF OATHS

ZURO FORLEY FAHEWELL MADLANGA
 PRACTISING ATTORNEY
 GROUND FLOOR, BLOCK C
 GRAYSTON RIDGE OFFICE PARK
 144 KATHERINE STREET
 SANDTON
 GAUTENG S.A.

Received by Me Dr B Ngubane, in my capacity as Chairperson of the SABC Board on this the _____ day of _____ 2011.

 Dr B Ngubane


 4/1/11

ANNUAL REPORT 2016

Ours is not
just a job.

it is a calling
to ensure that
everyone
in our

nation

is informed,
educated and
entertained.

#TakeTheNextStep

SABC



cm1

cm1

Markets (Nelson Mandela School of Law and the University of the Witwatersrand).

Mr Krish Naidoo practices as an Attorney and has extensive experience in the fields of human rights, administrative law, mining and commercial law and conveyancing. Mr Naidoo provides legal advice to the ANC's National Disciplinary Committee. He worked for Armscor as the Senior Manager of Corporate Communications and gained experience in liaising with the Diplomatic Corps and the Parliamentary Defence Committee. He participated in programmes relating to defence and has written articles for the media and defence journals.

Mr Naidoo was a Non-Executive Director of Peregrine Treasury solutions and the Managing Director of Public Sector Consultants where he developed risk and financial management strategies for municipalities. As the General Manager and Acting CEO of Boxing South Africa, he settled the Boxing Act and Regulations in consultation with the Chief State Law Advisor.

He was part of a team that travelled to Amsterdam to review the cultural and academic boycott of South Africa, which made it possible for progressive cultural workers and academics to garner international experience and qualifications in preparation for a new democratic order. He was a Founding Member of the National Association of Democratic Lawyers Steering Committee and a Founding Member of the National Sports Congress. He chaired the soccer unity talks to form the SA Football Association and was part of the team that wrote the White Paper for the Department of Sport and Recreation.

Dr Ndlovhoniwani Aaron Tshidzumba

BA (Hons), MA, PhD in Communication (North West University); Postgraduate Diploma in TV Production National Electronic Media Institute of South Africa (NEMISA); Certificate in Public Relations (Allenby Campus); BA UED (University of Venda).

Dr Tshidzumba was the CEO of NEMISA and a lecturer in Broadcasting at the Journalism Department of the Tshwane University of Technology. He is a facilitator at the Business School of the North West University in the field of Graphic Design, Public Relations Management and Visual Programming.

He also managed the Multi-Media Centre and was in charge of Research, Sound and Video Productions at the Intelligence Academy. Dr Tshidzumba was a lecturer in the Department of Communication at North West University where he taught Broadcasting for Radio and TV, Computer Literacy and Media Ethics, to mention a few.

Dr Tshidzumba taught Media Studies, Graphic Design and Computer Literacy as an Educator at the Hurlingham and Chelsea College in London. He gained experience as a camera person, studio coordinator, video editor, script writer and floor manager. He also has experience with video transfers and logging, video productions and the training of new camera interns. He was a teacher at the Mmabatho and Riverlea High Schools.

Executive Members of the Board

Mr James Rogers Aguma

Acting Group Chief Executive Officer (Group CEO)
June 2016

BCom (Hons) (Makerere University); BCom; PGDA (University of Cape Town); PGCTA (Natal); CA (SA); ACMA; CGMA.

Mr Aguma was appointed as CFO on 5 January 2015. He joined the SABC in March 2013 as a General Manager: Strategic Support and, in the period before his appointment as CFO, he also served as acting CFO and as acting GCEO.

Mr Aguma has extensive experience in the public and private sectors. He spent eight years at the AGSA where he was employed as a Senior Manager. He has led audits at numerous government departments and public entities such as National Departments of Police, Health, Labour, Science and Technology, and Water Affairs and Sanitation. He also oversaw audits of several public entities including CSIR, NRF, HSRC, Magalies Water, Botshelo Water, UIF, Compensation Fund, CMS and the Mine Workers Compensation Fund.

He trained at and worked for PricewaterhouseCoopers in Sunninghill, servicing local and international clients including Rand Merchant Bank, USAID, Momentum Group, Gensec Bank, Imperial Bank, PSG, USAID, EU, the World Bank, Swedish Development Agency, National Roads Agency of Mozambique and Bristol Myers Squibb Foundation.

He has also worked as a tutor in Accounting at the University of Cape Town, as an educator at St Agnes High School in Teyateyaneng Lesotho and a teaching assistant in Marketing and Management studies at Makerere University in Kampala.

Mr Hlaudi Motsoeneng

Chief Operations Officer (COO)

Leadership Development Programme, Gordon Institute of Business Science (GIBS): NQF Level 7 – Bachelor's Degree; National Certificate in Generic Management, (Prodigy): NQF Level 5 – Higher Certificate; The Thompson Foundation Certificate in Radio Journalism; Analysis of Contemporary Social Issues (University of Witwatersrand).

Mr Hlaudi Motsoeneng has proven to be a leader of note, who has overcome challenges and focused on supporting the national agenda as prescribed by the Broadcasting Act and other relevant prescripts. He rose from a Trainee Journalist to Chief Operations Officer (COO). He has played an important role at various organisations, for example being Board Member for the SABC, SABC Foundation and Local Organising Committee (AFCON). While serving on the Board at AFCON, he went on to further participate as a member of the Marketing and Communications Sub-Committee of the said Board. Mr Hlaudi Motsoeneng also serves as a member of the Regenesys Business School Advisory Council.

He played a pivotal role in the creation of two new Television Channels, namely 24 Hour News Channel and SABC Encore, by raising the necessary funding for the said channels. Mr Motsoeneng is the brainchild behind the empowerment of local musicians and artists by introducing the 90% local music initiative on all the SABC Radio Stations, as well as 80% local content across all SABC Television Channels. This initiative will largely benefit the emerging producers, music composers etc. He recently raised funding to honour the South African Musical Legends, as a token of appreciation of their contribution to the development and growth of music in our country.

Mr Hlaudi Motsoeneng takes keen interest in the skills development programmes for the young people of South Africa, including vulnerable groups, i.e. women and people with disabilities. To this effect he has successfully drove a Flagship Project where unemployed graduates were exposed to Film and Television Production, Broadcast Engineering and Entrepreneurial skills since 2014.

He has presented lectures on Leadership and Transformation in Business Schools, for example University of Witwatersrand, Regenesys and University of Limpopo. Parts of his lectures were incorporated in the curriculum as a Professional Certificate in Government Communications and Marketing by the Wits School of Governance. He has received the certificate of positive role models, awarded by the Free State Youth Commission and the Special Recognition Certificate from the University of the North (Qwa Qwa campus) and Qwa Qwa Community.

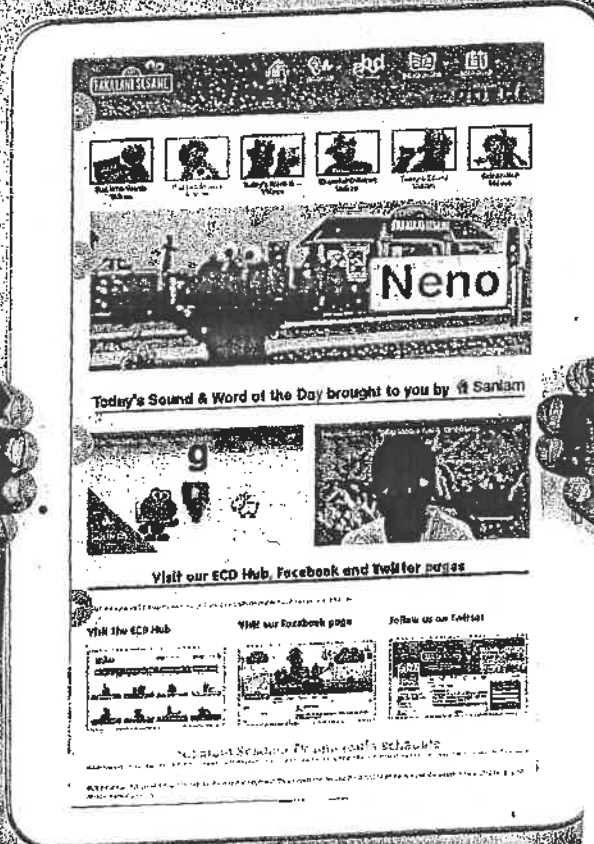
Ms Audrey Raphaela
Acting Chief Financial Officer (CFO)
June 2016

BCom (former University of Bophuthatswana now University of North-West); Bcompt (Hons)/CTA (University of South Africa); CA (SA); Executive Development Programme, Gordon Institute of Business Science (GIBS).

Ms Raphaela was appointed as acting CFO on 28 June 2016. She joined the SABC in February 2016 as a General Manager: Financial and Management Reporting.

She trained at Ernst and Young in Mafikeng, where she serviced local, public and private entities including government departments. After completion of her articles she immediately joined the private sector.

Ms Raphaela also has extensive experience in the public sector. This includes spending more than four years at Magalies Water where she was employed as an Executive Manager (CFO) in Finance. She has also held a number of senior/executive management positions in the finance and auditing field at Johannesburg Roads Agency, National Housing Development Corporation, South African Post Office, South African Airways, Eskom and other public entities.



HGM 19

Some of the Important Dignitaries at FICCI FRAMES 2016



Anthony D'Silva
CEO
Hinduja Media Group



MK Anand
Chief Executive Officer &
Managing Director
Times Network



Res Atkins
Presenter
Outside Source, BBC World News
and BBC World Service



Samir Bangara
Co Founder and MD
Qyuki



Rajat A Barjatya
MD and CEO
Rajshri Entertainment
Private Limited



Arunabh Kumar
Founder
The Viral Fever



Shiladitya Bera
CEO
Drishyam Films



Francois Da Silva
International Sales and Marketing
Baahubali



Anand Doshi
Co-founder
Click Digital Studios



Anant Geenka
Wholtime Director
and Head of New Media
The Indian Express



Nickhil Jakaldar
CEO & Founder
Vuclip



Prahlad Kakkar
Founder and Director
Genesis Film
Production Pvt. Ltd.



Kartik
Co Founder
Maati Baani



John Medeiros
Chief Policy Officer
CASBAA



Michael Schlesinger
Vice President & Regional
Legal Counsel, Asia Pacific,
Motion Picture Association
International (MPA-I)



John Michael Schreiner
Senior Vice President
Theatre Development
IMAX Corporation



Ashish S K
Chairman
FICCI Animation, Gaming
VFX & Comics Forum



Paramdeep Singh
Co Founder and
Executive Chairman
Saavn



Uday Singh
Managing Director
Motion Picture Association
(India Office)



Vijay Singh
CEO
Fox Star Studios
India Private Limited



Uday Sodhi
EVP and Digital head
Sony LIV and
Sony Entertainment



Ioanna Stais
Head of Festivals and Sales
Heretic Outreach



Selvaggia Vele
Florence Indian
Film Festival



Neeraj Pandey
Film Maker



Sandra Luckow
Film Maker



Swapnil Joshi
Actor



Valsa Nair
Principal Secretary
Tourism and Culture,
Govt. of Maharashtra



Carl Marvis
President and Co Founder
The QYOU



Harit Nagpal
MD & CEO
Tata Sky



Paritosh Joshi
CEO
India TV



Partho Dasgupta
CEO, BARC



Shantanu Moitra
Music Director



Suhel Seth
MD
Counselage India



Rance Pow
President
Artisan Gateway



Pranjal Sharma
Editorial and
Knowledge Advisor
The Outstanding Speakers' Bureau



Ravi Velhal
Technology Policy and
Standards- Intel Research

Handwritten signature and initials

Some of the Important Dignitaries at FICCI FRAMES 2016



Ravi Shankar Prasad
Minister for Telecom
and Communications



Col. Rajyavardhan Singh Rathore
Minister of State for
Ministry of Information
& Broadcasting*



R S Sharma
Chairman
Telecom Regulatory
Authority of India



Sunil Arora
Secretary
Ministry of Information &
Broadcasting, Govt. of India*



Uday Shankar, Chairman
FICCI Media Entertainment
Committee &
CEO, Star India Pvt Ltd



Mukesh Ambani
Chairman & Managing Director
Reliance Industries Limited



Ramesh Sippy
Co-Chairman
FICCI Media
Entertainment Committee
& Producer, Director
R S Entertainment Pvt Ltd



Rakeysh Om Parkash Mehra
Chairman
FICCI Film Forum



A Didar Singh
Secretary General
FICCI



Francis Gurry
Director General
WIPO



J B Perrette
President
Discovery Networks
International



Sadhguru Jaggi Vasudev
Founder
Isha Foundation



Kabir Khan
Film Maker



Kishore Lulla
Executive Chairman
Eros International



Sudhanshu Vats
Group CEO
Viacom 18



Ran Buck
VP
Asia Pacific, Taboola



Alexey Nikolov
Managing Director
Russia Today



Hlaudi Motsoeneng
COO, South African
Broadcasting Corporation
(SABC)



Ayuna Badraeva
CEO
Digital Television Russia



Aroon Purie
Chairman & Editor-in-Chief
The India Today Group



Sunil Lulla
Chairman and MD
Grey Group India



Arthur Bastings
President and Managing
Director, Discovery
Networks, Asia-Pacific



Lindsay Oliver
Director
BRICS Media Network Ltd.



Dima Khatib
MD, AJ+



Vikram Chandra
Executive Director &
CEO, NDTV Group



Mahesh Manjrekar
Director



S K Gupta
Principal Advisor
(B&CS), TRAI



Alistair Thompson
Executive Vice President
The Mill



Sajid Khan
Film Maker



Mike Chao
Regional Vice President
Asia-Pacific Dolby Laboratories



David Clark
Detective Chief Superintendent
Head of Economic Crime
and Fraud, City of London
Police



Valerie Creighton
President and CEO
Canada Media Fund



Govindraj Ethiraj
Co Founder
Ping Digital Broadcast



Siddharth Varadarajan
Founding Editor
The Wire



Siddharth Roy Kapur
Managing Director
Disney India



Amish Devgan
Prime Time Anchor &
Editor Output, Zee Business

CH

CH

Ball Rooms 1 & 2

1615- 1715 hrs

Media challenges and opportunities in emerging markets of BRICS

Last year at the first BRICS Summit convened in China, leaders of 25 media organizations from BRICS countries vowed to strengthen cooperation towards each other. The business footprint on the global map of each of these countries is huge and they also stand strong in the media and entertainment space. While collaborations, ease of business and networking for greater opportunities look like the immediate and low hanging fruits, how else do industry experts envision the partnership of BRICS nations for the future of media and entertainment for these countries and their markets.

Moderator:

Zeenat Saberlin, Editor, BRICS Media Network

Panelists:

Alexey Nikolov, Managing Director, Russia TV

Hlaudi Motsoeneng, COO, South African Broadcasting Corporation (SABC)

Ayuna Badmaeva, CEO, Digital Television Russia

Lindsay Oliver, Director, BRICS Media Network

Ballroom 3

1615-1715 hrs

Shaping & Funding the Marathi film ecosystem

Marathi Cinema is the starting point for all cinema industry in India. The whole culture evolved with Hon. Shri Dadasaheb Phalke starting the industry from Mumbai. In the last few decades Marathi Cinema has evolved its unique positioning and following. Several Marathi movies were sent as official entries to the Oscars. Marathi cinema has very distinct maturity when it comes to dealing with several critical and sensitive subjects in the society and surroundings. Marathi cinema has shown the world that the creators are capable of dealing with these kind of subjects and the audience are equally prepared to appreciate the same. The shaping and funding of these great ideas into films remain a challenging experience. Finding theatres, funding marketing, distribution etc. The time has come to establish a Marathi film fund as well as shaping the institutional design from creating, marketing and distributing Marathi films globally.

Moderator:

Anand Vaidyanathan, CEO, Encyclomedia

Panelists:

Smt. Valsa Nafr Singh, Principal Secretary, Tourism and Culture, Govt. of Maharashtra

Swapnil Joshi, Actor

Vishwas Joshi, Producer

Shhyam Singhanla, Chairman, Enarr Capital

Sanjay Chhabria, MD, Everest Entertainment, Producer

Powai Room 1 & 2

1615-1715 hrs

From reel to virtually real

With the advent of a whole new audience that is queued to virtual reality experiences, the art of storytelling is going through a revolutionary change. How will virtual reality and other immersive viewing experiences impact content creation, distribution and consumption in India in the medium and long term, is the big question that we ask our VR experts.

Moderator:

Biren Ghose, Country Head, Technicolor India

Panelists:

Alistair Thompson, Executive Vice President, The Mill

Rishi Ahuja, MD, Sunova Tech India

Ninan Chundamannil, Industry Business Head - Media, Broadcast, Entertainment, NVIDIA

Ball Rooms 1 & 2

1715- 1815 hrs

The Future of Television

The panel will discuss how new technology developments in the television screen – e.g. HDR, UHD, 4K, OLED will drive the demand for content to be created in these formats. Is the industry ready to support the onslaught of new realistic & immersive technologies and what's the impact on the industry and the consumers. As the pixels on televisions become smart, will content & delivery be smarter!

Panelists:

Kim Ki-Wan, Managing Director, LG India

Mike Chao, Regional Vice President, Dolby Labs

Sajid Khan, Film Maker

Gaurav Banerjee, General Manager, Star Plus*

Ferzad Palia, Business Head – MTV, MTV Indies & English Cluster- Music

Ball Rooms 3

1715- 1815 hrs

Director's Masterclass

Vikram Malhotra, CEO, Abundantia Entertainment in conversation with Film Maker **Neeraj Pandey**

The art of picking sensitive issues, necessary matters and transforming them into compelling content. We listen to those who are masters of the craft.

Ball Room 1 & 2

1830 hrs

Networking Cocktail & Dinner

FICCI BAF Awards followed by, Networking Cocktail & Dinner

Day II: 31 March, 2016**Ball Rooms 1 & 2**

1030-1130 hrs

Fulfilling the dream of a digitally connected India

Keynote by **Shri Ravi Shankar Prasad**, Hon'ble Minister, Department of Telecommunications, Government of India

Ball Rooms 1 & 2

1130-1230 hrs

Internalizing the emerging patterns in broadcast distribution

The Indian Broadcasting Sector is over two decades old and in this period it has grown from a single channel to more than 800 channels, analogue to digital and from single to multi-platforms. The Indian television audience is pampered with choice and there is more to offer. But there are some real questions to ponder over: Is this growth real or illusory? How do regulators, policy makers and industry move away from legacy bottlenecks to turn a new page in forging relationships among stakeholders? An expert panel will deliberate on their take on some of the major challenges facing the sector and throw light on how to usher in a light touch regulatory paradigm which encourages investment, assures fair share of revenue, protects consumers and ensures level playing fields.

Keynote Address:

R.S. Sharma, Chairman, TRAI

Panelists:

Sanjay Gupta, COO, Star India

MK Anand, MD & CEO, Times Networks

Harit Nagpal, MD & CEO, Tata Sky

Tony D Silva, MD and CEO, Indusind Media and Communications Ltd

Jagi Mangat Panda, Co-Founder, Ortel Communications Ltd

Anuj Gandhi, Group CEO, Indiacast Media Distribution Pvt Ltd

Ball Room 3

1130-1230 hrs

Enough Talk. Time for action- The Screen Density Verdict

Five years back, China was at roughly the same number of screens as India. It has worked furiously to push the number to 24 screens per million. This has taken it to \$4.8 billion in total box office revenues, compared to India's \$1.7 billion, making it the second largest film market in the world after the US - this in spite of not having a robust local film industry like India. So where is India lacking and isn't it time to end the talk and get to immediate action. We bring the top minds in the industry to the mike.

HGM 20

	Audits performed by private firms				Auditor General			
	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Audit opinion	Qualified	Unqualified	Qualified	Qualified	Disclaimer	Qualified	Qualified	Qualified
Number of qualification paragraphs	2	0	1	2	9	8	3	1
Movements	↓	↑	↓	↓	↓	↑	↑	↑
	regress	improve	regress	regress	regress	improve	improve	improve
Matters associated with qualification paragraphs								
	Private audit firms				AGSA			
	2008/9	2009/10	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
Property plant and equipment	-	-	-	-	✓	✓	R	-
Programme, film and sports rights	✓	-	✓	-	✓	R	-	-
Intangible assets	-	-	-	-	✓	R	-	-
License fees and receivables	-	-	-	-	✓	✓	✓	R
Trade and other receivables	-	-	-	-	✓	R	-	-
Irregular, fruitless and wasteful expenditure	✓	R	-	✓	✓	✓	✓	✓
Deferred tax, tax payable and income tax	-	-	-	-	✓	✓	✓	R
Expenditure	-	-	-	-	✓	R	-	-
Post-retirement	-	-	-	-	✓	R	-	-

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**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG LOCAL DIVISION, JOHANNESBURG)**

HGM21Case Number: **18/04253**

In the matter between:

SPECIAL INVESTIGATING UNIT

First Plaintiff

**SOUTH AFRICAN BROADCASTING CORPORATION
SOC LIMITED**

Second Plaintiff

and

GEORGE HLAUDI MOTSOENENG

Defendant

GRUPPIER VAN DIE HOOGGEREGENSHOF VAN SUID-AFRIKA GAUTENG PLAASLIKE AFDDELING, JOHANNESBURG	
PRIVAATSAK/PRIVATE BAG 17 JOHANNESBURG 2000	
2018 -02- 05	8
ISSUING	
REGISTERED OF THE HIGH COURT OF SOUTH AFRICA GAUTENG LOCAL DIVISION, JOHANNESBURG	

COMBINED SUMMONS

TO THE SHERIFF OR HIS DEPUTY
INFORM

GEORGE HLAUDI MOTSOENENG, an adult male and former employee, Chief Operating Officer of the Second Plaintiff, whose present occupation is to the First Plaintiff unknown, residing at **1237 Crownest, Featherbrooke Estate, Roodepoort, Gauteng** (herein after called the "Defendant").

that

THE SPECIAL INVESTIGATING UNIT, established by the President of the Republic of South Africa in terms of Proclamation No. R.118 of 31 July 2001; (hereinafter referred to as "the First Plaintiff");

Mandated to investigate certain allegations relating to the affairs of the South African Broadcasting Corporation SOC Limited ("the Second Plaintiff") and institute civil proceedings emanating from the said allegations in terms of Proclamation No. R.29 of 1 September 2017;

and

THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED, a state owned company with limited liability, registered in terms of the Broadcasting Act 4 of 1999 company laws of the Republic of South Africa, under registration number 2003/023915/30 and constituted in terms of the Broadcasting Act, No. 4 of 1999, as amended, and having its principal place of business at Radiopark, corner Henley and Artillery Roads, Auckland Park, Johannesburg, Republic of South Africa; (hereinafter called the "Second Plaintiff");

hereby institutes action against the Defendant, in which action the First Plaintiff claims the relief on the grounds set out in the particulars of claim annexed hereto.

Inform the Defendant further that if they dispute the claim and wish to defend the action, the Defendant shall –



- 1 within 10 (ten) days of the service upon the Defendant of this summons, file with the registrar of this court.

ROOM 008, HIGH COURT BUILDING,
VON BRANDIS SQUARE, JOHANNESBURG;

notice of the Defendant intention to defend and serve a copy thereof on the Plaintiffs' attorneys, which notice shall give an address (not being a post office box or poste restante) within 15 kilometres of the office of the registrar, for service upon the Defendant of all documents in the action;

- 2 thereafter, and within 20 days after filing and serving notice of intention to defend as aforesaid, file with the registrar and serve upon the Plaintiffs' attorneys a plea, exception, notice to strike out, with or without a counterclaim.

Inform the Defendant further that if they fail to file and serve notice as aforesaid, judgment as claimed may be given against the Defendant without further notice to them or if, having filed and served such notice, the Defendant fail to plead, except, make application to strike out, or counterclaim, judgment may be given against them.

And immediately thereafter serve on the Defendant a copy of this summons and return same to the registrar with whatsoever you have done thereupon.

DATED at JOHANNESBURG on this the 05th day of February 2018.



REGISTRAR OF THE HIGH COURT



WERKSMANS ATTORNEYS

Plaintiff's Attorneys

The Central

96 Rivonia Road

SANDTON

Tel: (011) 535 8475

Email: kmabaso@werksmans.com

Ref: Ms Khosi Mabaso/SPEC37662.1



ANNEXURE

FIRST PLAINTIFF'S PARTICULARS OF CLAIM

- 1 The First Plaintiff is the **SPECIAL INVESTIGATING UNIT** (hereinafter referred to as "the Unit"):
 - 1.1 established by the President of the Republic of South Africa in terms of Proclamation No. R. 118 of 31 July 2001;
 - 1.2 mandated to investigate certain allegations relating to the affairs of the South African Broadcasting Corporation (SBC) Limited ("The Second Plaintiff") and institute civil proceedings emanating from the said allegations in terms of Proclamation No. R. 29 of 1 September 2017 ("the 2017 proclamation");
 - 1.3 authorised by the aforementioned proclamations, issued and published in the Government Gazettes in terms of s2(1)(a)(i) and (ii) of the Special Investigating Units and Special Tribunals Act 74 of 1996 ("the Act"); and
 - 1.4 is entitled and empowered to institute these proceedings in the above Honourable Court and in its own name in accordance with the provisions of ss4(1) and 2(2), read with s5(5) of the Act.



2 The Second Plaintiff is the South African Broadcasting Corporation SOC Limited ("SABC"), being:

2.1 a national broadcaster and former employer of the Defendant;

2.2 a state owned company with limited liability, registered in terms of the company laws of the Republic of South Africa, under registration number 2003/023915/30 and constituted in terms of the Broadcasting Act, No. 4 of 1999, as amended;

2.3 a major public entity in terms of Schedule 2 of the Public Finance Management Act 1 of 1999 ("the PFMA");

2.4 having its principal place of business at Radio Park, Corner Artillery and Henley Roads, Auckland Park, Johannesburg Gauteng; and

2.5 funded through the public purse and through the levying of licence fees.

3 The Defendant is **GEORGE HLAUDI MOTSOENENG**, an adult male and former employee, Chief Operating Officer of the Second Plaintiff, a state-owned company more fully defined in paragraph 2, infra, whose present occupation is to the Plaintiffs unknown, residing at 1237 Crownest, Featherbrooke Estate, Roodepoort, Gauteng.

4 **FRAMEWORK OF THE FIRST PLAINTIFF**

4.1 The First Plaintiff has at all material times hereto been empowered to:



4.1.1 investigate allegations on the grounds envisaged in s2(2) of the Act pertaining to the affairs of the Second Plaintiff regarding financial losses it has suffered that may be recovered; and

4.1.2 institute civil proceedings emanating from the investigation, which must be adjudicated upon.

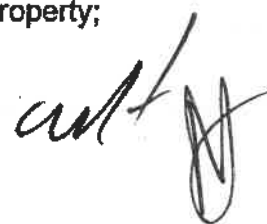
4.2 The terms of reference contained in the 2017 proclamation empower the First Plaintiff to investigate any of the following allegations, which took place between 1 November 2011 and the date of publication of the 2017 proclamation or which took place prior to 1 November 2011 or after the date of publication of this proclamation, but which are relevant to, connected with, incidental or ancillary to the matters, or the same persons, mentioned in the Schedule of the proclamation, including:

4.2.1 serious maladministration in connection with the affairs of the Second Plaintiff;

4.2.2 improper or unlawful conduct by Board members, officials or employees of the Second Plaintiff;

4.2.3 unlawful appropriation or expenditure of public money or property;

4.2.4 unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;



4.2.5 intentional or negligent loss of public money or damage to public property;

4.2.6 offence referred to in Parts 1 to 4 or ss17, 20 or 21 (insofar as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the Second Plaintiff; or

4.2.7 unlawful or improper conduct by any person that has caused or may cause serious harm to the interests of the public or any category thereof.

5 FIRST PLAINTIFF'S MANDATE

5.1 The Schedule to the 2017 proclamation provides under Clause 2, that the matters sanctioned for investigation by the First Plaintiff include, *inter alia*:

5.1.1 Maladministration in the affairs of the Second Plaintiff and any losses or prejudice suffered by the Second Plaintiff or the State as a result of such maladministration in relation to, *inter alia* the:

5.1.1.1 irregular appointment and promotion of staff; or

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5.1.1.2

payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable:

5.1.1.2.1

legislation; or

5.1.1.2.2

manuals, policies, procedures, directives, instructions or practices of or applicable to the Second Plaintiff, including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the Second Plaintiff or the State.

5.1.2

A copy of the 2017 proclamation is annexed hereto marked "POC1".

5.2

In accordance with the terms of reference contained in the 2017 proclamation as read with the empowering provisions of the Act, the First Plaintiff:

5.2.1

performed an investigation into the affairs of the Second Plaintiff;

5.2.2

collated the relevant evidence and information that it found to support allegations of maladministration in the affairs of the Second Plaintiff (and matters connected therewith in terms of s2(2) of the Act), which resulted in the latter suffering losses during the period 2011 to 2017, relating to, *inter alia*, the irregular

and/or unlawful and undue payments made by the Defendant to various former employees of the Second Plaintiff and/or to the Defendant by the Second Plaintiff in the form of:

5.2.2.1 salary increases;

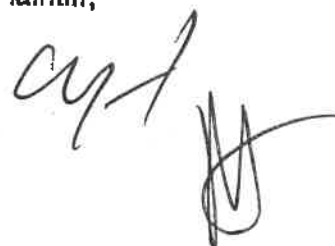
5.2.2.2 bonuses and/or other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable legislation and policies and directives of the Second Plaintiff; and

5.2.2.3 decided to institute these proceedings against the Defendant for the recovery of losses suffered by the Second Plaintiff pursuant to the above.

6 DEFENDANT'S EMPLOYMENT HISTORY WITH THE SECOND FIRST PLAINTIFF

6.1 During the year 2011 and pursuant to numerous appointments and promotions within the Second Plaintiff's employ, having been employed since 1995, the Second Plaintiff appointed the Defendant:

6.1.1 from 1 November 2011 to 30 November 2012, while employed as the Group Executive: Stakeholder Relations, to the position of Acting Chief Operating Officer of the Second Plaintiff;



6.1.2 from 1 December 2012 to 30 June 2014, to the position of Group Executive: Provinces and Stakeholder Relations; and

6.1.3 it is during this period that the events leading to the First Plaintiff's first claim arise, pursuant to which the Public Protector in a report dated 17 February 2014 ("Public Protector's report") made adverse findings against the Defendant pertaining to, *inter alia*:

6.1.3.1 his appointment as Acting Chief Operating Officer;

6.1.3.2 irregular appointments of various employees and their respective salary increments;

6.1.3.3 his purging of senior staff members through unfair and/or unlawful terminations of employment; and

6.1.3.4 further, the Public Protector determined remedial action that was to be taken by the Second Plaintiff against the Defendant.

6.2 Following the Public Protector's report, the Defendant instituted litigation to challenge the former's findings and to defend himself against public groups seeking enforcement of the Public Protector's findings.

6.3 On or about 8 July 2014, the Second Plaintiff and the Defendant entered into a fixed term Service Agreement for a five year period ("the Service Agreement") in terms of which the Second Plaintiff appointed the



Defendant in the position of Chief Operating Officer. A copy of the Service Agreement is annexed hereto marked "POC2".

6.4 The First Plaintiff's second claim arises from events that took place during this period of the Defendant's engagement by the Second Plaintiff.

6.5 The Defendant's appointment as Chief Operating Officer was set aside on 27 November 2015; however, leave to appeal was granted. On 23 May 2016, the Defendant's leave to appeal was dismissed and further, his petitions to the SCA were dismissed on 14 September 2016.

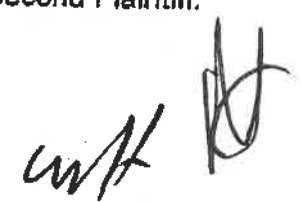
6.6 As a result of the SCA judgment, the Second Plaintiff removed the Defendant from the position of Chief Operating Officer and transferred him to his former position of General Manager: Stakeholder Relations (it had changed to General Manager: Corporate Affairs).

6.7 The Defendant remained in the employ of the Second Plaintiff until his dismissal on 12 July 2017, pursuant to a finding made during his disciplinary inquiry.

7 FIRST CLAIM

Payments by the Defendant

7.1 During the period November 2011, while employed as the Group Executive: Stakeholder Relations since April 2011, the Defendant was also appointed Acting Chief Operating Officer of the Second Plaintiff.



- 7.2 During his engagement as the Acting Chief Operating and General Manager: Stakeholder Relations, the Defendant abused his position and conducted himself improperly, *inter alia* as follows.

Irregular appointments and salary increments

- 7.3 The Defendant irregularly appointed numerous persons into the employ of the Second Plaintiff and awarded salary increments to various other employees, in that he, amongst others:

- 7.3.1 in contravention of G3 of the Delegation of Authority Framework ("DAF") and Clauses 4 and 5 of Part IV of the Second Plaintiff Personnel Regulations:

- 7.3.1.1 appointed Ms Sully Motsweni (Ms Motsweni) into the position of General Manager: Compliance and Operations and Stakeholder Relations Provinces on 30 June 2011 to 31 January 2012; Head: Compliance and Operations on 1 February 2012; Acting Group Executive: Risk and Governance on June 2012;

- 7.3.1.2 unilaterally caused her salary to be increased from R490 132,00 per annum to R2 229 563,76 per annum within a period of four (4) years, resulting in a 454.89% increase; and

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7.3.1.3 further, unilaterally increased the salary of Ms Thobekile Khumalo, a shop steward and various freelancers; and


7.3.2 in contravention of the provisions of s19.1.1. of the Articles of Association of the SABC and the Broadcasting Act, he:

7.3.2.1 orchestrated, having convinced the Board, the appointment of Ms Gugu Duda ("Ms Duda") into the role of Chief Financial Officer during February 2012:

7.3.2.1.1 without her applying for the position as advertised; and

7.3.2.1.2 after the recruitment and selection process of legible applicants had been closed, particularly after the Board had submitted a recommendation to the Minister for the appointment of a legible candidate, one Mr Daka.

7.3.2.2 Further, caused the Second Plaintiff to appoint Ms Duda at an annual package of R5 917 268,33, in respect of which she only served the Second Plaintiff for a period of five (5) months, whereafter the Defendant caused her to be suspended with pay until her dismissal (litigation pending in this regard).



7.3.3

The Defendant's improper conduct as illustrated above constitutes maladministration and abuse of power and caused the Second Plaintiff to:

7.3.3.1

flout its financial management and internal control policies, by making unlawful appointments; and

7.3.3.2

incur fruitless and wasteful and/or irregular expenditure in its salary bill which has run into millions of Rand.

7.3.4

The Defendant's unlawful increases of Ms Motsweni's salary, resulted in the Second Plaintiff's loss which is calculated on the difference between:

7.3.4.1


an unlawful increase of 454.89% on the amount of R490 132,00 over 4 years, resulting in an annual salary of R2 229 563,86; and

7.3.4.2

a salary increase of 10% per annum over 4 years on the annual package of R490 132,00, which would have resulted in an annual salary increase of increase of R717 602,25.

7.3.5

Accordingly, the Second Plaintiff suffered loss in the sum of R1 511 961,51, under this head.



Suspensions and unlawful terminations of employment

7.4

The Defendant unfairly suspended various employees and unlawfully terminated the employment of various employees, by instituting unfair disciplinary proceedings and/or suspensions against such employees, such that:

7.4.1

the Second Plaintiff has suffered great financial losses (and continues to do so) which were preventable had reasonable care been exercised by the Defendant to ensure that Part V, Clause 9 and VI, Clauses 11 and 12 of Second Plaintiff's Personnel Regulations and Disciplinary Procedure and Code of Conduct *inter alia* had been followed. The Second Plaintiff remains saddled with the following prolonged suspensions and disciplinary processes:

7.4.1.1


Ms Cecilia Phillips' suspension that endured for four months without charges being brought against her;

7.4.1.2

Mr Hosia Jiyane endured a disciplinary process that lasted two years - he won the case against Second Plaintiff - however, the Defendant opposed same; and

7.4.1.3

Ms Duda was suspended indefinitely since 2012 to date without finalisation of disciplinary proceedings against her.



7.4.2

Alternatively, in the event that these three above matters have been completed, the Second Plaintiff will have incurred losses in the settlement packages offered in each case.

7.4.3

The dismissals of various employees done by the Defendant have subsequently been proven to be both procedurally and substantively unfair in findings of the CCMA and the courts, such that in certain instances, where reinstatement was not carried out, the Second Plaintiff had to pay excessive amounts for settlement packages, included herein are:

7.4.3.1.1

Mr Bernard Koma received a 12 months settlement award CCMA (loss is yet to be computed).

7.4.3.1.2

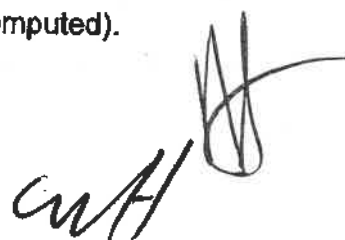
Mr Saul Pelle won his case at the Labour Court for reinstatement, but Second Plaintiff refused same and offered 12 months' settlement package (loss is yet to be computed).

7.4.3.1.3

Mr Motlenyane Diphoko reinstated after a CCMA ruling, which was handed down three years after the Second Plaintiff had terminated his employment (loss is yet to be computed).

7.4.3.1.4

Ms Ntsiepe Masoetsa reinstated after her case against Second Plaintiff dragged for three years in the Labour Court (loss is yet to be computed).

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7.4.4 Further, and in particular, owing to the Defendant's unlawful termination of employment of the following persons, the Second Plaintiff has suffered losses computed as follows:


7.4.4.1 Ms Charlotte Mampane: R4,344,688.51 in settlement of premature termination of employment, the Defendant having refused renewal of same.

7.4.4.2 Ms Phumelele Ntombela-Nzimande: R2,578,803.18, in settlement of premature termination of employment, the Defendant having refused renewal of same.

7.4.4.3 Mr Thabo Lesala: R1 800 000,00, settlement in award at the CCMA for unfair dismissal.

7.4.5 The Second Plaintiff suffered losses in the sum of R8,723,491.69, under this head.

7.5 As a result of the Defendant's abuse of power, improper conduct and maladministration at the Second Plaintiff regarding the irregular appointments, irregular salary increments, unfair disciplinary actions and unlawful terminations of the employees referred to above, the Defendant is liable to pay the losses suffered by the Second Plaintiff under his maladministration of the latter.



7.6 In the premises, the First Plaintiff is entitled to recover and accordingly claims the losses suffered by the Second Plaintiff, in the total sum of R10 235 453,20, from Defendant in terms of the 2017 proclamation and the Act.

7.7 Accordingly, the Defendant is liable to pay to the First Plaintiff, the aforesaid sum, which amount is due, owing and payable.

8 SECOND CLAIM

Payment to the Defendant

8.1 On 19 August 2016, the Governance and Nomination Committee of the Board of the Second Plaintiff ("the GNC") approved that the Defendant be paid an amount in the sum of R11 508 549,12 in the form of what was termed a "success fee".

8.2 During the meeting of the GNC on 19 August 2016, the former Acting Chief Executive Officer, Mr James Aguma ("Mr. Aguma") made an oral representation to the GNC wherein he:

8.2.1 requested the approval for the payment of the success fee on the basis that the Defendant had managed to raise R1,19 billion Rand worth of funding for the Second Plaintiff; and

8.2.2 presented that the amount of R1,19 billion rand generated by the Defendant comprised the amounts set out in "POC3" hereto.

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- 8.3 As a result thereof, the GNC resolved to approve the payment of the success fee to the Defendant, calculated at 2.5% of the R1,19 billion, less R1 million Rand and that payment would be made to the Defendant in instalments over a period of three years.
- 8.4 Copies of the minutes of the 19 August 2016 GNC meeting, the transcript, and two certified extract of draft minutes of the GNC dated 19 August 2016 and 2 September 2016 are annexed hereto marked "POC4" to "POC8", respectively.
- 8.5 On 22 August 2016, the erstwhile Acting Group Executive: Human Resources, Mr Mohlolo Lephaka, addressed a letter to the Defendant confirming the approval of the GNC to pay him the success fee calculated as per the resolution of the GNC. A copy of the letter is annexed hereto marked "POC9".
- 8.6 On 12 September 2016, Ms Raphela instructed the Finance Department of the Second Plaintiff to effect payment of the success fee in the sum of R11 508 549,12 to the Defendant, calculated on the amount of R460 341 964,80.
- 8.7 In accordance therewith, the Second Plaintiff made payment of the success fee to the Defendant in two instalments on 12 and 13 September 2016.

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- 8.8 Copies showing how the amount of R11,508,549.12 was calculated and the proof of payments transferred on 12 and 13 September 2016, are annexed hereto marked "POC10" to "POC12", respectively.

Legality of the success fee payment

- 8.9 The payment of the success fee to the Defendant by the Second Plaintiff was irregular and unlawful in that:

- 8.9.1 The GNC had, to the knowledge of the Defendant, no authority to approve the payment of a success fee, on any terms, to any person, including the Defendant, in that:

- 8.9.1.1 the Delegation of Authority Framework (2016 – 2017) ("DAF") provides in clause 2.4, that Board Committees are generally constituted with powers of recommendation only. Subject to certain statutory limitations, the Board may, in its discretion delegate decision-making authority to any one or more of the Board Committees;

- 8.9.1.2 section 3 of the DAF provides that the HR Committee determines the remuneration and bonuses payable in terms of performance contracts;

- 8.9.1.3 under table G thereof, G12 provides that the annual appraisal of the performance of the Chief Operating Officer and Chief Financial Officer shall, at the recommendation



of the GNC, be approved by the Board on notice to the Shareholder; and

8.9.1.4

clause 4.3 of the GNC Terms of Reference (2016 – 2017), circumscribes the approval powers delegated to the GNC to the conditions of employment and all benefits applicable to the Group Chief Executive Officer, Chief Financial Officer and the Chief Operating Officer and the terms of reference of the severance of employment of such individuals.

8.9.2

The Board did not approve the payment of the success fee to the Defendant.

8.9.3

The GNC's approval of the amendment of the Commission Policy and the award of the success fee to the Defendant was irregular in that the GNC acted beyond the scope of the aforementioned empowering provisions and in contravention of the Second Plaintiff's empowering legislation and the PFMA.

8.9.4

The award of the success fee to the Defendant was made *ultra vires*, rendering the use of the public funds utilised in the payment of such award unlawful.

8.10

The Defendant's acceptance of the success fee payment was likewise unlawful in that the Defendant accepted the success fee in circumstances where:



8.10.1 there was no legal basis for the payment as it was not regulated by:

8.10.1.1 any of the empowering provisions of; and/or

8.10.1.2 his employment relationship, in terms of the Service Agreement, with the Second Plaintiff, as such it was not due or owing or payable to him;

8.10.2 that the Second Plaintiff did not have a success fee policy nor one that recognised such a "reward";

8.10.3 particularly, the Second Plaintiff Board Charter states that Executive Directors will be remunerated in accordance with their contracts of employment and will not receive additional fees;

8.10.4 the Defendant was under an obligation in terms of s57 of the PFMA to:

8.10.4.1 ensure that the system of financial management and internal controls established for the Second Plaintiff are carried out; and

8.10.4.2 take effective and appropriate steps to prevent any irregular expenditure and fruitless and wasteful expenditure, within his area of responsibility - the

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Defendant's acceptance of the success fee payment was a direct contravention of this obligation;

8.10.5 in violation of s76(2)(a) of the Companies Act 71 of 2008 ("the Companies Act") he used his position of Chief Operating Officer to gain an advantage for himself or knowingly caused harm to the Second Plaintiff, in that at the time of accepting the success fee:

8.10.5.1 his continued employment with the Second Plaintiff was in jeopardy, following findings of misconduct on his part and irregularity of his appointment by the Public Protector in the report dated 17 February 2014 and the various judgments that followed; and

8.10.5.2 he orchestrated that he obtains payment of the success fee (payment on 12 and 13 September 2016) a day before his appointment as Chief Operating Officer was reviewed and set aside (on 14 September 2016) by the SCA, following the dismissal of his leave to appeal on 23 May 2016, of the initial decision to set aside his appointment on 27 November 2015.

8.10.6 The Defendant's acceptance of the payment of the success fee was in contravention of his fiduciary duties to the Second Plaintiff, which constitutes unlawful conduct, as it resulted in the intentional and/or negligent loss of public money.



8.10.7 As a result, the Second Plaintiff suffered irregular and/or fruitless and wasteful expenditure in the sum of R11,508,549,12.

8.10.8 In the premises, the First Plaintiff is entitled to recover the above losses that the Second Plaintiff has suffered, from the Defendant in terms of the 2017 proclamation and the Act.

8.10.9 Accordingly, the Defendant is liable to pay to the First Plaintiff the sum of R11 508 549,12, which amount is due, owing and payable.

WHEREFORE the First Plaintiff prays for judgment against the Defendant in the following terms:

1 Payment in the sum of R 10 235 453,20;

Alternatively:

Payment in the sum of R11 508 549,12;

2 Interest on the aforesaid sum at the rate of 9% per annum *a tempore morae* from date of service of summons to date of payment;

3 Costs of suit on the attorney and client scale, including the costs occasioned by the employment of two counsels;



4 Further and/or alternative relief.

DATED at JOHANNESBURG this the 05th day of FEBRUARY 2018


K MABASO

*Attorney with right of appearance in
terms of section 4(2) of Act 62 of 1995*


WERKSMANS INC

Plaintiffs' Attorneys

The Central

96 Rivonia Road


Sandton

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BOKWA
LAW INCORPORATED*Perseverance beyond passion*By Email: JLeRoux@siu.org.za

HGM 22

Our ref: N SIMATAA/r/M02282

04 September 2019

Your ref: SBCR29FCM2HOF

SPECIAL INVESTIGATING UNIT
PRETORIA

ATTENTION: Mr J LE ROUX

Dear Madam

IN RE: INVESTIGATION IN TERMS OF PROCLAMATION NO. R.29 OF 2017, AS AMENDED
BY PROCLAMATION NO. R.19 OF 2018, IN RESPECT OF THE AFFAIRS OF THE SOUTH
AFRICAN BROADCASTING CORPORATION LIMITED

1. We confirm that we act for and on behalf of Mr George Hlaudi Motsoeneng.
2. It is our instructions that we address this letter to you, as we hereby do in response to your letter dated 01st of August 2019 in which letter your office listed a number of questions which our client was requested to answer.
3. We have advised our client to decline the invitation to give you answers to your questions. The reason for this position is that the SIU has instituted proceedings against our client before the High Court under case no.04253/19 for the recovery of monies allegedly owed to the SABC by our client. The issues in that matter are similar or closely related to the questions that you seek answers from our client. Our client will respond to questions asked in the course of the litigation and in accordance with the Rules of Court. As matters stand, we are of the view that it is unfair for the SIU to require answers to questions that are the subject of issues before the Court.

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944 Justice Mohamed Street (Previously 210 Charles Street) | Brooklyn | Pretoria | P O Box 325 | Newlands | 0049
Director: Ronnie Bokwa | Associate: Nixon Simataa
Company Registration Nr: 2013/117854/21 | B-BBEE Level 1

4. In the event that the SIU abandons its ill-conceived action against our client and is advised to withdraw the action, our client will cooperate with a lawful investigation but it is patently unfair to require him to give you answers when the parties are in the middle of litigation over the same issues that are the subject of the SIU inquiry.

5. We trust you find the above in order.

6. Our client's rights remain reserved.

Yours faithfully,



PER: NIXON SIMATAA
EMAIL: nixon@bokwalaw.co.za



HGM 23

Ref: SBCR29FCM2HOF
Enq: Ms Johnny Le Roux

1 August 2019

Mr. Hlaudi George Motsoeneng
1237 Featherbrooke Estate
Krugersdorp
1746

082 471 0898

By email: nixon@bokwalaw.co.za
refilwe@bokwalaw.co.za

Dear Mr. Motsoeneng

RE: INVESTIGATION IN TERMS OF PROCLAMATION NO. R.29 OF 2017, AS AMENDED BY PROCLAMATION NO. R19 OF 2018, IN RESPECT OF THE AFFAIRS OF THE SOUTH AFRICAN BROADCASTING CORPORATION LIMITED: REQUEST FOR YOUR RESPONSE

1. The Special Investigating Unit ("SIU") has been mandated in terms of Proclamation R.29 of 2017, published in Government Gazette No. 41086 on 1 September 2017 ("the Proclamation"), to investigate certain matters in respect of the affairs of the South African Broadcasting Corporation Limited ("SABC"). Proclamation No. R.29 of 2017 has been extended by Proclamation No. R.19 of 2018 (a copy of which is attached hereto as Annexure "A").
2. As part of its mandate, the SIU is required to investigate:
"Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to –
 - (e) *the payment of salaries, increased, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable–*
 - (i) *legislation; or*
 - (ii) *manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC,*

including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State”.

3. The SIU's investigation has revealed that, during May 2016, you participated in the negotiations with the Communications Workers Union (“**CWU**”), which resulted in an ex-gratia amount of R10 000 per person payable to certain SABC employees.
4. The further factual background to this matter is as follows:
 - 4.1. On 18 January 2016, the SABC's Human Resources and Remuneration Committee (“**HRRC**”) resolved that management be granted an absolute mandate to embark on negotiations with Organised Labour for salary increases and other substantive matters in respect of the 2016 annual increases up to a maximum of 7% of annual salaries, and that, in the event that no agreement is reached between Management and Organised Labour on the 7%, the matter must be tabled at the Board for further discussion. See **Annexure B** attached for a copy of the minutes of the meeting concerned.
 - 4.2. On 19 April 2016, the HRRC resolved that Management must continue negotiations with Organised Labour on the basis of an absolute mandate of 7% and that, in the event that no agreement was reached, the matter must be tabled at a Board meeting for further discussion; and to recommend that the Board approves the implementation of the 7% annual salary increase for employees who were not members of the Bargaining Council. See **Annexure C** attached for a copy of the minutes of the meeting concerned.
 - 4.3. On 26 April 2016, the SABC Board resolved that the 2016/17 salary increases are approved on the basis that the maximum offer of 7% for employees within the Bargaining Unit be ratified through the process of negotiations for Scale Code 300 and lower for all wage and substantive items. See **Annexure D** attached for a copy of the minutes of the meeting concerned.
 - 4.4. On 24 May 2016, the SABC entered into Memorandums of Agreement with the Broadcast Electronic Media and Allied Workers Union (“**BEMAWU**”) and CWU - to the effect that an additional ex-gratia amount would be paid subject to the overall organisational performance for the 2015/2016 financial year, which were to be reviewed in September 2016 or soon thereafter. See **Annexure E** attached for a copy of the Memorandums concerned.

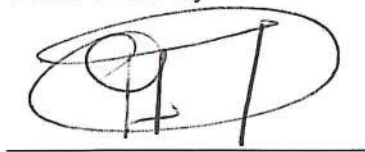


- 4.5. On 30 May 2016, the SABC Board resolved that the 2016/2017 salary increases are approved on the basis that matters relating to the maximum offer of 7% for employees within the Bargaining Unit be ratified through the process of negotiations for Scale 300 and lower for all wage and substantive items. See **Annexure F** attached for a copy of the minutes of the meeting concerned.
 - 4.6. On 27 October 2016, a Memo was sent to the Manager: Payroll (a copy of which has been attached as **Annexure G**), in which an instruction was given to process once off ex-gratia payments of R10 000 (gross) per person to qualifying staff in the bargaining unit (scale 300 – 407). The memo also sets out the rules which would apply to the payments and stipulates that the payments had to be made on Tuesday, 1 November 2016.
 - 4.7. On 1 November 2016, 3124 SABC employees on scale code 300 and below each received payment of a R10 000.00 ex-gratia/bonus payment, amounting to R31 240 000.00 in total.
5. In terms of section 5(2)(a) of the *Special Investigating Units and Special Tribunals Act, Act 74 of 1996* ("**the SIU Act**"), the SIU is entitled to require from any person such particulars and information as may be reasonably necessary for it to perform its functions, i.e. to conduct investigations such as this.
 6. Against the background of the above, it would be appreciated if you could furnish the SIU with your response to the following questions:
 - 6.1 As mentioned above, the SABC Board resolved to approve a maximum offer of a 7% salary increase. Were you mandated by the SABC Board to partake in the negotiations with trade unions? If so, when did the SABC Board resolve such and what exactly was the mandate that was given to you?
 - 6.2 Did approval of the ex-gratia payment concerned form part of the mandate given to you from the SABC Board?
 - 6.3 Did you make a suggestion to the CWU that staff members be paid an additional ex-gratia amount later in 2016?
 - 6.4 During the negotiations with the CWU, was an agreement reached between yourself and the CWU that the ex-gratia amount payable to SABC employees later in 2016 would amount to R10 000 per person (gross)?
 - 6.5 Which documentation and/or information did you rely on and/or applied your mind to in making the decision to agree to the R10 000.00 ex-gratia payments payable to staff?



- 6.6 Did you, at any stage, take the SABC's financial position and interest into consideration when agreeing to the ex-gratia payment of R10 000.00 to be paid to staff? If so, how and on basis of what information?
- 6.7 On 20 May 2016, the Memorandum of Provisional Agreement between the SABC and the CWU was signed. Why did you not sign the agreement on the SABC's behalf?
- 6.8 Why did BEMAWU sign the Memorandum of Provisional Agreement on 24 May 2016 and not on 20 May 2016 (like the CWU)?
- 6.9 Was proper process followed in the negotiation and processing of the R10 000 payments concerned? Please motivate your answer.
7. Your response is required with a view to enable the SIU to decide as to whether any further action should be taken or recommended against any party and also with a view to take it into account when drafting a final report to the President.
8. Any input that you wish to make must reach the SIU within **seven (7) days** from receipt of this letter.
9. If no response or input regarding this communication is received within the abovementioned period, it will be accepted that you have elected to not respond to this communication and the SIU will then proceed to finalise the matters.
10. The SIU is available to discuss this matter with you. Should you have any questions or require further clarification, please do not hesitate to contact **Mr Johnny Le Roux** at JLeRoux@siu.org.za on **012 843 0177**.

Yours sincerely



Mr Leonard Lekgetho

Chief National Investigation Officer





27 October 2016

Memo to Manager: Payroll

Subject: Payment of an Ex-Gratia Amount to Bargaining Unit Staff

The recent line talk by the SABC Management with staff in the bargaining unit (scale 300 – 407) as well as the Intercom Update of 26 October 2016 has reference

Could you please process a once-off ex-gratia payment of R10 000 (gross) per person to qualifying staff in the bargaining unit (scale 300 – 407).

Since the payment relates to the 2016/2017 Wage Agreement, the following rules must apply:

- Staff members who are in the bargaining unit as on 31 October 2016 will qualify for the payment.
- Staff members who are on scale 900 and in the bargaining unit as on 31 October 2016 will qualify for the payment.

The amount must be paid on Tuesday 1 November 2016.

Kind Regards,

Supported/~~Not Supported~~



Mphahlele
Group Executive: Human Resources

Approved



Audrey Raphela
Chief Financial Officer (Acting)



REPUBLIC OF SOUTH AFRICA
REPUBLIEK VAN SUIDAFRIKA

Regulation Gazette

No. 10754

Regulasiekoerant

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PROCLAMATIONS • PROKLAMASIES

PROCLAMATION NO. R. 29 OF 2017

by the
PRESIDENT of the REPUBLIC of SOUTH AFRICA

SPECIAL INVESTIGATING UNITS AND SPECIAL TRIBUNALS ACT, 1996 (ACT NO. 74 OF 1996): REFERRAL OF MATTERS TO EXISTING SPECIAL INVESTIGATING UNIT

WHEREAS allegations as contemplated in section 2(2) of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996) (hereinafter referred to as "the Act"), have been made in respect of the affairs of the South African Broadcasting Corporation Limited (hereinafter referred to as "the SABC");

AND WHEREAS the SABC or the State suffered losses that may be recovered;

AND WHEREAS I deem it necessary that the said allegations should be investigated and civil proceedings emanating from such investigation should be adjudicated upon;

NOW, THEREFORE, I hereby, under section 2(1) of the Act, refer the matters mentioned in the Schedule in respect of the SABC, for investigation to the Special Investigating Unit established by Proclamation No. R. 118 of 31 July 2001 and determine that, for the purposes of the investigation of the matters, the terms of reference of the Special Investigating Unit are to investigate as contemplated in the Act, any alleged—

- (a) serious maladministration in connection with the affairs of the SABC;
- (b) improper or unlawful conduct by board members, officials or employees of the SABC (hereinafter referred to as "the personnel of the SABC");
- (c) unlawful appropriation or expenditure of public money or property;
- (d) unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State property;
- (e) intentional or negligent loss of public money or damage to public property;
- (f) offence referred to in Parts 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act No. 12 of 2004), and which offences were committed in connection with the affairs of the SABC; or
- (g) unlawful or improper conduct by any person, which has caused or may cause serious harm to the interests of the public or any category thereof,

which took place between 1 November 2011 and the date of publication of this Proclamation or which took place prior to 1 November 2011 or after the date of publication of this Proclamation, but is relevant to, connected with, incidental or ancillary to the matters mentioned in the Schedule or involve the same persons, entities or contracts investigated under authority of this Proclamation, and to exercise or perform all the functions and powers assigned to or conferred upon the said Special Investigating Unit by the Act, including the recovery of any losses suffered by the SABC or the State, in relation to the said matters in the Schedule.

Given under my Hand and the Seal of the Republic of South Africa at Pretoria this Twenty-fourth day of August Two thousand and seventeen.

J G Zuma
President

By Order of the President-in-Cabinet:

T M Masutha
Minister of the Cabinet

SCHEDULE

1. The procurement of, or contracting for goods, works or services by or on behalf of the SABC from Lornavision (Pty) Ltd, Vision View Productions CC, Sekela Xabiso CA Incorporated, Lezaf Consulting CC, Gekkonomix (Pty) Ltd (trading as Infonomix), Asante Sana (Pty) Ltd, Foxton Communicating (Pty) Ltd and Mott MacDonald (Pty) Ltd and payments made in respect thereof, in a manner that was—

- (a) not fair, competitive, transparent, equitable or cost-effective;
- (b) contrary to applicable—
 - (i) legislation;
 - (ii) manuals, guidelines, practice notes, circulars or instructions issued by the National Treasury; or
 - (iii) manuals, policies, procedures, prescripts, instructions or practices of, or applicable to the SABC,

and any related unauthorised, irregular or fruitless and wasteful expenditure incurred by the SABC or the State.

2. Maladministration in the affairs of the SABC and any losses or prejudice suffered by the SABC or the State as a result of such maladministration in relation to—

- (a) the mismanagement of the finances, rights, assets or liabilities of the SABC;
- (b) the selling of assets or rights which were owned by the SABC which was not to the advantage of the SABC;
- (c) business transactions that were concluded by or on behalf of the SABC and which were not viable or to the advantage of the SABC;
- (d) the irregular appointment and promotion of staff; or
- (e) the payment of salaries, increases, bonuses and other forms of remuneration that were not due, owing or payable or were made in a manner that was contrary to applicable—
 - (i) legislation; or
 - (ii) manuals, policies, procedures, directives, instructions or practices of or applicable to the SABC,

including the causes of such maladministration and any related unauthorised, irregular or fruitless and wasteful expenditure suffered by the SABC or the State.

3. Any undisclosed or unauthorised interest that certain members of the personnel of the SABC may have had with regard to –

- (a) contractors, suppliers or service providers who bid for work or did business with the SABC; or
- (b) contracts awarded by or on behalf of the SABC.

"B"

**SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED**

REGISTRATION NUMBER 2003/023915/30

**MINUTES OF A HUMAN RESOURCES AND REMUNERATION COMMITTEE MEETING OF
THE BOARD OF DIRECTORS OF THE SOUTH AFRICAN BROADCASTING
CORPORATION SOC LIMITED HELD IN THE 28TH FLOOR BOARDROOM, RADIO PARK,
HENLEY ROAD, AUCKLAND PARK, JOHANNESBURG**

AT 10:30**ON 18 JANUARY 2016****MEETING NUMBER 2016/01****PRESENT**

Ms N M Mhlakaza
Prof M O Maguvhe
Mr V G M Mavuso

Chairperson
Member
Member

IN ATTENDANCE

Mr J B Matthews
Mr G H Motsoeneng
Mr J R Aguma
Ms T V Geldenhuys
Ms L V Bayi
Mr J Mabaso

Acting Group Chief Executive Officer (AGCEO)
Chief Operations Officer (COO) (From 11:45)
Chief Financial Officer (CFO)
Group Company Secretary
Deputy Company Secretary
GE: Human Resources

1. CONSTITUTION OF THE MEETING

The Chairperson, Ms N M Mhlakaza, welcomed everyone present and declared the meeting duly constituted.

Mr J B Matthews informed Members that an SABC's Sports Presenter, Ms Delisiwe Ngwenya, had passed on because of a car accident. Members expressed their condolences and delegated Management to organise a memorial service and to represent the Board at the funeral.

1.1 OBSERVATION OF A MOMENT OF SILENCE

A moment of silence was observed.

1.2 SABC SECURITY PROCESSES

The video on the Safety and Emergency Processes was not presented.

1.3 ATTENDANCE REGISTER

The attendance register was signed by all present.

1.4 APOLOGIES

Apologies were received and noted.

1.5 DECLARATION OF INTEREST

The Declaration of Interest document was circulated and signed as required by legislation. Executive Directors and attendees declared their interest in Item 4.2 on the Agenda.

1.6 APPROVAL OF THE AGENDA

The Agenda was unanimously adopted with the addition of the Annual Salary Increase and Substantive Matters Mandate.

Ms T V Geldenhuys informed Members that a Human Resources & Remuneration Committee (HRC) In-Committee meeting would not be convened as there were no Agenda Items for discussion. She suggested that the minutes of the previous In-Committee meetings be approved at this meeting. She assured Members that only the Members of the HRC were privy to the minutes of the HRC In-Committee meetings.

Members agreed that the Minutes of the previous HRC In-Committee meetings be considered and approved at this meeting.

2. APPROVAL OF PREVIOUS MINUTES

2.1 MINUTES OF MEETING 2015/02 HELD ON 26 OCTOBER 2015

The minutes of Meeting 2015/02 held on 26 October 2015 were considered.

Resolution Number: 18/01/16 – HRC94 RESOLVED that:

The Minutes of the Meeting 2015/02 held on 26 October 2015 be and are hereby approved for signature by the Chairperson.

2.2 MINUTES OF IN-COMMITTEE MEETING 2014/08 HELD ON 22 OCTOBER 2014

The minutes of In-Committee Meeting 2014/08 held on 22 October 2014 were considered.

Resolution Number: 18/01/16 – HRC95 RESOLVED that:

The Minutes of the In-Committee Meeting 2014/08 held on 22 October 2014 be and are hereby approved for signature by the Chairperson.

2.3 MINUTES OF IN-COMMITTEE MEETING 2015/01 HELD ON 26 OCTOBER 2015

The minutes of In-Committee Meeting 2015/01 held on 26 October 2015 were considered.

Resolution Number: 18/01/16 – HRC96 RESOLVED that:

The Minutes of the In-Committee Meeting 2015/01 held on 26 October 2015 be and are hereby approved for signature by the Chairperson.

3. MATTERS ARISING FROM MINUTES OF THE MEETINGS UP TO 26 OCTOBER 2015

3.1 RECRUITMENT POLICY

Mr J Mabaso reported that, as previously requested by Group EXCO (EXCO), the proposed Recruitment Policy had been piloted. He stated that the Policy would be resubmitted to EXCO together with the Pilot Report prior to being submitted at the HRC meeting scheduled for 18 April 2016.

Resolution Number: 18/01/16 – HRC97 RESOLVED that:

The Recruitment Policy must be tabled at the Human Resources and Remuneration Committee meeting scheduled for 18 April 2016.

3.2 HUMAN RESOURCES REPORT FOR THE QUARTER ENDED 31 DECEMBER 2015

It was reported that a meeting to allow Members to consider the capacity of the SABC, and how the Skills Audit and Work Plan could assist the Corporation with Succession Planning, had not taken place. It was pointed out that, in as much as this was an historical issue, it would be imperative to discuss it at the Human Resources Workshop in order to establish what had transpired in this regard.

Resolution Number: 18/01/16 – HRC98 RESOLVED that:

The Human Resources Workshop must be scheduled for early March 2016.

3.3 HUMAN RESOURCES REPORT FOR THE QUARTER ENDED 31 DECEMBER 2013

This matter was included in the discussion under Item 3.2 above.

3.4 HUMAN RESOURCES WORKSHOP AND BOARD INDUCTION

This matter was included in the discussion under Item 3.2 above.

3.5 EMPLOYEE ASSISTANCE SCHEME POLICY

Mr Mabaso reported that the discussion around the proposal to create a savings account for employees by deducting a certain amount from their salaries, which would be paid back to them at the end of the year was ongoing and that this matter would again be discussed with Organised Labour at the end of the wage negotiations process. He mentioned that, when the matter was initially raised with employees, their view had been that they had their own stokvels and methods of savings.

Mr V G M Mavuso stated that this was a separate matter and should not form part of the wage negotiations process. He pointed out that, when the Board mandated Management to engage Organised Labour on this matter, the intention was to test employees' appetite and attitude to the proposal to create a savings account. He stated that, if Organised Labour was not keen on the proposal, the Board could not force it on employees and the proposal would need to be withdrawn.

Resolution Number: 18/01/16 – HRC99 RESOLVED that:

- (1) Management must meet with employees to negotiate the proposal to create a savings account for employees from the deduction of a certain amount from their salaries, which would be paid back to them at the end of the year;
- (2) Feedback on the outcome of the negotiations outlined in Resolution (1) above must be provided to the Human Resources & Remuneration Committee meeting scheduled for 18 April 2016.

3.6 EMPLOYEE ASSISTANCE SCHEME POLICY

This matter was included in the discussion under Item 4.3 below.

3.7 2015/16 TERMS OF REFERENCE

It was reported that these matters had been completed.

3.8 PERFORMANCE MANAGEMENT POLICY FRAMEWORK

It was reported that this matter had been completed.

In response to Mr Mavuso's query regarding the samples of PMS Framework Agreements, Mr Mabaso stated that the contracting stage had not yet been reached as Management had been busy socialising the Policy. He mentioned that, currently the focus had been on familiarising employees with the automated process to ensure there would be no areas that could derail the process.

Mr Mabaso stated that it was crucial for the Board to agree on the mandatory KPIs for the GEs in order for them to be cascaded down to all levels of employment.

Ms Geldenhuys recommended that, after the approval of the Corporate Plan, which captured the pre-determined objectives, the Human Resources Workshop could use those predetermined objectives as a basis for the mandatory KPIs for the GEs.

Mr Mavuso concurred with Ms Geldenhuys and raised a concern that the socialisation process was taking a long time as the contracts had to be signed at the beginning of the financial year in order for the Corporation to embark on quarterly reviews. He stated that, as long as the Corporation was not in sync with the PMS itself, there would not be a good outcome and the entire system would not have stood the test of time. He implored Management to expedite the process in order to meet the deadlines.

In response, Mr Mabaso reassured Members that the Corporation would meet the deadlines. He stated that the conversations would commence in April, the second quarter would be a conversation on media performance, the third quarter a conversation on careers, succession and talent management and then the last quarter would be on ratings.

Resolution Number: 18/01/16 – HRC100 RESOLVED that:

The Pre-determined Objectives, as approved in the 2016/17 to 2018/19 Corporate Plan must be used as a basis for the mandatory KPIs for the GEs.

3.9 DISCIPLINARY CODE POLICY AND PROCEDURE

It was reported that these matters had been completed.

3.10 GRIEVANCE POLICY

It was reported that these matters had been completed.

3.11 TRAVEL, ENTERTAINMENT AND SUBSISTANCE POLICY

It was reported that these matters had been completed.

3.12 REQUEST FOR A DEVIATION FROM THE DISCIPLINARY CODE POLICY AND PROCEDURE

It was reported that these matters had been completed.

3.13 HR POLICIES REVIEW UPDATE

Mr Mabaso reported that the process of vetting and counter surveillance was underway and that the National Key Point Awareness was included in the induction programme for new staff members. He stated that initial discussions on a campaign programme had been held with the previous Acting GE Risk who had since been replaced and that engagements for the Corporation to embark on a campaign programme would continue with his replacement.

Mr Mabaso reported that a Training Programme to build capacity amongst Managers on Labour Laws had commenced in 2013 and was an ongoing process. It was agreed that this matter be removed from the matters arising.

3.14 UPDATE ON DISCIPLINARY CASES

It was reported that these matters had been completed.

3.15 PROGRESS UPDATE ON THE CONVERSION OF FREELANCERS TO FIXED TERM EMPLOYEES

This matter was included in the discussion under Item 5.3 below.

3.16 SKILLS PLAN

It was reported that this matter was ongoing.

3.17 MATTERS RELATING TO THE PREVIOUS ACTING GCEO

Mr Matthews reported that, as previously mandated by the HRC, he had had engagements with the previous Acting GCEO to convey the sentiments of the Board regarding his matter and his response had been that he would exercise his legal rights.

4. APPROVALS/NOTING/DISCUSSIONS

4.1 HUMAN RESOURCES REPORT FOR THE QUARTER ENDED 31 DECEMBER 2015

Mr Mabaso tabled the Human Resources Report for the Quarter ended 31 December 2015 and highlighted the salient points, which were discussed in detail. He reported that Organised Labour had attempted to interdict the deviation on the Medical Aid case but the CCMA had ordered that it was not within their scope and that the SABC could continue with the deviation process.

Mr Mavuso stated that Management must find a mitigating process to balance the R8,5 million reported as over expenditure due to interns and the R16,8 million reported as under expenditure for personnel costs in order for the Corporation not to be seen as irresponsible at the point of reporting to Parliament.

In response, Mr J R Aguma stated that work was being done to address this issue and that there would be an explanatory note to clarify that the separation of the figures was for accounting purposes and that overall there was no over expenditure.

Mr Mavuso stated that until the Corporate Strategy Session, which would inform the structure, had been convened, Management must continue to be mindful of issues of head count within the Corporation. He enquired as to what informed the decrease in the headcount and how that related to the new appointments.

In response, to Mr Mavuso's query it was pointed out that, amongst other things, the decrease in the headcount had been due to resignations and retirements. It was further explained that in terms of the current budget approach, a motivation for all vacant positions including those previously budgeted for was required to be submitted to EXCO, to first consider if the positions were relevant prior to these being approved.

Resolution Number: 18/01/16 – HRC101 RESOLVED that:

Subject to the following amendments, the Human Resource Report for the Quarter Ended 31 December 2015 be and is hereby approved for inclusion in the Quarterly Report:

Replace the sentence under Paragraph 3; Divisional Challenges; with the following sentence: 'Targeted recruitment efforts are currently being promoted to improve the representation of females and employees with disabilities'.

4.2 MATTERS RELATING TO THE PAYMENT OF THE 13TH CHEQUE FOR TOP AND SENIOR MANAGEMENT

Mr Mabaso provided a brief background to the matter. He stated that this matter had been discussed at the Board meeting held on 26 November 2015 where a Proposal to re-instate the 13th cheque as a condition of Service for Top and Senior Management had been tabled. The Board had approved that a 13th cheque be paid to Senior and Top Management with a proviso that it would be a once off payment for the 2015/16 financial year as the Corporation was in the process of introducing a PMS.

Subsequent to the Board's resolution to pay the 13th cheque, Middle Management claimed to have been privy to the Board's resolution and were of the view that, if the 13th cheque was a once off payment, then it translated into a bonus, to which they should also be entitled. In as much as Middle Management continued to receive a 13th cheque, which was paid to them monthly, they threatened to take this matter to Court, hence Management had delayed implementing the Board's resolution until it had engaged the HRC. It was noted that Management had sought a Legal Opinion on this matter from Werksmans Attorneys, which, in essence, stated that the payment of a 13th Cheque to Top and Senior Management was not a unfair labour practice for Middle Management and that there would be no legal implications if the resolution were implemented under the present circumstances.

The Chairperson raised concerns and stated that she found it ridiculous that Middle Management had the audacity to bully the Board because they had their own interpretation of the Board's resolution and what a 13th cheque should be.

Mr Motsoeneng stated that the key issue was that there was a difference between the PMS and a 13th cheque, which was part of the conditions of service and which was a standard practice for all

other SOEs. He pointed out that Managements' proposal was that the 13th cheque be re-instated as a condition of service for Top and Senior Management in order to close the gap of inequality that currently existed. After the approval to re-instate the 13th cheque, a decision on the method of payment would be made, because if it was paid at the same time to all employees, it could destabilise the financial state of the Corporation. He mentioned that, when Middle Management had delayed the implementation of the Board's resolution, Top and Senior Management had become furious and the proposal was that the Board resolve the issue as a matter of urgency.

Mr Mabaso confirmed that, on approval of the 13th cheque as a condition of service, it would form part of the Total Cost To Company, which was a standard practice of SOEs.

Mr Mavuso stated that Management had confirmed that R7,5 million had been set aside for Top and Senior Management, which was commendable, but the question remained whether that would be sustainable throughout the years because it would be irresponsible for the current Board to take the Corporation back to its previous state of financial instability. He mentioned that his main concern was how Middle Management had become privy to a Board resolution, which had also ended up in the media and implored Management to investigate this matter and to ensure that consequential management was enforced. He pointed out that if other SOEs received a 13th cheque and if the CFO could assure the Board that going forward, payment of a 13th cheque would be sustainable, bearing in mind that the R7,5 million was only for the 2015/16 financial year, then, he would support the re-instatement of the 13th cheque, which would be delinked from performance.

In response, Mr Aguma stated that, besides being an interested party in this matter, the R7,5 million was not an amount that could financial sink the SABC. What previously caused the financial woes to the Corporation was, amongst other things, the acquisition of content. He stated that the R7,5 million once off payment would not take away the fact that Top and Senior Management remained dissatisfied by the fact that they continued to be excluded from this benefit. He mentioned that Middle Management received the 13th cheque on a monthly basis, whilst staff in the Bargaining Unit received it at the end of the year.

Prof Maguvhe stated that the Boards' resolution to pay the 13th cheque must be implemented and that the issue of re-instatement must be taken to the Board for a resolution.

Mr G H Motsoeneng assured Members that strategies had been put in place to ensure that the Corporation remained financially stable and if, at some point the Corporation's financial situation collapsed, there would be no harm in the Board considering austerity measures. He stated that there had been serious concerns of discrimination amongst Top and Senior Management as the Corporation had improved from its previous financial state.

The Chairperson concurred with Mr Mavuso's sentiments regarding enforcement of consequential management as she found it difficult to comprehend the fact that Middle Management could question a Board decision and put its integrity at stake. She commended Management for obtaining a legal opinion on this issue, but raised concern that Management had been instructed by the Board to pay the 13th cheque, which they had not, and now they were a party these discussions. She stated that the proposal to re-instate the 13th cheque was a new matter, which must be taken to the Board and if approved, the method of payment must be normalised so that people understood that everyone received a 13th cheque.

Mr Motsoeneng explained that the possible source of leaks could be the staff, which were acting in executive positions, because they attended EXCO meetings and became privy to Board resolutions. He recommended that, going forward, EXCO must ensure that only EXCO members acted in Executive positions.

Members were of the view that the issue of ethics and confidentiality was a professional requirement, and that in the event of a breach, staff must be held accountable.

Resolution Number: 18/01/16 – HRC102 RESOLVED that:

- (1) In order to build internal equity on the 13th cheque payments in the SABC, Management must implement the Board resolution to pay the 13th Cheque to Top and Senior Management in the 2015/16 financial year;
- (2) Management must investigate the leaking of the Board resolution regarding the payment of the 13th cheque to Top and Senior Management and enforce consequential management with regard to the perpetrators;
- (3) Feedback with regard to Resolution (2) above must be provided at the Human Resources Committee meeting scheduled for 18 April 2016;

- (4) Approval be and is hereby given to recommend that the Board considers and provides a final decision in terms of the proposal to re-instate the 13th cheque as a condition of service for Top and Senior Management.

4.3 ANNUAL SALARY INCREASE AND SUBSTANTIVE MATTERS MANDATE

Mr Mabaso tabled the proposal for the Board to mandate Management to embark on negotiations with Organised Labour for salary increases and other substantive matters for the 2016 annual increases. The proposal was that Management be granted a mandate to negotiate a minimum of 5% up to 7% and a broader mandate of 0,5% in the event there was a dispute by Organised Labour. He stated that the budget had been set at 7% due to the forecast that CPI would breach the 6% target.

Members were of the view that there was no guarantee that the broader mandate of 0,5% would not be leaked to Organised Labour and therefore agreed to grant Management an absolute mandate of 7%.

Resolution Number: 18/01/16 – HRC103 RESOLVED that:

- (1) Management be and are hereby granted an absolute mandate of 7% to embark on negotiations with Organised Labour for salary increases and other substantive matters for the 2016 annual increases;
- (2) In the event that no agreement could be reached between Management and Organised Labour on, the 7% as outlined in Resolution (1) above, the matter must be tabled at the Board for further discussion.

5. MONITORING/FEEDBACK

5.1 HR POLICIES REVIEW UPDATE

Mr Mabaso reported that the Recruitment and Leave Policies would be tabled at EXCO for deliberation prior to being submitted to the HRC for approval. He stated that the piloting process had been satisfactory because already the Corporation had been practicing some of the new clauses included in the Policies.

Resolution Number: 18/01/16 – HRC104 RESOLVED that:

The Recruitment and Leave Policies be submitted to the Human Resources and Remuneration Committee meeting scheduled for 18 April 2016.

5.2 UPDATE ON DISCIPLINARY CASES

Mr Mabaso tabled the Update on the Disciplinary Cases and stated that the status quo remained since the previous HRC meeting.

5.3 PROGRESS UPDATE ON THE CONVERSION OF FREELANCERS TO FIXED TERM EMPLOYEES

Mr Mabaso reported that, as previously mandated by HRC, Management had developed a letter for signature by those Freelancers who had declined the Conversion to Fixed Term Employees. He stated that PriceWaterhouseCoopers (PWC) had assisted the Corporation with tax issues relating to the Independent Contractor Policy and Agreement and a new contract would be tabled for approval in order to implement it in the new financial year.

Members raised a concern that this matter had been going on for a while and that at some point Management must close the process and ensure that those Freelancers who did not want to convert to full time employees signed the letters.

Mr Mabaso explained that the process of conversion had been going on since 2014 and that the main reason, by most of the Freelancers, for refusing to convert was that the full time employment offer was at an entry level of the scale code, which would result in a lower net salary due to the benefits they would receive as permanent employees.

Members were of the view that, as much as the Corporation wanted to create certainty on employment and cater for peoples' needs, it was also imperative to create stability for the Corporation. The fact that 114 of the 224 Freelancers, had taken up the offer of conversion indicated that most of them were not interested in the conversion, as that would limit them from working for SABC's competitors. It was emphasised that for those Freelancers who did not want to convert, Management must reduce their hours of work and ensure that they signed the confirmation that they did not want to convert.

Mr Mabaso pointed out that, since the services of Independent Contractors were sourced as and when required, the SABC needed to assess which categories of Freelancers were required in order to make a firm decision around this matter.

It was emphasised that the Corporation would not tolerate being bullied by Freelancers and that Management must ensure that Freelancers worked within the confinements of the SABC. It was pointed out that the contracts of Freelancers were not seasonal and that the expertise that they purported to have did exist within the Corporation, but were not optimally utilised.

Resolution Number: 18/01/6 – HRC105 RESOLVED that:

- (1) It must be ensured that those Freelancers who had declined the Conversion to Fixed Term Employees provided written confirmation that they had declined the offer to Convert to Fixed Term Employment;
- (2) Management must close the process of conversion for a period of time and ensure that the hours of work were reduced for the Freelancers who had declined the conversion;
- (3) In order to make a firm decision whether the business needed those Freelancers who refused to convert, Management must assess the areas that required Freelancers and establish if the Corporation had sufficient internal capacity including the newly converted Freelancers to close the gap.

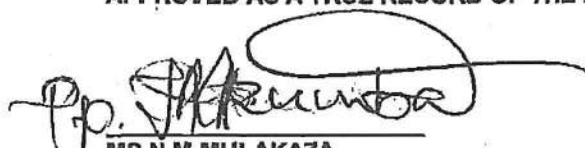
6. DATE OF THE NEXT MEETING

The next meeting will be held on MONDAY 18 APRIL 2016.

7. CLOSURE

There being no further business to transact, the Chairperson terminated the meeting at 12:30.

APPROVED AS A TRUE RECORD OF THE PROCEEDINGS


MS N M MHLAKAZA
CHAIRPERSON

18 April 2016
DATE

HGM 24

Audit opinion	SUMMARY OF INCOME STATEMENTS							
	Qualified 2008/9 R4,71bn	Unqualified 2009/10 R4,79bn	Qualified 2010/11 R5,29bn	Qualified 2011/12 R5,68bn	Disclaimer 2012/13 R6,71bn	Qualified 2013/14 R7,17bn	Qualified 2014/15 R7,56bn	Qualified 2015/16 R8,09bn
Revenue and other income	(R790m) (R910m)	(R492m) (R486m)	(R129m) (R214m)	R343m R268m	(R139m) (R202m)	R358m R559m	(R131m) (R137m)	(R411m) R401m
Profit/ (loss)								
Total comprehensive income/ (loss)								
SUMMARY OF BALANCE SHEETS								
Net Assets	R1,55bn R43,9m	R1,07bn R167,6m	R851m R861m	R1,12bn R1,23bn	R1,53bn R1,07bn	R2,34bn R1,42bn	R2,29bn R1,02bn	R2,69bn R881m
Cash and cash equivalents								
Bank	(R408,1m)							
Overdrafts								
Interest bearing loans	(R127,6m)	(R1,35bn)	(R1,35bn)	(R1,18bn)	(R400m)	(R92m)		
Current ratio	1.07	1.80	1.63	1.63	1.94	1.97	2.07	1.68
OTHER STATISTICS								
Net cash inflows/ (outflows) from operations	(R784m)	(R215m)	R491m	R642m	R529m	R527m	(R313m)	R22m
Net cash inflows/ (outflows) from investments	(R6,5m)	(R620m)	(R624m)	(R278m)	(R101m)	(R100m)	(R194m)	(R324m)
Net cash inflows/ (outflows) from financing	R225m	R1,35bn	R128m	(R169m)	(R80m)	(R79m)	R100m	R166m



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HGM 25

7 August 2013

Ms Ellen Tshabalala
Board Chairperson
28th Floor, Radio Park
Auckland Park

Dear Ms Tshabalala

STRATEGIC PERSPECTIVE ON THE DIGITAL BROADCASTING ROLE OF THE SABC AS A PUBLIC BROADCASTER

The Operations Committee (OC) has voiced its deep reservations over partnering with eTV around Set-Top-Box (STB) control. The Committee found it prudent to write this letter to give a detailed background to its concerns.

Background

The OC acknowledges the fact that there was a Group submission before, to support the STB control and its approval. There is thus a Group Resolution to that effect.

It has since come to CBOC's attention that there is information that Group Executive Committee was not privy to, prior to the approval of the Joint Venture with eTV. In light of this, the Operations Committee is therefore of a different view than the previous position taken by Group Exco. The CBOC has prepared a Business case for submission to Group Exco to rescind the previous Group resolution.

Operational involvement of Department of Communications

In 2008, when the first Broadcasting Migration Policy was adopted by the Department of Communications (DoC) and National Treasury (NT) made a financial allocation of funds for the subsidies for STB control to the Universal Service and Access Agency of South Africa,

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(USAASA). The Department allocated itself the role of procuring STBs which makes it a player and a referee as the policy making Department.

When the Department lost the case against e-TV, it became certain that the policy position of the Department that placed Sentech at the core of Digital broadcasting distribution failed. SABC is affected by this because e-TV as it aims to out manoeuvre the SABC by launching its satellite business and selling its own STB with over 20 free-to-air channels in September 2013. This e-TV venture is a threat to the SABC and the market audiences it currently commands, and goes against the goodwill of the MOU signed between SABC and eTV

This is a situation that requires an urgent response by the Department as a Shareholder and the SABC to return the SABC to a position of leadership. The Department needs to urgently consider the following:

- Allow SABC to decide its own free-view platform independently of e-TV.
- SABC must not be forced into a marriage with Free to Air (FTA) broadcasters based on the STB control which arrangement will not last long due to conflicting interests.
- Allow the SABC to explore obtaining its own STB within its own procurement process in order for it to determine and control its own creative and innovative destiny.

The SABC is of the opinion that posts the e-TV case judgement, the Department cannot be responsible for appointing manufacturers to design and manufacture boxes. This is now a market issue. The SABC must be empowered, by government, with funding, to obtain the boxes and launch its services urgently. The SABC will obtain legal opinion in order for it to ensure that it protects its right of broadcasting to the public, and that this constitutional right is not infringed upon.

Policy Inconsistencies and legal crisis

e-TV has used the courts to create a crisis for the country and the SABC by threatening to interdict every action or decision that the government and the SABC make in this respect. The Department must lead public policy in the public's interest which means that the SABC must be the leading free-to-air platform offering various genres of content services to the public by executing its basic mandate in terms of the law and the constitution.

The Department made policy pronouncements which intended to amend the policy in respect of enforcing STB Control. The SABC supports this policy amendment. This policy will help reduce the cost of boxes and free the system from the controversial issue of binding the country to a

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single system operator. SABC supports a broadcasting system which is free from Conditional Access so that the public can benefit from their government's investment in a technology free from interference. South Africa must learn from the experiences of Italy where a similar system of Conditional Access was implemented but collapsed.

The country needs consensus on new systems whilst taking cue from the likes of e-Tolling software and e-NaTIS where the government was made to fund foreign designed systems. This led to economic loss in funds, jobs and electronic excellence development potential which was exported to foreign countries.

The policy of no STB Control is aligned with the Government position of extending universal access to broadcasting services to the population of this country. This supports the views expressed by the late Honourable Minister Padayachee who questioned the need for STB control and the location, as well as who must control it.

The SABC is committed to work with Sentech as the signal distributor and potential carrier of SABC channels.

The SABC will lead the process of determining the STP specifications suitable for its purposes and will also determine the most suitable distribution channels.

Increased costs for SABC from STB controls

The SABC desires to allow the public to benefit from STBs at the lowest cost possible. However, the SABC will be forced to incur the following avoidable costs, if it is to adopt eTV's position on STB control:

- On-going royalties per activated box that we will pay to the STB Control vendor
- The establishment and support of a business system to manage the STB control, involving significant costs
- We will need a permanent call centre to support STB control, which will deviate us from our mandate of broadcasting, it should be noted that we are not in the business of managing call centres as these are complex and costly
- What happens when the system fails? Does the SABC have to take responsibility for such failure and again incur huge costs to upgrade the system
- We know that software needs constant upgrading – This will mean additional once off costs from time to time

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Inadequate SABC commercial benefits for SABC from STB control

There is no benefit for the SABC, but there is very clear benefit for eTV. A normal pay TV licensee has to buy market and sell boxes into retail shops like Makro and to subscribers. If the DTT box already has encryption (STB Control/ CA) paid for by Government, eTV won't have to do this and will not have to incur this cost which runs into hundreds of millions of rands per annum. Unlike the SABC, eTV has a pay TV license and a free to air license. People will be able to access their pay service through this box. Only these people will be able to get access to the free to air services of the SABC and eTV. Other pay TV broadcasters will be blocked from receiving the free to air services on the DTT. All broadcasters are under obligation on the Must Carry principle, and thus should be able to carry FTA services.

Further, eTV is launching a FreeSat (Openview) which in future will logically include a pay service which use the same system – so it will benefit from reduced costs for this platform as well.

We, as the SABC, will be enabling and supporting a competitor who will undermine the service of the SABC in the future with free channels and cheap pay TV bouquets which is exactly our target market. They will take valuable advertising revenue away from the SABC, eTV benefits and grows at our expense.

Partnering with eTV and supporting STB control is not in our interests – it will only benefit eTV and in the long run, we as the SABC will be the ultimate loser.

Disaster Management

The Broadcasters are currently able to do the following without investing in the STB control:

- South African Weather Bureau gives regular update to SABC and other broadcasters to alert the public, countrywide or in certain areas
- Radio stations can be used to broadcast area specific alerts
- Cellphone infrastructure can be used for cell broadcast, and
- The Department of Water Affairs via the National Joint Operations Centre (NATJOINTS) gives updates to broadcasters on flood warnings as it monitors river and dam water levels across the country.

Handwritten signature and initials: "SABC" and "eTV" with a large "H" above them.

Languages

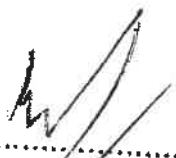
The SABC will continue to broadcast in different official languages. The SABC will continue to sub-title popular, educative or informative programmes into other languages, including disaster alert messages if and when required.

Resolutions Taken


The CBOC considered all the above matters, and came to the resolutions below:

We do not support the inclusion of STB control going forward. The SABC as a public broadcaster, with a mandate not to switch off any viewer, cannot affect the feature of access control. The inclusion of the control feature will also cause the cost of STB unit to be higher than it would ordinarily be which is against the public interest.

Yours Sincerely,



.....
Mr Hlaudi Motsoeneng
Chief Operations Officer (Acting)



.....
Mr Tian Olivier 12/8/13.
Chief Financial Officer (Acting)

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SABC



HGM26

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12 August 2013

Honourable Mr Yunus Carrim (MP)
Minister of Communications
Private Bag X860
Pretoria
0001

Dear Honourable Minister Carrim

SUPPORT OF THE SABC POSITION ON STB CONTROL MATTER

The bilateral meeting between you and the SABC Board refers.

At the meeting, the SABC was requested to prepare a narrative encapsulating a cost-benefit analysis for the exclusion of Set-Top-Box (STB) control mechanism in the individual STB units.

Herewith, please find the narrative summary from the SABC which is against the first proposal as promised.

Should the need arise to get some clarity on any aspect of the letter, please feel free to contact me anytime so that I can assemble the team to provide it as soon as possible.

Yours sincerely


ZANDILE E. TSHABALALA (Ms)
SABC BOARD CHAIRMAN

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023815/06
Non-Executive Directors: Ms Ellen Tshabalala (Chairperson); Ms Nokuthando Gosa (Deputy-Chairperson)
Mr Vusumuzi Mavuso; Mr Ronny Lubisi; Dr Iraj Abedian
Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlaudi Motsoeneng (Acting Chief Operations Officer); Company Secretary: Ms Theresa Victoria Geldenhuys

HGM 27



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HONORABLE MINISTER OF COMMUNICATIONS
MS. DINA PULE MP
PRIVATE BAG X860
PRETORIA
0001

30 January 2013

Dear Honorable Minister Pule

RE: STB CONTROL

The above mentioned matter has reference

We hereby wish to inform the Department of Communication (DOC) of our decision to exclude the functionality known as Conditional Access from the STB Control system. The purpose of this functionality is to switch off the TV licence holders upon failure to pay their TV licences.

The SABC strongly believes that the activation of the Conditional access will be in violation of its Public Broadcasting mandate. It is therefore our view that all South African citizens should have the right to receive and impart information and ideas through our broadcasting services. To this extent, we kindly request the DOC to communicate this decision to all relevant stakeholders.

May we kindly engage on the above mentioned matter at your earliest convenience.

Kind Regards


Dr. Ben Ngubane

Chairperson of the SABC Board

Cc: Mr. Thami Ka Plaattjie

Mr. Lumko Mtshede

Ms Lulama Mokhobo

South African Broadcasting Corporation Limited SOC: Registration Number: 2003/023915/06
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Ms Clare O'Neil; Ms Suzanne Vos
Executive Directors: Ms Lulama Mokhobo (Group Chief Executive Officer) Ms Gugu Pride Duda (Chief Financial Officer)
Mr Hlaudi Motsoeneng (Acting Chief Operations Officer)
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