IN THE HIGH COURT OF SOUTH AFRICA

EASTERN CAPE DIVISION, BHISHO

Case No.: 800/2021

Date Heard: 10 November 2022

Date Delivered: 14 February 2023

In the matter between:

BABALO MADIKIZELA Applicant

and

PUBLIC PROTECTOR First Respondent

THE PREMIER OF THE EASTERN CAPE Second Respondent

THE MEC FOR TRANSPORT AND SAFETY Third Respondent

THE SPEAKER: WINNIE MADIKIZELA MANDELA LOCAL MUNICIPALITY (FORMERLY KNOWN AS THE MBIZANA LOCAL MUNICIPALITY) Fourth Respondent

THE DIRECTORIATE OF PRIORITY CRIMES INVESTIGATIONS Fifth Respondent

THE AFRICAN NATIONAL CONGRESS Sixth Respondent

LULABALO OSCAR MABUYANE Seventh Respondent

(1) REPORTABLE: NO
(2) OF INTEREST TO OTHER JUDGES: NO
(3) REVISED.

……
SIGNATURE DATE

WESEWE DIKANA-GXOTHIWE Eighth Respondent

AND

Case No.: 802/2021

LULABALO OSCAR MABUYANE Applicant

and

PUBLIC PROTECTOR First Respondent

THE SPEAKER: EASTERN CAPE PROVINCIAL GOVERNMENT NO Second Respondent

THE NATIONAL HEAD OF THE DIRECTOIRATE FOR PRIORITY CRIMES INVESTIGATIONS NO Third Respondent

MINISTER OF POLICE Fourth Respondent

AND

Case No.: 818/2021

THE SPEAKER: WINNIE MADIKIZELA MANDELA LOCAL MUNICIPALITY First Applicant

THE MUNICIPAL MANAGER: WINNIE MADIKIZELA MANDELA LOCAL MUNICIPALITY Second Applicant

WINNIE MADIKIZELA MANDELA LOCAL MUNICIPALITY Third Applicant

and

PUBLIC PROTECTOR First Respondent

MTHOMBENI PROJECTS CC Second Respondent

KOO CONSTRUCTION & PROJECTS CC Third Respondent

MAIKENJO TRADING CC Fourth Respondent

JUDGMENT

EKSTEEN J

[1] This matter concerns the consolidated application for the hearing of three review applications. The applicants seek orders to have a report, findings and remedial action taken by the Public Protector (PP) reviewed and set aside and declared unconstitutional and invalid. She has opposed each of the applications.

[2] The applicant in case number 800/2021 is Mr Babalo Madikizela. He was the Treasurer of the African National Congress (ANC) in the Eastern Cape at the time of the material events, and he held no public office. He is currently the MEC for Public Works in the Eastern Cape. Mr Lulabalo Oscar Mabuyane, the applicant in case number 802/2021 was the MEC for Economic Development, Environmental Affairs and Tourism at the time and is currently the Premier of the Province. Mr Vuyo Mahlaka, the Municipal Manager of the Winnie Madikizela Mandela Local Municipality (formerly the Mbizana Local Municipality, to which I refer as the MLM) is the second applicant in case number 818/2021. The speaker of the council of the MLM and the MLM itself, are the first and third applicants, respectively, in the latter application. As I have said, the three applications were consolidated and heard as case number 800/2021, but I shall refer to original case numbers, where convenient, to distinguish between them.

[3] The investigation has its origin in a complaint laid in July 2019 at the office of the PP in Bhisho, Eastern Cape. The complaint was based on a newspaper article that was published in the Herald newspaper on 20 May 2019 under the heading: “BHISHO BOSSES’ R2m PIGGY BANK”. In the article it was alleged that amounts of R2 million

and R1 million had been misappropriated from the MLM and Departments of the Eastern Cape Provisional Government to improperly benefit senior government officials or private persons.

[4] The PP investigated two questions. The first was whether an amount of R1.1 million that had been allocated for the transportation of mourners to the funeral of Ms Winnie Madikizela Mandela had been improperly deposited into the account of Mthombeni Projects (Pty) Ltd (Mthombeni) for the benefit of certain officials of the Eastern Cape Provincial Government and private persons (the first question). The second was whether the amount of R2.2 million that had been paid by Key Spirit Trading 218 CC, a close corporation (Key Spirit), to Mthombeni had originated from public funds so that officials in the Eastern Cape Provincial Government and private persons could benefit from these funds (the second question).

[5] She answered the first question in the affirmative and found that Mr Madikizela and Mr Mabuyane personally benefitted from public funds which were misappropriated. She further found that the MLM did not comply with the relevant legal prescripts during the procurement of services and that Mr Mahlaka had fabricated, or facilitated the creation of, letters to create the impression that a lawful scheme had existed which included the “cession” of agreements for the benefit of Mthombeni. Finally, she concluded that the financial benefits that accrued to Mr Madikizela and Mr Mabuyane raised the suspicion that they were engaged in criminal conduct, which should be investigated by the Directorate of Priority Crime Investigation (DPCI).

[6] These events arose after the passing of Ms Winnie Madikizela Mandela, an iconic figure in the struggle against “apartheid”, on 2 April 2018. She was to be laid to rest in Mbizana and structures of the ANC in the Eastern Cape had entered into negotiations for the transportation of mourners to the funeral service with the Mbizana Taxi Association. After the commencement of these negotiations, the State President declared the funeral to be an official state funeral, with the consequence that the duty to transport mourners no longer fell on the ANC, but on the Eastern Cape Government. They had a standing contract, the product of a due tender process, with Maikenjo Trading CC (Maikenjo) for the provision of transportation services in the Eastern Cape. However, the taxi association in Mbizana threatened violence if transportation services were allocated to Maikenjo, who had been regarded as an outsider. Accordingly, the Eastern Cape Government entered into a written Memorandum of Agreement (MoA) with the MLM with the view to collaborate and co-ordinate efforts geared at a successful hosting of the memorial service of Ms Madikizela Mandela.[1] In terms of the MoA, the Eastern Cape Government undertook to provide the municipality with funding in the amount of R1.1 million for the transportation of the public to the memorial service. The MoA further recorded that the MLM was responsible for the procurement of transport service providers and to effect payment of the appointed service providers for their services on the day of the memorial service. The payment was to be effected upon documentary proof of the service delivery.

[1] Although the written Memorandum of Agreement was signed at a later date it records a commencement date of 6 April 2018.

[7] Mthombeni is a private company engaged in building and civil construction works. Mr Edgar Bam is the sole director of Mthombeni and had been a longstanding friend of Mr Madikizela. He provided an affidavit to the PP and she interviewed him. Mr Bam said that he was contacted on 24 July 2018 by Mr Madikizela who instructed him to provide an invoice in the amount of R1.1 million to the MLM and that he should contact Mr Dyala, the Office Manager of the ANC Provincial Offices in the Eastern Cape, in this regard. He later received an invoice, fully completed, save for the particulars of Mthombeni, from Mr Dyala reflecting an indebtedness of R1.1 million in respect of the hire of certain earthmoving equipment and he delivered it to the MLM. He proceeded to explain that he was subsequently contacted by Mr Mahlaka, who advised that the invoice for the hire of earthmoving equipment might look suspicious and Mr Mahlaka requested him to present a fresh invoice reflecting the transportation or ferrying of passengers to the memorial service. He, accordingly, resubmitted the invoice to the MLM, on the advice of Mr Mahlaka, reflecting Maikenjo as the service provider for the transportation or ferrying of passenger services, but reflecting the banking details of Mthombeni. On 1 August 2018, the amount of R1.1 million was paid into the bank account of Mthombeni and he received a message from Mr Mahlaka advising that the payment had been made. Mr Bam said that he had no right to receive payment and he had rendered no services of any nature to the MLM.

[8] After receipt of the payment, he said, Mr Madikizela called and instructed him to deposit R450 000 into the Nedbank account of “Allan Morran Design”, with the reference “Mr Mabuyane”, to assist Mr Mabuyane with his house. Mr Madikizela further

instructed him to deposit R350 000 into the account of IPM Plant Hire. Ms Zonozeto Siyazithanda Madikizela, the wife of Mr Madikizela, was the sole director of IPM Plant Hire. Finally, Mr Madikizela instructed him to pay a further amount of R280 000 into the ANC fundraising account. He duly made all these payments.

[9] The payment to Allan Morran Design is not disputed, however, Mr Mabuyane's account of these events is material to the conclusion to which I have come. He had purchased a new home at the time and intended to renovate the home. Accordingly, he engaged the services of Allan Morran Design, a firm rendering architectural services, to prepare plans for the intended renovations. On receipt thereof, he requested Mr Morran to provide him with an estimate of the costs of construction and Mr Morran, after consulting a construction company, provided an estimate in the amount of R450 000. As Mr Mabuyane did not have the finances at his disposal at the time he approached Mr Madikizela, a longstanding friend and business associate, who was apparently a man of means and requested him to advance to him an amount of R450 000. Mr Madikizela agreed and a written loan agreement was concluded on 23 July 2018[2] which provided for the advance of the money and the terms of repayment. Mr Mabuyane said that Mr Morran was appointed as the principal-agent to manage the execution of the renovations and, accordingly, Mr Madikizela was requested to pay the amount of R450 000 into the account of Allan Morran Design so that Mr Morran could make payment to suppliers and contractors during the course of the construction. Mr Morran was indeed appointed as the principal-agent for this purpose and he managed the construction of

[2] The conclusion of the agreement was not in dispute and a copy thereof was provided to the PP.

the subsequent renovations. He said that he was advised by Mr Mabuyane's wife that the money deposited was to be used for this purpose and Mr Mabuyane maintained that he had no knowledge of the interaction between Mr Madikizela, Mr Mahlaka, and Mthombeni and had believed that the loan had been advanced to him by Mr Madikizela. He said that the loan had been repaid in full even before the PP started her investigation and he provided documentary proof thereof. I shall revert to this issue later.

[10] The facts underlying the second question also arose from information provided by Mr Bam. He said that on 7 August 2018, he had received a call from Mr Mhlaba, the Chief of Staff in the office of Mr Mabuyane. Mr Mhlaba forwarded to him the cellphone number of Mr Phala, a director of Key Spirit, and instructed Bam to liaise with Mr Phala in order to prepare an invoice for R2.2 million to be made out as if he was billing for coil sheets (coils). He duly did so and an amount of R2.2 million was subsequently paid into his account.

[11] The PP alleged in her report that she had received a financial intelligence report[3] from the Financial Intelligence Centre (FIC) on 14 July 2021 which confirmed the payment of R2.2 million into the account of Mthombeni. The report, she said, further reflected that Key Spirit had received payment from the Eastern Cape Department of Transport (ECDoT) of an amount of R38 388 672,93 a week earlier. The evidence suggested that the ECDoT did from time to time place orders for the supply of

[3] The alleged report has not been provided to the applicants and it does not form part of the record provided in terms of rule 53 of the rules of court.

equipment with Key Spirit. She found that the amount of R2.2 million had emanated, or originated, from the R38 million which was paid by the Eastern Cape Provincial Government. Mr Bam said that he had not purchased any coils and that the claim that he made for Mthombeni was fraudulent. He confirmed that he had received payment from Key Spirits for R2.2 million and, again, he said, on the instructions of Mr Madikizela, he had distributed the money to various beneficiaries.

[12] On completion of her investigation on 28 September 2021, the PP issued and published her report (the first report) in which she recommended the following remedial action:

> **"To the National Head of the Directorate of Priority Crimes Investigations (DPC/Hawks):**
>
> 7.1.1 The investigation has undeniably proven that the nature of the allegations and complaints referred to above are largely of criminal nature and may not be executed fully by the Public Protector, without bringing them to the attention or notice of the relevant public authorities charged with criminal investigation and prosecution. The issues investigated and the evidence obtained are accordingly, in terms of section 6(4)(c)(ii) of the Public Protector Act, referred to the Head of the Directorate of Priority Crimes Investigations (DPCI/Hawks) of the South African Police Service for consideration of criminal investigation, with a view of prosecution.
>
> **The Speaker of the Council of Mbizana Local Municipality (MLM) to:**
>
> 7.1.2 Take urgent steps to ensure that the Municipality take the appropriate action, including the institution of disciplinary proceedings in respect of the financial misconduct by the Municipal Manager in connection with (sic) and that of any

other official involved in the procurement of transportation services for the memorial service of the late Ms Winne Madikizela, as contemplated by section 171(4) of the MFMA, within sixty (60) days of the issuing of this report;

8. MONITORING

8.1 The Speaker of the Council of MLM must submit an Implementation Plan to the Public Protector within thirty (30) working days from the date of receipt of this report indicating how the remedial action referred to in paragraph 7 above will be implemented.

8.2 The submission of the implementation plan and the implementation of the remedial action taken shall in the absence of a court order be complied with within the period prescribed in this report to avoid being in contempt of the Public Protector."

[13] However, later, she reconsidered. She altered her findings[4] in respect of the second question and she added the following further remedial action in her later report (the second report) dated 10 October 2021.

"7.1.3 Within 60 (sixty) days from the date of issuing of this report, table it to the EPL."

I set out below how the history of the two reports.

[4] The alteration of her findings is fully discussed in paras [73-76] of this judgment

The litigation background

[14] It is necessary for the adjudication of the arguments raised by the parties to set out briefly the manner in which the litigation herein unfolded. On 10 October 2021, the PP held a media briefing in which she released her report (the second report) titled "The report on the investigation into allegations of corruption, maladministration or misuse of public funds by senior and executive government officials from the Mbizana Local Municipality and Eastern Cape Provincial Department(s)". Mr Madikizela and Mr Mabuyane immediately filed applications to review and set aside the report and the applicants in case number 818/2021 followed shortly thereafter. In each case the application was brought in two parts, first, to urgently interdict the implementation of her remedial action pending the finalisation of Part B, in which they sought to set aside, and declare the report unconstitutional and invalid. At the hearing of Part A, before Kruger AJ, it was noted that Mr Madikizela sought to review and set aside the first report, whereas Mr Mabuyane attacked the second report. Thus, it emerged that there were two reports in existence. Both were dated and signed by Ms Mkhwebane, the PP, and, as I have said, reflected the same remedial action, save that the second report reflected an additional remedial measure. The first report had been published on the PP's website, whilst the latter was released at the media briefing.[5]

[15] The relief sought in Part A of the notice of motion in each case was duly granted on 26 October 2021 and attorneys acting on behalf of Mr Madikizela immediately

[5] The material portion of s 8 of the Public Protector Act 23 of 1994 that regulates publication provides:
"8. **Publication of findings**
(1)The Public Protector may, … in the manner he or she deems fit, make known to any person any finding, … or recommendation in respect of a matter investigated by him or her.
…
(2A)(a) Any report issued by the Public Protector shall be open to the public …"

addressed correspondence to the PP requesting her to explain why there were two reports with different remedial action. She did not reply but responded through her attorneys who advised that an explanation for the two reports would be filed together with the record in terms of rule 53 of the Uniform Rules of Court (the rules). A record was duly filed and on 1 December 2021 they wrote to Mr Madikizela's attorneys to advise that the rule 53 record was incomplete and they undertook that a supplementary record would be filed in due course. There was no explanation for the two reports.

[16] On 13 January 2022, Mr Madikizela's attorney again addressed the PP's attorneys of record informing them that if they did not file a complete record Mr Madikizela intended to bring an application to compel the PP to produce a complete record. They responded, on the same day, advising that the PP did not intend to file any further records and would strenuously oppose such an application. Thus, Mr Madikizela's attorneys launched their application in terms of rule 30A (the rule 30A application). Consistent with the earlier promise a notice of opposition was delivered. The rule 30A application was duly enrolled, and, despite her earlier bravado, the PP filed an answering affidavit and produced a supplementary record just a few days prior to the hearing of the application. But Ms Mkhwebane did not attest to an affidavit, rather, she left it to Ms Roberts, her attorney of record, who also tried to explain that the first report was merely a draft that had been erroneously placed on the PP's website, as I explain later. The PP proceeded to contend that the application had become moot and should therefore be dismissed with costs. Accordingly, the application was not argued

and the costs of the rule 30A application remain to be decided, together with the review applications.

[17] In his supplementary affidavit filed in terms of rule 53(4), Mr Madikizela sought to address the affidavit of Ms Roberts in the rule 30A application and the material which emerged from the rule 53 record. He rejected the explanation advanced by Ms Roberts for the existence of the two reports and contended that the PP had failed to apply her mind to the contents of the report, that she had simply signed what had been placed before her without ensuring that it was appropriate for her to affix her signature and the date on the report. He argued that she had signed off on the report simply because she was determined to implicate members of the East Cape Provincial Government, and of the ANC generally, by the release of her report, which occurred just a few weeks before the local government elections. He accused her of having conducted her investigation in bad faith and having reached her conclusions for an improper and ulterior purpose. Finally, he noted that certain documentation referred to in her report, notably the FIC report[6], was absent from the record in terms of rule 53 and he, therefore, contended that she had not applied her mind to it at all.

[18] As I have said, the Ms Mkhwebane did not attest to an affidavit in the rule 30A application, nor did she do so in any of the review applications, notwithstanding the serious allegations by Mr Madikizela in his supplementary affidavit. Instead, Mr Dlamini, the regional representative of her office attested to the answering affidavit in each

[6] Referred to in para [11] above.

application.[7] This prompted Mr Madikizela to file an extensive application to strike out, as inadmissible hearsay, numerous allegations in the answering affidavits that sought to address the matters raised in the supplementary affidavit and to justify the PP's reasoning in arriving at her conclusions. In addition, they sought, on the same grounds, to strike out numerous averments in the affidavit of Ms Roberts, filed in the application to compel, which was incorporated in the papers in the review that had sought to explain why the PP deemed it appropriate to sign two different reports that contained different remedial action.

[19] Counsel for the PP raised three arguments in response thereto. First, they contended that the fact that Ms Mkhwebane had not personally confirmed it did not mean that the evidence of Mr Dlamini is hearsay evidence. This, so the argument went, was because Mr Dlamini had been responsible for the investigation and had worked closely with the PP. The investigations, it was contended, were conducted under his control and direction and he, as the delegated official for the PP[8], drafted the report for and on behalf of the PP. Thus, it was contended that he had personal knowledge of what the PP considered. Second, they argued, even if it did constitute hearsay evidence, it was admissible in terms of s 3(1) of the Law of Evidence Amendment Act, 45 of 1998 (the Evidence Act). Third, they asserted that the application to strike out should be dismissed as the applicants had failed to allege that

[7] His affidavit was not supported by any confirmatory affidavit by the PP.

[8] Section 7(3)(b) of the Public Protector Act provides for delegation of powers. Neither the report nor the answering affidavit makes any reference to a delegation. Rather, the report reflects that Mr Dlamini, as the Provincial Representative of the PP "assisted" her. Where she enlists the assistance of a member of her office the member acts under her supervision and control as set out in s 7(3)(a) of the Act.

any of the grounds relied upon for striking out the material was scandalous, vexatious, or irrelevant, and in what respect, nor had they alleged prejudice.

[20] In respect of the first contention, the Evidence Act[9] defines hearsay evidence, which is generally inadmissible in terms of s 3(1), as "evidence …, the probative value of which depends upon the credibility of any person other than the person giving such evidence." The material objected to in the affidavit of Mr Dlamini[10] relates to the PP's state of mind; what she read, thought, and considered, and what motivated her, as the decision-maker, before arriving at her factual findings and deciding to impose the remedial action impugned in the application. Per definition, the probative value of these passages of evidence depends primarily, if not exclusively, upon the credibility of Ms Mkhwebane. The fact that Mr Dlamini might have gathered the evidence and prepared the report does not assist in accounting for that which Ms Mkhwebane alone can answer for. Thus, in *Vere NO*[11] it was held that:

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[9] Section 3(4)

[10] The passages objected to in Dlamini's affidavit are as follows: Paragraph 19 in which it is stated that "I further deny that the Public Protector did not consider Madikizela's version"; paragraph 80 in which it is stated that "the evidence before the Public Protector raised suspicion that these purported cession letters were organised or facilitated by Mahlaka"; paragraph 81 in which it is stated that "The Public Protector took this view firstly, because Mngqongwa … had no reason to cede any payments from MLM to Mthombeni Projects …"; paragraph 81 in which it is stated that "The Public Protector had before her evidence that Key Spirit received R38, 388, 672.93 on 3 August 2018 from the Department of Transport …"; paragraph 169 in which it is stated that "the truth that the Public Protector was searching for is whether the public funds from MLM were improperly paid for the benefit of senior government officials or private individuals"; paragraph 173 in which it is stated that "I submit that the Public Protector took into account all evidence presented before her …"; paragraph 240.3 which states that "… I deny the Public Protector did not consider (or) apply correct legal principles in arriving at her findings. I further deny that the Public Protector did not conduct her investigations with an open mind"; and paragraph 442.1 which states that "… the Public Protector considered all evidence obtained during the investigation, including that of Cwele".

[11] *Vere N.O and Others vs MEC for Department of Economic Development, Environment, Conservation and Tourism, North West Province and Others; Vere N.O and Others vs MEC for Department of Economic Development, Environment, Conservation and Tourism, North West Province and Others* (UM112/2020; UM145/2020) [2021] ZANWHC 1 (19 February 2021) at [84] and [87])

> "[84] As correctly pointed out by the applicants, it is the MEC whose application of the mind and conduct is challenged. It is she, and only she, who can say what she read, considered, and applied her mind to. Nobody else can comment on what the MEC applied her mind to.
>
> …
>
> [87] In areas where Mr Mosiapoa purports to testify on behalf of the MEC on matters affecting the exercise of her discretion, his evidence constitutes inadmissible hearsay evidence and it must be totally disregarded in the adjudication of the issues between the parties. Consequently, the respondents have failed to show that the MEC exercised her discretion reasonably, lawfully and rationally."

The evidence objected to was hearsay.

[21] I turn to the averments of Ms Roberts[12] that relate to the explanations for the signature and publication of two separate reports with different content. Only Ms Mkhwebane can explain the reasons for the premature publication, the changes that she effected after the publication of the original report on her website, and why she appended her signature to a "draft". As I shall show later the changes that were effected were certainly not inconsequential and Ms Roberts could have no personal knowledge of what motivated her to make these changes.[13]

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[12] The paragraphs objected to in the affidavit of Ms Roberts are as follows: Paragraph 7 which states that: 'The review application concerns a draft report prepared by the First Respondent dated 28 September 2021 (the "draft report"), which First Respondent published prematurely on 8 October 2021.' The final report is dated 8 October 2021 and was released on 8 October 2021"; paragraph 17 which states that: "Moreover, I informed the Applicant's attorneys that in so far as it is relevant, aside from the inconsequential grammatical and draftsmanship errors, the material difference between the draft report and the final report is the addition of paragraph 7.1"; paragraph 48 which states that: "As already explained in paragraphs 10 to 19 above, the contents of which are incorporated herein as if specifically traversed, the draft report was prematurely published through First Respondent's website. The report dated 8 October 2021 is the final report and that was communicated to the Applicant".

[13] See *Gerhardt v State President and Others* 1989 (2) SA 499 (T) at 504f-h; *Von Abo v Government of The Republic of South Africa and Others* [2008] ZAGPHC 226 (29 July 2008) at [46]; *Drift Supersand (Pty) Ltd v Mogale City Local Municipality and Another* [2017] 4 All SA 624 (SCA) at [31] and Eskom Holdings SOC Ltd v Masinda 2019 (5) SA 386 (SCA) at [3]

[22] The second contention raised is equally untenable. Section 3(1) of the Evidence Act permits a court to receive hearsay evidence if, on a consideration of a number of factors enumerated in the section, it is of the opinion that such evidence should be admitted in the interests of justice.[14] I have considered earlier the nature of the evidence and the probative value thereof. These considerations militate against the admission of such evidence. The purpose for which the evidence is tendered is to rebut the contention by the applicants that the PP had failed to apply her mind on material issues, that she had acted with an ulterior motive, exceeded her powers, and that she conducted her enquiry in bad faith. These are fundamental components of the applicants' case and accordingly, the reception thereof would, self-evidently, result in considerable prejudice to the applicants.

[23] The reason advanced on behalf of the PP for Ms Mkhwebane not having attested to the affidavit herself was that she had been suspended from office. The answering affidavits were due on the same day that the President suspended her from office and counsel on behalf of the PP explained, though it does not appear from the papers, that

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[14] Section 3(1)(c) provides:
"(1) Subject to the provisions of any other law, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless-
...
(c) the court, having regard to-
(i) the nature of the proceedings;
(ii) the nature of the evidence;
(iii) the purpose for which the evidence is tendered;
(iv) the probative value of the evidence;
(v) the reason why the evidence is not given by the person upon whose credibility the probative value of such evidence depends;
(vi) any prejudice to a party which the admission of such evidence might entail; and
(vii) any other factor which should in the opinion of the court be taken into account,
is of the opinion that such evidence should be admitted in the interests of justice."

her suspension came with an injunction that she was no longer authorised to act in any manner on behalf of the office of the PP.

[24] There are a number of difficulties with this argument. First, Ms Mkhwebane was suspended on 9 June 2022. She had been called upon in October 2021 to explain her reasons for there being two reports and the discrepancy between the two reports. Ms Roberts deposed to her affidavit on 22 February 2022, some months prior to the suspension. Second, on Mr Dlamini's version, the PP was required to file an answering affidavit in these proceedings by no later than 9 June 2022, the date on which Ms Mkhwebane was suspended. No reason is advanced why her affidavit, which must have been prepared by that time, was not filed. In any event, her suspension provides no impediment to her attesting to an affidavit as a witness. A deponent to an affidavit in motion proceedings need not be authorised by the party concerned to depose to an affidavit.[15] After her suspension from office, she was no longer the litigating party and the proceedings continue in the name of the acting PP, but there can be no reason to disqualify her as a witness in matters within her personal knowledge. The explanation advanced does not withstand scrutiny.

[25] In respect of the third contention, rule 6(15) provides that a court may, on application, strike out any matter which is scandalous, vexatious or irrelevant from an affidavit, with an appropriate order as to costs. The rule stipulates that a court may not grant such an application unless it is satisfied that the applicant will be prejudiced if the application is not granted. The difficulty for the PP is that the subrule is not exhaustive

[15] *Ganes and Another v Telkom Namibia Limited* 2004 (3) SA 615 (SCA) at 624H; [2004] 2 All SA 609 (SCA)

of the grounds on which the application to strike out may be brought.[16] Inadmissible hearsay evidence may always be struck out, simply because it is inadmissible.[17] It may be struck out even where no prejudice can be shown.[18]

[26] I am accordingly satisfied that Mr Madikizela's application to strike out inadmissible hearsay evidence in the affidavits of Dlamini and Roberts was well-founded.

[27] The applicants in case number 818/2021 also launched an extensive application to strike out material in the answering affidavit of Mr Dlamini on the grounds that they "not only constitute hearsay evidence for which no justification for tendering has been laid, but it is improper for the deponent to the answering affidavit to tender that kind of evidence". The applicants persisted in their heads of argument with the application, but no argument was presented to me on this issue. Suffice it to say that the vast majority of the offending material to which they objected does not constitute hearsay evidence at all and no reason has been advanced in the notice to strike out, the heads of argument, or in the argument for the contention that it is improper to tender such evidence. I do not consider that a proper case has been made for the striking-out in case number 818/2021.

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[16] *Titty's Bar and Bottle Store (Pty) Ltd v ABC Garage (Pty) Ltd and Others* 1974 (4) SA 362 (T) at 368G

[17] *Premier Produce Co. v Mavros* 1931 WLD 91; *Cash Wholesalers Limited v Cash Meat Wholesales* 1933 (1) PH A24; and *Rail Commuters Action Group and Others v Transnet Limited t/a Metro Rail and Others (No 1)* 2003 (5) SA 518 (C) at 546E-547E

[18] *Cultura 2000 and Another v Government of the Republic of Namibia and Others* 1993 (2) SA 12 (Nm) at 27H

Interpretation of legislation

[28] In presenting their argument the applicants contended that the PP had acted unlawfully in referring her report to the DPCI in terms of s 6(4)(c)(ii) of the Public Protector Act (the Act) and that she exceeded her powers in directing the DPCI to act on her recommendation. They contend, too, that she exceeded her jurisdictional powers by investigating matters which fell beyond the scope of her authority and the affairs of the State.

[29] The arguments rely primarily on the interpretation of the legislation which finds application to the investigations of the PP. As adumbrated earlier, the applicants seek an order declaring the reports of the PP dated 28 September 2021 and 10 October 2021 unconstitutional and invalid. There has been some debate as to whether the PP's remedial action constitutes administrative action in terms of the Promotion of Administrative Justice Act (PAJA)[19]. In *Minister of Home Affairs,*[20] the SCA said that it was not, but the decision has been criticised by the Constitutional Court in *Public Protector and Others v The President of the Republic of South Africa and Others*[21] (the President (CC)) where it was emphasised that the reasoning of the SCA was contrary to the jurisprudence of the Constitutional Court. I shall accept for purposes of this judgment that the application is one in terms of PAJA. However, on either approach it is a constitutional matter.[22]

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[19] Promotion of Administration of Justice Act 3 of 2000

[20] *Minister of Home Affairs and Another v The Public Protector of the Republic of South Africa* 2018 (3) SA 380 (SCA; [2018] 2 All SA 311 (SCA); [2018] ZASCA 15)

[21] 2021 (6) SA 37 (CC); [2021] ZACC 19

[22] PAJA was promulgated to give effect to the right to fair administrative action enshrined in s 33 of the Constitution.

[30] In Constitutional matters, the court must declare that any conduct that is inconsistent with the Constitution is invalid to the extent of the inconsistency.[23] The office of the PP was established in terms of s 181 of the Constitution, which requires of the PP to act independently, and impartially and to exercise her powers, and to perform her functions without fear, favour or prejudice. The Constitution empowers her to investigate any conduct in state affairs, or in the public administration in any sphere of government, that is alleged or suspected to be improper, or to result in impropriety or prejudice, as regulated by national legislation, and to report thereon and take appropriate remedial action.[24] Section 182(2) of the Constitution provides that additional powers and functions may be ascribed to her in terms of national legislation.

[31] The national legislation regulating her investigations is the Act. The PP's powers of investigation are circumscribed by s 6(4) of the Act[25]. If, during the course of, or before, an investigation, that falls properly within her competence, the PP forms the opinion that the facts disclose the commission of an offence, she is empowered to bring the matter to the attention of the relevant authority charged with prosecutions.[26]

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[23] Constitution s 172(1)(a)

[24] Section 182(1) of the Constitution

[25] Section 6(4)(a) provides:

"(4) The Public Protector shall, be competent-

(a)to investigate, on his or her own initiative or on receipt of complaint, any alleged-

(i) maladministration in connection with the affairs of government at any level;

(ii) abuse or unjustifiable exercise of power or unfair, capricious, discourteous or any other improper conduct or undue delay by a person performing a public function;

(iii) improper or dishonest act, or omission or offences referred to in Part 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 Combatting of Corrupt Activities Act, 2004 with respect to public money;

(iv) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or

(v) act or omission by a person in the employ of government at any level, or a person performing a public function, which results in unlawful or improper prejudice to any person."

[26]Section 6(4)(c)(i) and *The President (CC)* para [115]

Section 6(4)(c)(ii) allows her, if she deems it advisable, to refer any matter, which has a bearing on an investigation, to the appropriate public body, or the authority affected by it.

[32] While there may be some overlap between the powers entrusted to her in s 182(1)(a) of the Constitution and s 6(4) of the Act, the powers listed in s 6(4) are largely additional powers, over and above those provided for in the Constitution, that flow from the Act.[27]

[33] As alluded to earlier the PP referred her report to the DPCI in terms of s 6(4)(c)(ii) of the Act for their consideration of criminal investigation, with a view to prosecution. The applicants contend that she has misunderstood the legislation regulating her conduct and that her reference to the DPCI in terms of s 6(4)(c)(ii) is unlawful, firstly because the section does not empower her to do so, and, secondly because the nature of her reference constitutes a direction to the DPCI that compels them to investigate, which undermines the independence[28] of the institution.

[34] In respect of the first contention, the question is not whether the PP is empowered to draw the attention of the DPCI to matters which have manifested during her investigation, but rather, whether she is entitled to do so in terms of provisions of s 6(4)(c)(ii). It is an established principle of law that when a person exercising public power has committed themselves unequivocally to an empowering provision to justify their authority to exercise that power, they stand or fall by that choice. They are,

[27] *The President (CC)* para [100]
[28] Section 17B(b)(ii) and 17D(1) of the South African Police Service Act 68 of 1995

generally speaking, not free to rely on some other source of authority that may allow them to do what they purported to do.[29] Thus, where a decision maker relies on the incorrect provision in a statute to inform their decision, and such provision is relied upon deliberately, the decision will be unlawful.[30]

[35] On behalf of the applicants, it was argued that the proper construction of s 6(4)(c) is that subsection (i) is concerned with criminal matters arising from the PP's investigations, whilst subsection (ii) is concerned with non-criminal matters arising from the investigations. They contend, accordingly, that she relied, intentionally, on the wrong section as the reference to the DPCI could only occur in terms of subsection (i). The argument turns on the construction of s 6(4)(c).[31]

[36] The approach to the interpretation of documents, including statutes, was authoritatively stated in *Endumeni Municipality.*[32] It is the process of attributing meaning to the words of the relevant section in the light of the ordinary rules of grammar and syntax; the context in which the provisions appear; the apparent purpose to which it is directed and the material known to those responsible for its production.

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[29] *AfriForum NPC v Minister of Tourism and Others* and a similar matter 2022(1) SA 359 (SCA) at [49]; and *Minister of Education v Harris* 2001 (4) SA 1297 (CC) para [17] - [19]

[30] *Tulip Diamonds FZE v Minister for Justice and Constitutional Development* 2013 (2) SACR 443 (CC) at [122]

[31] Section 6(4)(c) provides:

"The Public Protector shall, be competent-

(c) at a time prior to, during or after an investigation-

(i) if he or she is of the opinion that the facts disclose the commission of an offence by any person, to bring the matter to the notice of the relevant authority charged with prosecutions; or

(ii) if he or she deems it advisable, to refer any matter which has a bearing on an investigation, to the appropriate public body or authority affected by it or to make an appropriate recommendation regarding the redress of the prejudice resulting therefrom or make any other appropriate recommendation he or she deems expedient to the affected public body or authority; "

[32] *Natal Joint Municipal Pension Fund v Endumeni Municipality* 2012 (4) SA 593 (SCA) para [18]

[37] As I have said, the powers set out in s 6(4) are "additional powers", over and above those set out in s 182(1)(a) of the Constitution, which are directed at achieving the effective investigation and remedial action in respect of matters set out in s 182(1) of the Constitution and s 6(4)(a) of the Act. The applicants emphasised, correctly, that interpretation requires a sensible, businesslike meaning to be preferred over an interpretation that results in absurdity or redundancy.

[38] Subsections (i) and (ii) of s 6(4)(c) of the Act are connected by the word "or".[33] In *Municipality of Mossel Bay,*[34] the SCA explained that the word "or" is to be construed as a disjunctive, signifying a substitution or alternative, unless the context, in most exceptional cases, demands otherwise. Thus, the applicants argue, it must be the meaning of the term where it connects s 6(4)(c)(i) and (ii). So, the argument proceeds, if the PP is permitted to make a referral to the DPCI under both s 6(4)(c)(i) and (ii), it would render (i) unnecessary and superfluous which is not a sensible interpretation.

[39] I agree that the two sections are to be interpreted as alternatives and that the term "or" is used in a disjunctive sense. It is also, undoubtedly, correct that the PP has deliberately chosen to rely on s 6(4)(c)(ii), not only in her report, but throughout the affidavits filed on her behalf in all three applications. However, I am, unable to discern any logical reason for the distinction that the applicants sought to draw between civil matters and criminal matters. Section 6(4)(c)(i) finds application where the PP forms an opinion that the facts established, during an investigation that falls within the ambit of

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[33] fn 31

[34] *Municipality of Mossel Bay v The Evangelical Lutheran Church and Another* [2013] ZASCA 64 (24 May 2013) para [12]

her authority, disclosed that a person has committed an offence. If this occurs, she is empowered to refer the matter to "the relevant authority charged with prosecutions". The authority charged with prosecutions is the national prosecuting authority. Thus, the section empowers the PP to draw the matter to the attention of the national prosecuting authority for their consideration. The subsection does not authorise a reference to the South African Police Service (SAPS) or the DPCI. These institutions are charged with investigation, not prosecution.

[40] However, if, in the course of an investigation that falls properly within her authority, she coincidently comes across information[35] that, in her opinion, gives rise to a well-founded suspicion of the commission of an offence by any person, the appropriate public body to whom it should be referred is an investigative body.[36] The PP is not empowered, to investigate crime unless the offences fall within the ambit of s 6(4)(a), which is the function of the SAPS. As I have said she was not empowered by s 6(4)(c)(i) to refer such matters to the SAPS or the DPCI. Her authority to do so arises from s 6(4)(c)(ii). Thus, she did not rely on the wrong section. No absurdity or redundancy arises from this interpretation and the first contention can accordingly not be upheld. If the interpretation contended for by the applicants is accepted, it would have the absurd result that she would be precluded from referring matters to the police at all.

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[35] *The President (CC)* para [115]

[36] *Democratic Alliance v Public Protector; Council for the Advancement of South African Constitution* [2019] 3 All SA 127 (GP) para [36]

[41] The second contention was that the remedial action taken by the PP is binding and, accordingly, her reference to the DPCI is an injunction to them, which directs them to investigate criminal activity, and will undermine their independence.[37] It was contended that the PP does not have the competence to do so. The effect of the decision in *SABC*[38] and *Economic Freedom Fighters*[39] is that the principle in *Oudekraal*[40] applies to the decisions of the PP. Her decisions cannot be ignored (nor trumped by parallel process) and, unless they are set aside on review, they must be obeyed and given effect to. To that extent they are binding[41]. In *Economic Freedom Fighters* the Constitutional Court also considered the proper interpretation to be given to remedial action taken by the PP. At para [69] and [70] they explained:

> "[69] But, what legal effect the appropriate remedial action has in a particular case depends on the nature of the issues under investigation and the findings made. As common sense and s 6 of the Public Protector Act suggest, mediation, conciliation or negotiation may at times be the way to go. Advice considered appropriate to secure a suitable remedy might, occasionally, be the only real option. And so might recommending litigation or a referral of the matter to the relevant public authority, or any other suitable recommendation, as the case might be. The legal effect of these remedial measures may simply be that those to whom they are directed are to consider them properly, with due regard to their nature, context and language, to determine what course to follow.
>
> [70] It is, however inconsistent with the language, context and purpose of ss 181 and 182 of the Constitution to conclude that the Public Protector enjoys the power to make only recommendations that may be disregarded, provided there is a

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[37] Section 17D(1)(a) of the South African Police Act
[38] *South African Broadcasting Corporation SOC Ltd and Others v Democratic Alliance and Others* 2016 (2) SA 522 (SCA)
[39] *Economic Freedom Fighters v The Speaker, National Assembly and Others* 2016 (3) SA 580 (CC)
[40] *Oudekraal Estates (Pty) Ltd v City of Cape Town and Others* 2004 (6) SA 222 (SCA)
[41] *Minister of Home Affairs* para [5]

> rational basis for doing so. Every complaint requires a practical or effective remedy that is in sync with its own peculiarities and merits. It needs to be restated that it is the nature of the issue under investigation, the findings made and the particular kind of remedial action taken, based on the demands of the time, that would determine the legal effect it has on the person, body or institution it is addressed to."

Thus, what the legal effect of a particular action taken or measure employed is, is a matter of interpretation aided by context, nature, and language.[42]

[42] The argument for the applicants was that the effect of para 7.1.1 of the PP's remedial action[43] is to instruct the DPCI to investigate the matter in order to endeavor to secure a prosecution. The argument relied on *President v Public Protector (the President (GP)).*[44] But the facts in the *President's* case were markedly different. In the *President's* case the PP had directed the National Director of Public Prosecutions (NDPP) "within 30 working days of receipt of (her) report to take note of (her) observations …, as well as the recommendations contained in 7.3.3 of (her) report, and to conduct further investigation into the *prima facie* evidence of money laundering." She proceeded to direct the NDPP to submit to her "for approval … an implementation plan" indicating how the remedial action would be implemented. The High Court emphasised that the PP has no power under s 6(4)(c)(i) to direct the NDPP to investigate and to monitor their actions in this regard.

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[42] *Economic Freedom Fighters* para [71](h)
[43] Quoted at para [12] of this judgment
[44] The *President v Public Protector* 2020 (5) BCLR 513 (GP); [2020] 2 ALL SA 865 (GP)

[43] Her remedial action in the *President's* case clearly contained an instruction, that was intended to be binding, to show within 30 days how they intended to proceed. She sought to subject the NDPP to her authority. This is a far cry from the facts in the present matter, where she has merely referred "the issues investigated and the evidence obtained" to the DPCI "for consideration of criminal investigation, with a view to prosecution". The DPCI is required to consider the evidence presented to them and, if they so choose they may investigate. The obligation to consider arises not only from the remedial action, but from s 17B(1)(a) of the SAPS Act. As a matter of law, any investigation that they may carry out must be with a view to prosecution. The DPCI is not empowered to carry out investigations at public expense for any other purpose. Applying the approach set out in *Economic Freedom Fighters* the legal effect of the remedial action set out in paragraph 7.1.1 of the reports is simply a referral to the DPCI to consider the evidence that she had gathered and to determine for themselves what course to follow. This argument must therefore fail.

[44] Mr *Katz,* on behalf of Mr Madikizela, submitted that the PP had exceeded her jurisdiction in two respects. Firstly, she was not entitled to make findings against Mr Madikizela, who did not occupy public office at the time that the alleged unlawful acts took place. He contended that she is only competent to investigate conduct arising in the affairs of the state, which excludes the power to make findings against a private person or to impose remedial action in respect of a private person. Secondly, it was contended that she intentionally exceeded her jurisdiction by embarking on an

investigation into money laundering, which falls beyond the scope of her competence. I confine myself at this stage to the first issue and I shall revert later to the second.

[45] As I have said s 182(1) of the Constitution provides for the PP to investigate any conduct in the state affairs, or in the public administration, in any sphere of government, as regulated by the Act, and the powers set out in s 6 of the Act are, at least in part, additional powers.[45] Section 6(4)(a)(iv) empowers her to investigate any improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission of a person performing a public function.[46]

[46] In advancing the argument that the PP has no jurisdiction to investigate, or to make any finding against a private individual holding no public office, Mr *Katz* sought to rely on *The President* (CC) where the Constitutional Court remarked, with reference to s 182(1) of the Constitution:

> "This provision empowers the Public Protector to investigate any conduct in state affairs or in the public administration. This means the scope of the power is limited to state affairs and affairs of the public administration. There can be no doubt that

[45] *The President (CC)* para [99] and [100]

[46] It is not contended that s 6(4)(a)(iv) is unconstitutional and it provides:

"(4) The Public Protector shall, be competent-

(a)to investigate, on his or her own initiative or on receipt of a complaint, any alleged-

(vi) improper or unlawful enrichment, or receipt of any improper advantage, or promise of such enrichment or advantage, by a person as a result of an act or omission in the public administration or in connection with the affairs of government at any level or of a person performing a public function; or"

> the CR17 campaign was engaged in the affairs of the ANC, which is a political party. The fact that it was a ruling party at the relevant time did not make it part of the public administration."[47]

[47] Her investigation of the *President's* case was prompted by a complaint made to her in terms of the code of ethics promulgated in terms of the Executive Members Ethics Act[48] (the Members Act). The questions that arose from the complaint were whether (1) the statement made by President Ramaphosa in the national assembly on 6 November 2018 that he had seen a contract between his son's company and Global Operations was true, and whether a contract in fact existed; and, (2) whether President Ramaphosa had deliberately misled Parliament in violation of the Members Act. The PP embarked on a different enquiry as to whether the President had personally benefitted from donations made to the CR17 Campaign. She was plainly not authorised to investigate the issue in terms of s 4 of the member's act, as it only mandates the PP to investigate violations of the code if there is a complaint by one of the persons listed in the section. The Constitutional Court, therefore, proceeded to consider whether the PP was competent to investigate the affairs of the CR17 Campaign on any other basis. In doing so they noted:

> "[99] This is a legal question which must be answered with reference to the empowering provisions of the Constitution and relevant legislation. Section 182(2) of

[47] *The President* para [103]
[48] Executive Members Ethic Act, 82 of 1998

> the Constitution provides that in addition to powers listed in s 182(1), the Public Protector has additional powers prescribed by legislation. …
>
> [100] The Public Protector Act lists additional powers of the Public Protector in s 6. Section 6(4) empowers the Public Protector to investigate maladministration in connection with the affairs of government; abuse of public powers and improper or unlawful enrichment by a person as a result of an act or omission in the public administration. Whereas s 6(5) confers similar powers on the Public Protector in respect of state-owned entities. Evidently, none of the powers flowing from s 6 of the Public Protector Act cover the affairs of the CR17 campaign."[49]

[48] Having eliminated the application of s (6)(4) to the affairs of the CR17 campaign the Constitutional Court then proceeded at para [102] to state:

> "This leaves section 182(1) of the Constitution as the only possible source of the Public Protector's power."

[49] As I have said, the passage emphasised on behalf of the applicants did not purport to consider the PP's jurisdiction in terms of s 6(4) of the Act.[50] The *President's* case is, accordingly, not authority for the proposition that the PP may not make findings against private individuals where the investigation proceeds in terms of s 6(4)(a)(iii) or (iv).

[50] On the facts which the PP found to be proved in respect of the first question investigated by her, money that had been paid by the Eastern Cape Government to the MLM for payment of transport services was disbursed by Mr Mahlaka, performing a

[49] *The President* para [99] and [100]
[50] fn 46

public function, to Mthombeni, acting on the instruction and for the benefit of Mr Madikizela. In order for the PP to execute her mandate in respect of subsection 6(4)(a)(iv) she is required to determine whether any person has derived an improper advantage or unlawful `enrichment as a result thereof. The issue necessarily requires an investigation into and findings in respect of the party alleged to have benefitted[51] from the conduct of the official performing a public function and, in an appropriate case, a recommendation that litigation be instituted against the private individual to recoup the lost funds may be the only real option. Accordingly, the mere fact that findings are made against private individuals is not necessarily evidence that she has exceeded her competence, provided that the findings flow from an enquiry that falls properly within her authority.

Bad faith argument

[51] The applicant's main argument was that the PP conducted her investigation in bad faith. Whilst the thrust of their case in the founding papers was that the PP's findings were irrational because they were materially influenced by errors of fact and law, Mr *Katz*, wisely in my view, did not pursue this argument. He stressed that for purposes of his argument what happened was irrelevant. He confined his argument to the manner in which the enquiry was conducted. Mr *Bodlani*, on behalf of the applicants in case number 818/2021, expressly abandoned any reliance on this ground of review.[52] I shall revert below to this ground in respect of Mr Mabuyane.

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[51] *The President (GP) para [98]*

[52] The evidence of the PP in respect of the payment of the R1.1 million by the MLM to Mthombeni does indeed give rise to serious concern and was worthy of investigation by the SAPS or the DPCI. As a fact the matter was referred to the DPCI, they have investigated the matter as they are entitled to do and they have been cited as a respondent in case number 800/2021. This judgment does not affect their investigation.

[52] In developing the argument Mr *Katz* emphasised a number of issues, some of which constitute self-standing grounds of review. He submitted that when viewed together the conclusion is justified that the PP had acted in bad faith, with an ulterior motive and without applying her mind. I set out below those grounds which I consider to be material to the outcome of the review.

(a) Competence to investigate offences of money laundering

[53] As I have said[53], the applicants contended that the PP investigated matters which she knew were beyond the scope of her authority. They argued that the PP had intentionally embarked upon an investigation into contraventions of the Prevention of Organised Crimes Act[54] (POCA), which she is not empowered to do. I have explained earlier the statutory provisions that circumscribe her investigative powers. Save for the provisions of s 6(4)(a)(iii)[55] they do not empower the PP to investigate crime. It is the function of the police service to investigate crime.[56] As adumbrated earlier, where the PP comes across allegations of crime, including money laundering, in the course of an investigation that falls properly within her competence, she is empowered to draw these matters to the attention of the SAPS or the DPCI in terms of s 6(4)(c)(ii). What she cannot do is to proceed to an investigation into the merits and demerits of the alleged crime and to make findings in respect thereof.[57]

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[53] Para [43] of this judgment
[54] Act 121 of 1998
[55] The subsection confers on the PP the competence to investigate specified offences under the Prevention and Combatting of Corrupt Activities Act with respect to public money.
[56] *The President (CC)* at [114] – [115] and s 205(3) of the Constitution
[57] *The President (CC*) para [115]; and *The President (GP)* para [139]

[54] In both her reports she recorded that: “A brief application and discussion, but not necessarily an investigation” of POCA was appropriate “in order to underpin or support” her referral to the DPCI. The applicants contended that notwithstanding this rather equivocal formulation, she had in fact set about intentionally to investigate money laundering, an offence created by POCA.

[55] It is instructive to consider her conduct during the investigation. Section 7(9) of the Act provides that when it appears to the PP during the course of an investigation that an adverse finding with a detrimental implication to any person may be made, the PP is obliged to afford the affected person a hearing. It follows that where remedial action adverse to an affected person may be taken, the PP should afford them an opportunity to make representations on the contemplated remedial action, too.[58] The PP gave notice to the applicants, in particular to Mr Madikizela and Mr Mabuyane, in terms of s 7(9). The notice given reflects the nature of the investigation conducted. After setting out the facts relating to the first question the PP proceeded to set out extensively the relevant legal framework that she sought to apply. It included provisions of the Constitution, the Municipal Finance Management Act[59], the MLM Supply Chain Management Policy, treasury regulations, and provisions of POCA. She recorded:

> “For purposes of this matter, the relevant question is whether or not Mr Mabuyane knew or ought reasonably to have known that the payment of R450 000 to Allan Morran Design for the renovation of his house came from Mthombeni Projects, Mr

[58] *The President (CC)* para [125]
[59] 56 of 2003

Bam and/or Mbizana Local Municipality. Knowledge not participation in the unlawful activity is required."

The statement, which encapsulates the test to be applied in respect of s 4 of POCA, gives expression to the purpose of her enquiry.

[56] At the conclusion of her discussion on the first question she found:

"13.1.149 The amount of R1,100 000,00 … was irregularly deposited into the account of Mthombeni Projects (Pty) Ltd by the MLM and subsequently misappropriated to benefit Mr Mabuyane, Mr Madikizela and the ANC …

13.1.150 Mr Mabuyane denied that he requested Mr Bam to pay the money into the account of Allan Morran Designs. However, Mr Mabuyane's wife: Ms Siyasanga Mabuyane (Ms Mabuyane) appears to have had knowledge or reasonably ought to have known that the money deposited to Allan Morran came from Mthombeni Projects of which Mr Bam is the owner since she is one who confirmed to Mr Morran that R450, 000 was to be used for the renovations of their house, when Mr Morran queried this payment.

13.1.151 Mr Mabuyane and Ms Mabuyane are married to each other and there is a *reasonable apprehension and probability* that they discussed all issues or expenses related to their house renovations.

13.1.152 Consequently, there is a *reasonable apprehension and probability* that Mr Mabuyane could have known that the amount of R450,000 paid to his developer (Allan Morran) for the renovation of his house originated from unlawful activities."

She gave notice, thus, that she intended to find that Mr Mabuyane was probably guilty of money laundering. She concluded too, that the provisions of POCA "could be relevant to Mr Madikizela for purposes of determining his liability in this matter".

[57] The suggestion in her reports that her discussions relating to POCA did not amount to an investigation is not born out by the evidence of her investigation. In her papers the PP did not deny that she investigated contraventions of POCA, rather Mr Dlamini sought to justify her discussions relating to POCA. This is remarkable as her reports were signed just three months after the Constitutional Court judgment in the *President* (CC) was delivered. She was clearly not entitled to investigate allegations of money laundering and in doing so exceeded her mandate and she knew that when she issued her reports.[60]

(b) Her suspicion that Mr Mabuyane may have committed an offence in terms of POCA or PCCA

[58] As adumbrated earlier Mr Madikizela did not pursue the rationality argument and the applicants in case number 818/2021 expressly abandoned it. That leaves the position of Mr Mabuyane. His version of events is set out earlier and I have quoted the preliminary conclusions of the PP in her s 7(9) notice to the parties, including Mr Mabuyane. In her reports the PP did not persist in her finding that he had probably known that the R450 000 that he had borrowed from Mr Madikizela had originated from unlawful activities.

[60] Section 6(2)(e) of PAJA

[59] However, she persisted that:

> "6.1.6 Mr Mabuyane personally benefitted R450,000 (Four hundred and fifty thousand rands) from the amount of R1,1 million which were certainly public funds that went into the Nedbank account of Allan Morran Design Architectural Services (Allan Morran Design) which is a private company that carried out renovations at his private house as set out in evidence.
>
> 6.1.7 Whereas Mr Mabuyane denied the knowledge of arrangements between Mr Bam and Mr Madikizela, evidence revealed that his wife, Ms Siyasanga Mabuyane … advised the business owner of Allan Morran Design: Mr Allan Morran … through an email that the deposit of R450, 000 was to be used for renovations of their private house when this payment was queried by Mr Morran."

[60] On the strength of this evidence, she concluded that the financial benefits that accrued to Mr Mabuyane raised a suspicion of a commission of criminal conduct in terms of POCA and PCCA and therefore she referred the investigation to the DPCI.

[61] Ms Mabuyane's account of her instruction to Mr Morran is consistent with her husband's version of the arrangement and the PP's rejection of Mr Mabuyane's version on the strength hereof is curious. The instruction by Ms Mabuyane to Mr Morran does not support the conclusion that she or Mr Mabuyane may have known of the origin of the money. The PP had no evidence before her to suggest any knowledge on the part of either Ms or Mr Mabuyane of the impropriety which had allegedly occurred between Mr Madikizela and Mr Mahlaka. She had been provided with a perfectly logical

explanation, supported by a written agreement of loan concluded before the payment to Mr Morran, and documentary proof of the complete repayment of the loan which she ought to have accepted. Her conclusion in this respect defies logic and is not rationally connected to the evidence before her nor the reasons given for it.[61] No reasonable decision-maker could have come to such a conclusion.

[62] Her finding that a suspicion existed that Mr Mabuyane may have been guilty of unidentified offences in terms of PCCA is equally curious. She found support for the conclusion in the fact that the money had been transferred directly from Mthombeni to the account of Mr Morran. She did not explain how this fact gave rise to her suspicion in the face of the explanation and evidence before her. She explained that a "gratification", as defined in the PCCA, includes a loan. However, the thrust of the potential offences under the PCCA lies in the acceptance or agreement to accept gratification in order to act in a dishonest or improper manner. In this case, the conclusion of the written loan agreement before the extension of the loan and the subsequent repayment thereof do not support the suspicion of the PP in respect of Mr Mabuyane nor was there any evidence to suggest that he had accepted the loan in exchange for an undertaking to act in a manner set out in the PCCA.[62]

[63] Nowhere in either of her reports did the PP identify the provisions of the PCCA that may have been contravened by any of the applicants. While she discussed the provisions of the PCCA in general terms she did not attempt to consider how the conduct of any of the applicants finds application to the provisions of the PCCA. Her

[61] Section 6(f)(ii) of PAJA
[62] Section 3, 4, 6 or 7 Of the PCCA

findings of suspicions have very serious implications for the applicants, in particular Mr Madikizela and Mr Mabuyane,[63] and her nebulous references to unidentified offences makes it virtually impossible for them to defend themselves against this. On this basis alone her administrative action must be set aside.[64]

(c) The two reports

[64] I have alluded before to the two reports signed by the PP on 28 September 2021 and 10 October 2021, respectively, and the attempts by Ms Roberts in the rule 30A application to explain their existence. Ms Roberts sought to explain that the additional remedial action contained in the second report was the only material difference between the reports and contended that the remaining changes were inconsequential. Both Ms Roberts and Mr Dlamini suggested that the first report was merely a draft and that the report dated 10 October is the only official report.

[65] There are a number of difficulties, apart from its hearsay nature, with the explanation. Firstly, the first report does not contain any suggestion that it was intended to be a draft. Secondly, Ms Mkhwebane, who signed both reports, has consistently failed to provide an explanation, when called upon to do so in the face of very serious allegations about her conduct. As I have said, she, as the decision-maker, is the only person who can explain the reasons for her appending her signature to the first report and why she decided to change it. Thirdly, the first report was not an internal document

[63] *The President (CC)* para [121]
[64] *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer, South African Social Security Agency, And Others* 2014 (1) SA 604 (CC) para [87-88]

and it was not disputed that it was published to the world at large under the signature of Ms Mkhwebane on the PP's website. It recorded, *inter alia*, as follows:

> "1. **INTRODUCTION**
>
> 1.1 This is a report of the Public Protector issued in terms of section 182(1)(b) of the Constitution of the Republic of South Africa, 1996 (Constitution) and published in terms of section 8(1) of the Public Protector Act, 23 of 1994 (Public Protector Act).[65]
>
> 1.2 The report is submitted in terms of section 8(3) of the Public Protector Act to the following people to note the outcome of investigation and the remedial action taken:
> …"[66]

[66] Once it had been published on her website the report became final.[67] The affect thereof is that the decision cannot be revoked or varied by the decision-maker[68]. In the result, she did not have the authority or the competence to add further remedial relief or to change factual findings in her second report dated 10 October 2021 and for that reason alone it should be set aside. In the absence of an explanation by Ms Mkhwebane for her publishing the first report the attempted suggestions by Ms Roberts

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[65] Section 8(1) is set out at fn 5

[66] Section 8(3) provides:
"(3) The findings of an investigation by the Public Protector shall, when he or she deems it fit, but as soon as possible, be made available to the complainant and to any person implicated thereby."

[67] *MEC for Health, Province of Eastern Cape NO and Another v Kirland Investments (Pty) Ltd t/a Eye & Laser Institute* 2014 (3) SA 219 (SCA) at [15]; and *MEC for Health, Eastern Cape and Another v Kirland Investments (Pty) Ltd* 2014 (3) SA 481 (CC)

[68] *Retail Motor Vehicle Industry Organisation and Another v The Minister of Water and Environmental Affairs and Another* 2014 (3) SA 251 (SCA) at [23]

and Mr Dlamini that it had been published by mistake are unconvincing. Even if it were true it cannot change the fact that it was published and that it was then final.

[67] I have recorded before that the change effected to the findings in the report are not insignificant. I shall consider the substance of the change below under the *audi alteram partem.*

(d) Audi alteram partem

[68] In *Traub*[69] Corbett CJ described the principle of *audi alteram partem* thus:

> "The maxim *audi alteram partem* expresses a principle of natural justice which is part of our law. The classic formulations of the principle state that when a statute empowers a public official or body to give a decision prejudicially affecting an individual in his liberty or property or existing rights, the latter has a right to be heard before the decision is taken … unless the statute expressly or by implication indicates the contrary."

[69] The principle is integral to the rule of law and to s 33 of the Constitution. Section 7(9) of the Act gives effect to the principle. Thus, the Constitutional Court in *The President (CC)*[70] explained that

> "[w]hen the Public Protector contemplates taking remedial action against the subject of an investigation, that subject is entitled to an opportunity to make representations on the envisaged remedial action. For a proper opportunity to be given, the Public Protector must sufficiently describe the remedial action in question to enable the affected person to make meaningful representations."

[69] *Administrator, Transvaal and Others v Traub and Others* [1989] 4 All SA 924 (AD) at 928
[70] para [126]

[70] In this instance the PP did issue a notice in terms of s 7(9) of the Act to affected persons. However, as I have said, the remedial action contained in paragraph 7.1.3[71] was added subsequently without any notice to any of the affected parties to enable them to make representations. The purpose of this additional remedial measure is not immediately apparent, but clearly had a potentially damaging effect on both Mr Madikizela and Mr Mabuyane (and possibly the MLM) in the face of the imminent local government elections. The failure in itself is fatal to the remedial action.

[71] Moreover, in respect of the second question the notice in terms of s 7(9) concluded:

> "15.2.1 The origin of the R2.2 million paid into the account of Mthombeni Projects (Pty) Ltd could not be established with certainty from the evidence obtained during the investigation, to date. However, the evidence indicates that there may have been contraventions of the Prevention of Organised Crime Act 121 of 1998 and/or Prevention and Combatting of Corrupt Activities Act 12 of 2004 in respect of this payment and the subsequent distribution of the amount."

[72] I have considered earlier the competence of the PP and her findings in respect of POCA and the PCCA. She was not competent to investigate the second question under s 182 of the Constitution or s 6(4)(a)(iv) of the Act unless it could be established that it related to public money.[72] The first sentence of the proposed finding constituted an admission that the investigation fell outside of her competence.

[71] Quoted in full in para [13] of this judgment
[72] *The President (GP)* para [98] and s 6(4)(c)(iv)

[73] However, in her first report, without any further notice to any of the affected persons, she changed her conclusion to:

> "6.2.1 The allegation that an amount of R2.2. million (Two million, two hundred thousand rand) that originated from the ECPG[73] was paid into the account of Mthombeni Projects (Pty) Ltd by Key Spirit Trading 218 is substantiated. However, due to the private nature of the subsequent transactions by Mthombeni Projects (Pty) Ltd it was not possible to conclude within the mandate of the Public Protector, whether the money was misappropriated or whether any person improperly benefited from it."

[74] She said that she had received reports from the FIC dated 14 July 2021 and 16 July 2021[74] which she explained revealed that an amount of R38 388 672,93 had been paid to Key Spirit by the ECDoT approximately a week before the R2.2 million payment referred to in the second question. She did not make a finding that there was any impropriety in the payment or that it was not due to Key Spirit. In respect of the subsequent management of the money she recognised that it was not in her competence to investigate further.

[75] However, in her second report this material finding was significantly changed without any reference to any of the affected parties and, apparently without any further evidence, to read:

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[73] Eastern Cape Provincial Government
[74] The notice in terms of s 7(9) was dated 16 June 2021

'6.2.1 The allegation that an amount of R2,2 million (Two million, two hundred thousand rand) that originated from ECPG was paid into the account of Mthombeni Project (Pty) Ltd by Key Spirit Trading 218 is substantiated.

6.2.2 It was noted that Key Spirit Trading 218 CC's ABSA bank account was funded or received payment of **R38 388 672.93** directly from Eastern Cape Provincial Government Department of Transport as referenced NPF CREDIT TREAS/IBS on 30 August 2018.

6.2.3 On 11 August 2018, Key Spirit Trading 218 CC, transferred R2 200 000.00 (Two Million, Two Hundred Thousand) to MTHOMBENI PROJECTS (PTY) LTD as referenced "*Colis Roof Sheet*".'

[76] These changes are not insignificant. The fact that a large sum of money may have been paid to Key Spirit by the ECDoT does not render the amount "public money" in the hands of Key Spirit, unless the payment had been tainted in some way. She made no such finding. In any event, as I have said there is no reference to any FIC reports in the s 7(9) notice nor was any subsequent opportunity granted to any of the affected persons, either before the first report or the second report, to respond thereto. The content of the FIC reports are not reflected in the reports nor is it explained why the PP considered that the amount of R2.2 million originated from public funds. Ms Baloyi on behalf of the PP, argued that the PP was not required to provide implicated persons with all her source documentation when affording them an opportunity to make representations. I shall accept, for purposes of this judgment, that the contention is correct, but it is not an answer to Mr Madikizela's complaint. In the *President (CC)*[75] it was held:

[75] para [123]

> "Whenever an individual is implicated during the course of an investigation, the Public Protector is obliged to afford such person an opportunity to respond to the implicating evidence, if the implication may be detrimental to the person or if a finding adverse to him or her is anticipated."

[77] The content of the FIC reports is critical to the conclusion that the R2.2 million was public money. If it was not, then the PP had no competence to proceed further under s 6(4)(a)(iv) of the Act.[76] What is required is that the PP must provide sufficient particularity of the nature of the information and a reason for it justifying the anticipated finding. She was obliged to afford Mr Madikizela and Mr Mabuyane an opportunity to respond to the FIC reports and its alleged incriminating information. She failed to do so. Again, this is fatal to her findings in the second question in her report.

(e) The rule 53 record

[76] As I have said the PP claimed to have relied on reports from the FIC in respect of the second question. In respect of the first question, too, she said that she received a report from the FIC dated 28 June 2021. I have set out earlier the litigation history and the endeavours of the applicants to obtain a full record from the PP. In respect of the second question, these reports formed the sole basis for her conclusion that the R2.2 million paid to Mthombeni had originated from public funds. As I have demonstrated the finding is essential to her investigation. None of these reports were included in the rule 53 record and to date they have not been produced, hence the contention on behalf of Mr Madikizela that the PP did not consider them.

[76] I have dealt earlier with the nebulous findings in respect of PCCA.

[77] In response, Mr Dlamini contended, as I have said, that the PP was not obliged to mention the Financial Intelligence Reports in the s 7(9) notice and he contended that the reports could not be made public because they are not public documents. The reports were only received after the PP had signed off on the s 7(9) notices and could not have been included, but that is no answer. As a result of the reports, she decided that a different finding was justified that had serious implications for Mr Madikizela and Mr Mabuyane.

[78] The purpose of the rule to provide a copy of the full record of the proceedings is primarily intended to operate in favour of and benefit an applicant in review proceedings and it has been held that they should not be deprived of the benefit of this procedural right unless there is clear justification therefor.[77] It has also been held that compliance with rule 53 regarding the provision of a complete record is not just a procedural process, but a substantive requirement which serves to ensure that the substance of the decision is properly put to the fore.[78] The purpose of the record is not solely to assist the applicant, but it is to enable the court fully to assess the lawfulness of the decision-making process. Thus, in *Turnbull-Jackson*[79] the Constitutional Court said:

> "Undeniably, a rule 53 record is an invaluable tool in the review process. It may help: shed light on what happened and why; give the lie to unfounded ex post facto (after the fact) justification of the decision under review; in the substantiation of as yet not

[77] *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660D-E; *Helen Suzman Foundation v Judicial Service Commission* 2018 (4) SA 1 (CC) at 9F

[78] *General Council of the Bar of the Bar v Jiba and Others* 2017 (2) SA 122 (GP) at 161I-162D (the decision was overturned on appeal, but not on this point, in *Jiba v General Council of the Bar* (unreported SCA case number 141/17 dated 10 July 2018) [2018] ALL SA 622 (SCA); 2019 (1) SA 130 (SCA)

[79] *Turnball-Jackson v Hibiscus Coast Municipality and Others* 2014 (6) SA 592 (CC) at 608C-D

> fully substantiated grounds of review; in giving support to the decision-maker's stance; and in the performance of the reviewing court's function."

[79] Without a record a court cannot perform its constitutionally entrenched review function, with the result that the litigant's rights to a fair public hearing before a court, in terms of s 34 of the Constitution, is infringed.[80] In order for the rule to fulfil its purpose of ensuring that all relevant material is placed before court, it is self-evident that all portions of the record relevant to the decision in question should be made available.[81]

[80] The mere fact that the FIC may claim confidentiality in respect of their communications to the PP is not sufficient for her to escape her obligation. In *Tulip*[82] the Constitutional Court explained:

> "A court cannot simply accept that, because a third party claims confidentiality, confidentiality exists. Tulip has not shown a general duty of confidentiality in law between a principal and a courier, or a consignor and a consignee, to support confidentiality flowing from Brinks' statement. Nor has Tulip demonstrated confidentiality by providing a contract with terms creating a confidentiality obligation as to the documents. Therefore both arguments relating to factual confidentiality are untenable."

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[80] *Helen Suzman Foundation* at 10B-C

[81] *Ekuphumleni Resort (Pty) Ltd and Another v Gambling and Betting Board, Eastern Cape and Others* 2010 (1) SA 228 (E) para [9]; and *Public Protector v South African Reserve Bank* 2019 (6) SA 253 (CC) para [185]

[82] *Tulip Diamonds FZE v Minister of Justice and Constitutional Development and Others* 2013 (2) SACR 443 (CC) para [37]

[81] In this case, the FIC indicated to the PP that their report may not be used as evidence in her investigation and that the purpose thereof was for her to gather other evidence. She chose to rely on the reports in order to establish a fundamental requirement for her investigation of the second question. Having done so, she was obliged to afford those implicated a meaningful opportunity to be heard in respect of the information contained in those reports. She could have done so without disclosing the report itself and the failure to do so is fatal.[83] Her failure to afford the parties the opportunity to be heard on these issues render her investigation procedurally unfair and violated their rights in terms of s 33 of the Constitution. Her failure to provide the reports as part of the record infringed on their rights in terms of s 34 of the Constitution.

Conclusion

[82] I alluded earlier[84] to s 181 of the Constitution which requires of the PP to act independently, impartially and to exercise her powers and to perform her functions without fear, favour or prejudice. The applicants contended that she breached this duty and acted in bad faith. It is disturbing that Ms Mkhwebane did not respond personally to numerous accusations made attacking the integrity of her investigation. An explanation was undeniably called for and, as I have said, she was the only person who could respond to these accusations. The effect is that the allegations of bad faith, of failing to apply her mind and of acting with an ulterior motive remain uncontested.[85]

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[83] *Zondi v The MEC for Traditional and Local Government Affairs* 2005 (3) SA 589 (CC) para [112]; and *The President (CC)* para [130]
[84] para [29]
[85] *Vere NO* para [87]

[83] Ms Mkhwebane had been charged of intentionally exceeding her jurisdiction in investigating possible offences of POCA. She signed her reports just weeks after the Constitutional Court judgment in the *President (CC)*. She must have known that her investigation of offences under POCA was not within her competence. Her failure to provide any explanation for her signing two different reports is disturbing and gives credence to the charge that she did not apply her mind to content. The argument advanced at the hearing that Mr Dlamini in fact drafted the reports further bolsters the conclusion, and the release of her report with vague suspicions of unidentified offences under the PCCA just weeks before the local government elections raises significant questions. The report itself demonstrates serious errors which justify the review and setting aside of both reports.

Costs

[84] The costs attendant on the rule 30A remains for decision. The suggestion that the presentation of a supplementary record (which is still not complete) a few days prior to the argument of the application renders the question of costs moot is clearly not acceptable. Mr Madikizela was entitled to the costs of the rule 30A application.

[85] In addition, the application of Mr Madikizela to review and set aside the reports had been duly enrolled for hearing on 16 September 2022 and was ready to proceed when the PP, at the eleventh hour, brought the application to consolidate the three applications. The time set to respond to the application postdated the date set for the hearing of Mr Madikizela's application. Mr Madikizela resisted the consolidation on the

grounds that his matter had been enrolled, costs had been incurred and that he was ready to proceed. In response the PP brought a separate application for the postponement of his review application. A postponement of his application was necessary in view of the consolidation. Both parties contended that they are entitled to the costs occasioned by the consolidation and the postponement which were reserved. I consider that the costs were occasioned by the last minute application for consolidation, which could have occurred much earlier. In the result it would be appropriate for the PP to pay Mr Madikizela's costs of the application for consolidation and the postponement on 16 September 2022.

[86] I have considered the applications to strike out earlier. Mr Madikizela's application was well-founded and he is entitled to the costs occasioned thereby. The striking-out application on behalf of the applicants in case number 818/2021 falls to be dismissed and the PP is entitled to recover her costs occasioned by the application.

[87] In respect of the review application none of the applicants had sought a punitive costs order in their papers and I consider it appropriate that the costs should follow the result in accordance with the ordinary rule. These matters involved complicated issues of law and the costs of two counsel was justified in each case.

[88] In the result, the following order is made:

1. In case number 800/2021:

(a) The report of the first respondent dated 8 October 2021 is reviewed and set aside and declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and invalid.

(b) The report of the first respondent dated 28 September 2021 is reviewed and set aside and declared to be inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid.

(c) The first respondent is ordered to pay the applicant's costs of the application, including the costs occasioned by consolidation of the applications and the postponement of the application on 16 September 2022, such costs to include the costs of two counsel.

(d) The first respondent is ordered to pay the costs of the interlocutory rule 30A application.

(e) The averments contained in the affidavit of Mr Vusumuzi Dlamini dated 14 July 2022 at paragraphs 19, 80, 81, 169, 173, 240.3 and 244.1 are struck out on the basis that they constitute inadmissible hearsay evidence.

(f) The averments contained in the affidavit of Ms Sarah Kate Roberts dated 22 February 2022 at paragraphs 7, 17 and 48 are struck out on the basis that they constitute inadmissible hearsay evidence.

(g) The costs of the strike out application shall be paid by the first respondent, such costs to include the costs of two counsel.

2. In case number 802/2021:

(a) The report of the first respondent, number 49/2021/22 (dated 28 September 2021 and reissued dated 8 October 2021), is reviewed and set aside and declared to be inconsistent with the Constitution of the Republic of South Africa, 1996, and invalid.

(b) The first respondent is ordered to pay the applicant's costs of the application, including the costs of two counsel.

3. In case number 818/2021:

(a) The report of the first respondent, number 49/2021/22 (dated 28 September 2021 and reissued dated 8 October 2021), is reviewed and set aside and declared to be inconsistent with the Constitution of the Republic of South Africa, 1996 and is invalid.

(b) The first respondent is ordered to pay the applicants' costs of the application, such costs to include the costs of two counsel.

(c) The application to strike out is dismissed with costs.

J W EKSTEEN
JUDGE OF THE HIGH COURT

Appearances:

Case No.: 800/2021

For Applicants: Adv A Katz SC and Adv K Perumalsamy instructed by Mvuzo Notyesi Incorporated c/o Mbaleni & Associates, King William's Town

For 1st Respondent: Adv E Baloyi-Mere SC and Adv N Jiba instructed by Gray Moodliar Inc c/o Gordon McCune Attorneys, King William's Town

Case No.: 802/2021

For Applicants: Adv A M Bodlani SC and Adv M Salukazana instructed by Sakhela Inc, East London

For 1st Respondent: Adv E Baloyi-Mere SC and Adv N Jiba instructed by Gray Moodliar Inc c/o Gordon McCune Attorneys, King William's Town

Case No.: 818/2021

For Applicants: Adv A M Bodlani SC and Adv Z Mashiya instructed by N Z Mtshabe Incorporated, Mthatha

For 1st Respondent: Adv E Baloyi-Mere SC and Adv N Jiba instructed by Gray Moodliar Inc c/o Gordon McCune Attorneys, King William's Town