IN THE HIGH COURT OF SOUTH AFRICA

(WESTERN CAPE DIVISION, CAPE TOWN)

CASE NUMBER: 1054/2024

In the matter between:

ECONOMIC FREEDOM FIGHTERS	Applicant
and	
PARLIAMENT OF THE REPUBLIC OF SA	First Respondent
SPEAKER OF THE NATIONAL ASSEMBLY	Second Respondent
CHAIRPERSON OF THE NATIONAL COUNCIL OF PROVINCES	Third Respondent
PRESIDENT OF THE REPUBLIC OF SA	Fourth Respondent
AFRICAN NATIONAL CONGRESS	Fifth Respondent
DEMOCRATIC ALLIANCE	Sixth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Seventh Respondent
AL JAMA-AH PARTY	Eight Respondent

AFRICAN INDEPENDENT CONGRESS	Ninth Respondent
AFRICAN TRANSFORMATION MOVEMENT	Tenth Respondent
CONGRESS OF THE PEOPLE	Eleventh Respondent
FREEDOM FRONT PLUS	Twelfth Respondent
GOOD PARTY	Thirteenth Respondent
INKATHA FREEDOM PARTY	Fourteenth Respondent
NATIONAL FREEDOM PARTY	Fifteenth Respondent
PAN AFRICANIST CONGRESS OF AZANIA	Sixteenth Respondent
UNITED DEMOCRATIC MOVEMENT	Seventeenth Respondent

JUDGMENT DELIVERED ELECTRONICALLY ON 06 FEBRUARY 2024

KUSEVITSKY J

Introduction

[1] This is an application brought on an urgent basis whereby the Applicant seeks an interim interdict to restrain and interdict the First Respondent ("Parliament"), from implementing chapters 1 to 2 B of the Joint Rules of Parliament, 6th Edition 2023 ("the Joint Rules or the impugned rules") which was adopted on 6 December 2023. The Applicant seeks an order that the interim interdict operate with immediate effect pending the outcome and final determination of Part B of the application wherein the Applicant will seek to declare the impugned rules to be unconstitutional, unlawful and

of no force and effect and/or to the extent necessary, reviewing and setting aside the impugned Joint Rules. Only the First, Second and Third Respondent's have opposed this application. The President has abided the decision of the court.

[2] The first issue to be disposed of is whether the Applicant has satisfied the court that it is entitled to the relief sought on an urgent basis. It is common cause that the Applicant is desirous of having a determination of Part A before the Opening of Parliament and the State of the Nation Address ("SONA"), which is three business days away. Essentially, the effect of the impugned rules would mean, as alleged by the Applicant, that its right to *inter alia* exercise freedom of speech at the upcoming SONA would be severely curtailed if the Joint Rules are not challenged.

[3] The adoption of the Joint Rules is intricately linked to the question of urgency. I will therefore first deal with the adoption thereof. Sections 45(1), 57(1) and 70(1) of the Constitution empowers Parliament to determine and control its internal arrangements, proceedings and procedures, and to make rules and orders concerning its internal business. Parliament consists of two 'Houses', the National Assembly ("NA") and the National Council of Provinces ("NCOP").[1] Both the NA and the NCOP participate in the legislative process in the manner set out in the Constitution. Both Houses have rules which regulate their internal processes.[2] Section 45(1) makes provision for both Houses to establish a joint rules committee to make rules and orders concerning the joint business of the Assembly and Council including rules and orders to determine procedures to facilitate the legislative

[1] s 42(1) of the Constitution

[2] s 57(1) in respect of the National Assembly and s 70(1) in respect of the NCOP

process including setting a time limit for completing any step in the process[3]; to establish joint committees composed of representatives from both of the Assembly and the Council to consider and report on Bills envisaged in sections 74 and 75 that are referred to such committee[4] and to regulate the business of the joint rules committee[5]. The NA and NCOP Rules must provide for the participation in the proceedings of the National Assembly and NCOP and its committees of minority parties represented in a manner consistent with democracy.[6]

[4] The President and any member of the Cabinet who is not a member of the NA may attend, and may speak in the Assembly, but may not vote[7]. Cabinet members and Deputy Ministers may attend, and may speak in the NCOP, but may not vote.[8] The President may summon Parliament to an extraordinary sitting at any time to conduct special business[9] and in terms of the Powers and functions the President, is responsible for summoning the NA, and the NCOP or Parliament to an extraordinary sitting to conduct special business[10].

[5] Section 58 provides Privilege for Cabinet members and members of the National Assembly and they have, subject to its rules and orders, freedom of speech in the Assembly and are not liable to civil or criminal proceedings, arrest,

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[3] s 45 (1)(a)
[4] s 45(1)(b)
[5] s 45(1)(d)(i)
[6] s 57(2)(b) and 70(2)(b)
[7] s 54
[8] s 66(1)
[9] s 42(5)
[10] s 84 (2)(d)

imprisonment or damages for anything that they have said in, produced before or submitted to the Assembly or any of its committees.[11]

[6] On 12 October 2023, the National Assembly and National Council of Provinces, Fifth session, Sixth Parliament, announced a Joint Sitting of the NA and NCOP on Thursday, 08 February 2024 at 19:00 in order to deliver the State of the Nation Address to Parliament. Parliament's guide to SONA sets out the prerogatives and objectives of SONA. I will highlight a few. SONA is called in terms of s 42(5) of the Constitution by the President. It is a joint sitting of the two Houses of Parliament and one of the rare occasions that bring together the three arms of the State under one roof. SONA affords the President an opportunity to speak to the nation on the general state of South Africa, to reflect on a wide range of political, economic and social matters within the domestic and global contexts, to account to the nation on the work of Government and to set out the Government's program of action. It is also a tradition that the President make key Government announcements during this important joint sitting of Parliament.

[7] Key is the fact that SONA is a ceremonial sitting of the two Houses of Parliament that is called specifically for the President to deliver his SONA; thus no other business may be considered on this day. During the week following the SONA, a debate of approximately two days is held on the SONA. The President is thereafter afforded an opportunity to reply to the debate on the third day, thus closing the debate. According to the guidelines, this is one of the major general debates of the parliamentary year.

[11] s 58 (1)(a), (b)(i)and (ii)

The adoption of the Joint Rules

[8] On 21 October 2016, the Sub-Committee on Review of National Assembly Rules held a workshop to discuss amendments to the Joint Rules which arose from the 9th Edition of the National Assembly Rules. During the remaining months of 2016, further meetings of the Sub-Committee took place, in which the prioritisation of the review of the Joint Rules on Order in Public meetings and Rules of Debate were noted. During 2017, a draft amendment to chapters 1 to 2A of the Joint Rules were circulated to members. Draft Rule 7A dealt with the President's Address at the Opening of Parliament and Rule 7B dealt with the President's State of the Nation Address. Although draft rules 7A(3) and 7B(3) provided that no member may interrupt the President's address, members retained the right to interrupt the President by raising a point of order or a question of privilege. Further meetings were held in which the members expressed the need for the amendments to be concluded before the end of that year; an updated report was considered by the Sub-Committee on those amendments and members supported most clauses as were presented.

[9] Bar one meeting in 2019, the next recoded meeting as contained in the founding affidavit occurred on 25 April 2023 where the Joint Rules Committee met to discuss the circumstances regarding the removal of members of Parliament during SONA 2023. It was also noted that a second item had been added to the agenda for discussion namely the Framework for Review of the Joint Rules. In that meeting, a

member of the Applicant is on record querying the manner in which that item was before the Joint Rules Committee. In response, the Chairperson indicated that the committee had to sit to refer the Framework to the sub-committee, that a review of the NCOP rules was occurring and the process was being done in the same manner as the Framework for review of Joint Rules. The Applicant in the founding affidavit then concluded on the afore basis, that the review of the Joint Rules and ultimately the adoption of chapters 1 to 2A of the Joint Rules was 'deliberately designed to target and victimise the Applicant for expressing political speech in Parliament.'

[10] On 17 November 2023, the Sub-Committee held a meeting to discuss its report on the proposed impugned Joint Rules. Members of the Applicant did not attend the meeting ostensibly because its Chief-whip, Mr Floyd Shivambu had been campaigning in KwaZulu-Natal and attending to voter registration that took place on 18 – 19 November 2023. It noted that the Applicant could not re-arrange their campaign responsibilities at short notice.

[11] The Sub-Committee also proposed that the proposed chapters be proceeded with and finalised by the Sixth Parliament and not stand over for decision by the incoming Seventh Parliament. The Applicant remarked that there were sentiments that Parliament should not go into the next SONA without the impugned Joint Rules being in place.

[12] On 1 December 2023, the Joint Rules Committee considered the Sub-Committee's report on the impugned rules. The Applicant stated that its members were also not present at this meeting, since Mr Shivambu was unavailable because

he had to attend a central elections meeting, followed by a caucus meeting. On 4 December 2023, Parliament conveyed that the first report of the Joint Rules Committee on the proposed amendments to chapters 1 to 2B of the Joint Rules would be tabled in the NA and the NCOP.

[13] On 6 December 2023, the report was tabled before the National Assembly. At this meeting, the Applicant noted its objection. A total of 297 members voted in favour thereof and 23 members of the Applicant voted against the adoption. There were no abstentions. On 8 December 2023, both the National Assembly and the National Council of Provinces purportedly adopted the Joint Rules Committees report and consequently, the impugned Joint Rules.

Urgency

[14] The Applicant contends that the Joint Rules were purportedly adopted by both Houses on 6 December 2023 and will be applied when the President delivers his State of the Nation Address ‘early 2024’. Surprisingly the Applicant does not specify a date even though it knows that the upcoming SONA is scheduled to take place on 8 February 2024. The Applicant contends that it briefed its legal team on 7 December 2023, however despite the fact that various consultations were had with its legal team, they were unable to finalise the application because ‘EFF members and members of the legal team were closing offices.’ Compounded to this, the majority of its counsel team were abroad for work purposes.

[15] The Respondents on the other hand contend that the urgency is self-created given the time frames elucidated above. Instructively, it contends that in 2019, the Sixth parliament undertook to complete the rule amendments before Parliament prorogued[12] in 2024; that in response to the violent actions of the Applicant during SONA 2023, on 25 April 2023 the Joint Rules committee undertook to amend Chapter 1 and 2 before the next SONA in February 2024 and that staff were instructed to draft proposals and present to the Joint Sub-Committee feedback on 17 November 2023. The Joint Sub-Committee reconvened on 24 November 2023 to consider submissions by the political parties. The Respondents contend that not only did the Applicant choose not to participate, but at no stage did it object to these Chapters being adopted.

[16] In argument, the Applicant denied that it had not objected to the proposed amendments and referenced the ostensible objection by its member to the addition of the inclusion of the proposed Framework of amendments to the agenda. This, they argue, evidences the objection by the Applicant of its opposition to the impugned rule amendments. In my view, this argument is unsustainable. It is clear that the objection raised by the member of the Applicant related to the *inclusion* of the item to the agenda for discussion and not an objection to the substance of the proposed joint rule amendments. The further justification of the Applicant's wilful non attendance of the meetings to debate the proposed amendments of the rules is unacceptable. The voter registration weekend during November was an invitation to all eligible citizens of South Africa to register to vote, yet all of the political parties with the lion-share of proportional votes deemed it important to participate in the deliberations of the Sub-Committee. For the Applicant to suggest that its member, Mr

[12] 'discontinued a session of parliament'

Shivambo was too busy to attend to these deliberations is startling. Furthermore, seemingly the meeting of the Joint Rules Committee on 1 December 2023 was held virtually. Notably, the Applicant again chose not to participate and neither, according to the Respondents, did they render an apology. Thus, as a consequence of its own inaction and decision not to participate in these deliberations, it was thus no surprise that it did not succeed in a vote against the adoption of a process in which it wilfully and manifestly on their own volition, chose to ignore and refrained from participating in.

[17] This application was launched on 17 January 2024. Ostensibly the members of the Applicant had returned from holiday and their legal team was now available to finalise this application. The matter was set down for hearing on Friday, 2 February 2024, three court days before SONA. Courts have consistently held that it is not here at the convenience of counsel and the unavailability of a party's chosen legal representative is not an excuse for the late filing of an ostensibly urgent application. This approach and attitude is indicative of an absolute disregard for the functioning of courts and the resources available to it. Thus due to the supine conduct of the Applicant, this court has now been put under immense pressure to deliberate on the relief sought by it.

[18] Mr Jamie for Respondents argued that this was the third matter that had been brought to this court on an urgent basis for adjudication. In the prior matters, the courts, including a full bench, berated the Applicant in the manner in which that urgent application had been brought, and its wilful non-compliance with a court order. Those matters were struck from the roll. On the face of it, this matter falls within that category. The urgency created is manifestly self-created. I am also

mindful of the discretion that an urgent Judge has to hear a matter. In my view, even if it is apparent that a matter should be struck, a court should always exercise its discretion given the facts, nature and importance of the matter at hand and to exercise that discretion in favour of an applicant if the interests of justice demands that same be heard. It goes without saying that each case should be determined on its own facts and it is against this backdrop that I will adjudicate the merits of the application, notwithstanding the clear deficiencies on urgency as elucidated above.

Submissions by the Applicant on the merits

[19] According to the founding affidavit, the Applicant contends that at the hearing of Part B, it will argue that the impugned joint rules are unconstitutional. The basis for the unconstitutionality is that the Joint Rules committee failed to apply its mind when it adopted the impugned rules because it was not quorate during its deliberations and therefore was incapable in law to produce a report to serve for adoption by both Houses. Secondly, that the impugned rules have been improperly used to achieve an ulterior political purpose. This is supported by the manner in which the impugned rules were adopted - in a piece-meal fashion where only chapters 1 to 2A were allegedly pushed through for adoption; and the extremely short period of time in which the impugned rules where brought before the National Assembly and the National Council of Provinces for adoption. It contends that the audit process for the rules had started as far back as 2016 and that Parliament had ample time to complete the revisions and adoption of the Joint Rules in its entirety.

[20] It argues that the impugned rules are designed to specifically target the Applicant and its members and to prevent them from participating in Parliament. The

Applicant also believes that the impugned rules was fast-tracked in this piece-meal fashion ‘so that the ruling party can claim an unfair advantage against the Applicant in the upcoming elections”. This, it alleges is an improper political motive by the ruling party.

[21] The other complaints essentially all amount to the contention that the impugned rules amount to a violation of members’ free speech in Parliament. In this regard the Applicant avers that Joint Rules 14(3) and 15(3) violates a member’s right to free speech in Parliament. These impugned Joint Rules provide that no member may interrupt the President either when he delivers the opening of Parliament address or the State of the Nation Address. They argue that members retain their right to freedom of speech when the President delivers the Opening Address and the State of the Nation address and that ‘*it is necessary for the President’s address to be robustly engaged with*’. They contend that the fact that the President is making the address does not mean that members right to free speech in Parliament is temporarily removed or rendered non-existent. This also means that members are precluded from rising on a point of order. Thus the effect of this, the contention goes, is that the impugned rules have the effect of insulating the President’s address.

Submissions by the Respondent

[22] The Respondents admit that the National Assembly Rules and the Rules of the National Council of Provinces had to be amended on several occasions as a result of the Applicant’s unprecedented deviations from established practice since 2014. In fact, since SONA 2015, the Applicant has, with premeditation, each year attempted to collapse SONA by persistently raising repetitive and spurious points of

order or privilege as a means to prevent the President from addressing Parliament. In doing so, the Applicant wilfully ignores the instructions of the Presiding Officers when they attempt to maintain and re-establish order in the proceedings. The Respondents contend that the Applicant, a party that holds just 10.7 % of seats in the Sixth Parliament resorts to unlawful self help, seeks to subvert the rule of law with the sole intention of collapsing sittings of Parliament, thereby preventing the latter from fulfilling its constitutional obligations.

[23] The Respondents also listed the history of disruptions by the Applicant since the start of the Fifth Parliament in 2014. It contended that the Applicant has a manifest disregard for the Rules and Orders, and parliamentary conventions and practices. They relay a 2014 news briefing in which the leader of the Applicant stated that his party would not follow parliamentary rules ‘created by colonialist and imperialists’. The Respondents contend, given that since 1994 there has been a plurality of parties which represent divergent political views, debates in parliament since the advent of democracy have often been vigorous and robust, but prior to 2014, sittings have never been violent, or the authority of the Chair disrespected and ignored.

[24] They contend that while the Applicant chose not to attend the meeting of 17 November 2023, pursuant thereto copies of proposed draft and amendments of Chapter 1 to 2 B were circulated to all members of the Joint Sub-Committee on Review of Joint Rules. The said email informed the members the following:

"During the meeting of the Subcommittee on Friday, members made certain proposals/requests for consideration by the secretariat. Following a meeting of officials, the affected rules were phrased as follows:

1. **Joint Rule 2(1): Unforseen eventualities**: The Speaker and the Chairperson [of the Council], acting jointly, may give a ruling or make a ruling in respect of any [**matter**] eventuality for which the Joint Rules do not provide.

   We have retained the original sub-rule, as requested by members.

2. **Joint Rule 7A: Opening of Parliament**: Joint Rule 7A was added back, as requested by members, to distinguish the Opening of Parliament after an election from the President's annual State of nation Address at the beginning of an annual session. It reads as follows:

   (1) At the commencement of the first session of a Parliament after its election, the President may deliver an Opening Address at a date and time to be determined by the Speaker and the Chairperson in accordance with Joint Rule 9.
   (2) The Speaker and the Chairperson must publish the Opening Address in the Minutes of Proceedings and place it on the Order Paper for debate.
   (3) No member may interrupt the President whilst delivering the opening of Parliament address.

3. **Joint Rule 7B3:** The section now reads: "No member may interrupt the President whilst delivering the State of the nation Address".

   We have removed reference to a point of order or a point of privilege to accommodate members' concerns. (Note that the same wording has been included for **Joint Rule 7A(3**).

   Please find attached revised proposals."

The basis for an interim interdict

[25] Ordinarily, an applicant need to satisfy a court that it has a prima facie right, namely *prima facie* proof of facts that establish the existence of a right in terms of substantive law; that it has a well-grounded apprehension of irreparable harm if the interim relief is not granted and the ultimate relief is eventually granted; that the balance of convenience favours the granting of an interim interdict and that the applicant has no other satisfactory remedy.

[26] The Constitutional Court in *Economic Freedom Fighters v Gordhan and Others* 2020 (6) SA 325 (CC) [13] referring to *OUTA*[14] raised the issue of whether the grant of an interim interdict impermissibly trenched upon the constitutional precept of separation of powers.

[27] Furthermore, that court established in *OUTA* that when granting an interim interdict against a state entity and, in effect, restraining the use of public power, courts should adroitly 'consider the probable impact of the restraining order on the constitutional and statutory powers and duties of the state functionary or organ of state against which the interim order is sought. The court also restated that the interim interdict test, as set out in *OUTA*, enjoins a court before granting an interdict against an organ of state to ensure that the order 'promotes the objects, spirit and purport of the Constitution'. This invariably attracts various constitutional issues into adjudication, including possible issues regarding separation of powers, the constitutional duties of the parties that may be frustrated by the order and any constitutional rights implicated in the matter.[15]

[28] It is also accepted that before a court may grant an interim interdict, it must be satisfied that the applicant for an interdict has good prospects of success in the main review. The claim for review must be based on strong grounds which are likely to succeed. This requires the court adjudicating the interdict application to peek into the grounds of review raised in the main review application and assess their strength. It is only if a court is convinced that the review is likely to succeed that it may appropriately grant the interdict. The rationale is that an interdict which prevents a

[13] Gordhan at para 37

[14] National Treasury and Others v Opposition to Urban Tolling Alliance and Others 2012 (11) BCLR 1148 (CC)

[15] Gordhan at para 40

functionary from exercising public power conferred on it impacts on the separation of powers and should therefore only be granted in exceptional circumstances. [16]

[29] That court further held that:

> "[47] An interim interdict is a temporary order that aims to protect the rights of an applicant, pending the outcome of a main application or action. It attempts to preserve or restore the status quo until a final decision relating to the rights of the parties can be made by the review court in the main application. As a result, it is not a final determination of the rights of the parties. It bears stressing that the grant of an interim interdict does not, and should not, affect the review court's decision when making its final decision and should not have an effect on the determination of the rights in the main application. The purpose of an interdict is to provide an applicant with adequate and effective temporary relief.
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> [48] We were cautioned by this court in OUTA that, where legislative or executive power will be transgressed and thwarted by an interim interdict, an interim interdict should only be granted in the clearest of cases and after careful consideration of the possible harm to the separation of powers principle. Essentially, a court must carefully scrutinize whether granting an interdict will disrupt executive or legislative functions, thus implicating the separation and distribution of power as envisaged by law. In that instance, an interim interdict would only be granted in exceptional cases in which a strong case for that relief has been made out." *(Footnotes omitted.)* ("*Own emphasis*")

[30] In *Glenister v President of the Republic of South Africa and Others* 2009 (1) SA 287 (CC), the court held as follows:

> "[19] The applicant submits that 'it is a necessary component of the doctrine of separation of powers that the courts have a constitutional obligation to ensure that the executive acts within the boundaries of legality'. The applicant relied on the following statement of Ngcobo J speaking for the majority of this court in *Doctors for Life*:
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> > Courts have traditionally resisted intrusions into the internal procedures of other branches of government. They have done this out of comity and, in particular, out of respect for the principle of separation of powers. But at the same time they have claimed the right as well as the duty to intervene in order to prevent the violation of the Constitution. To reconcile their judicial role to uphold the Constitution, on the one hand, and the need to respect the other branches of government, on the other hand, Courts have developed a 'settled practice' or general rule of jurisdiction that governs judicial intervention in the legislative process.
> >
> > The basic position appears to be that, as a general matter, where the flaw in the law-making process will result in the resulting law being invalid, Courts take the view that the appropriate time to intervene is after the completion of the legislative process.

[16] Ibid at para 42

> The appropriate remedy is to have the resulting law declared invalid. However, there are exceptions to this judicially developed rule or 'settled practice'. Where immediate intervention is called for in order to prevent the violation of the Constitution and the rule of law, courts will intervene and grant immediate relief. But intervention will occur in exceptional cases, such as where an aggrieved person cannot be afforded substantial relief once the process is completed because the underlying conduct would have achieved its object." *(Footnotes omitted.)*

[31] It furthermore noted:

"[33] In our constitutional democracy, the courts are the ultimate guardians of the Constitution. They not only have the right to intervene in order to prevent the violation of the Constitution, they also have the duty to do so. It is in the performance of this role that courts are more likely to confront the question of whether to venture into the domain of other branches of government and the extent of such intervention. It is a necessary component of the doctrine of separation of powers that courts have a constitutional obligation to ensure that the exercise of power by other branches of government occurs within constitutional bounds. But even in these circumstances, courts must observe the limits of their powers.

[32] In *Doctors for Life*[17] the court made these points:

> The constitutional principle of separation of powers requires that other branches of government refrain from interfering in parliamentary proceedings. This principle is not simply an abstract notion; it is reflected in the very structure of our government. The structure of the provisions entrusting and separating powers between the legislative, executive and judicial branches reflects the concept of separation of powers. The principle 'has important consequences for the way in which and the institutions by which power can be exercised'. Courts must be conscious of the vital limits on judicial authority and the Constitution's design to leave certain matters to other branches of government. They too must observe the constitutional limits of their authority. This means that the Judiciary should not interfere in the processes of other branches of government unless to do so is mandated by the Constitution.
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> But under our constitutional democracy, the Constitution is the supreme law. It is binding on all branches of government and no less on Parliament. When it exercises its legislative authority, Parliament 'must act in accordance with, and within the limits of, the Constitution', and the supremacy of the Constitution requires that 'the obligations imposed by it must be fulfilled'. Courts are required by the Constitution 'to ensure that all branches of government act within the law' and fulfil their constitutional obligations. This court 'has been given the responsibility of being the ultimate guardian of the Constitution and its values'. Section 167(4)(e), in particular, entrusts this court with the power to ensure that Parliament fulfils its constitutional obligations. This section gives meaning to the supremacy clause, which requires that 'the obligations imposed by [the Constitution] must be fulfilled'. It would therefore require clear language of the Constitution to deprive this court of its jurisdiction to enforce the Constitution.

[17] 2004 (4) SA 125 (CC)

(Footnotes omitted.) (“Own emphasis”)

[33] In support for the contention that the impugned rules are a violation of member’s free speech, the Applicant refers to impugned rules 14(3) and 15(3) which provide that no member may interrupt the President either when he delivers the opening of Parliament address or the State of the Nation Address. The Applicant also complains that should this not be adhered to, members face removal from the Chamber as provided for under Joint Rule 42. Rule 42(3) provides that a member may be removed with the use of force, by the Serjeant-at Arms, the Usher of the Black Rod and the Parliamentary Protection Services. The Applicant contends that the use of force means that a member may be assaulted in the process of being removed from the Chamber and that this violates a member’s constitutional rights to be free from all forms of violence whether from public or private sources.

[34] The Respondents contend that the aforesaid amendments were never conceivably contemplated that a member of parliament would ever disregard and disrespect the decorum of Parliament. They also contend that the rules sought to be impugned do not represent a significant departure to existing parliamentary practice and procedure or the Rules of Parliament which existed since at least 2015. Instead, they argue, the new rules merely codify existing parliamentary practice and procedure. Given the time constraints, I will only highlight a few; in terms of the new rules, no member may interrupt the President whilst delivering the State of the Nation Address. In the old rules, members were not to interrupt the member who had the floor, except to call attention to a point of order or a question of privilege. In terms of the new rules, members must comply with rulings made by presiding officers and a ruling given by a presiding officer is final. The old rule provided that a ruling from

the Chair is final and may not be challenged or questioned. For that reason, a Presiding Officer may refuse to hear further points of order on a matter once a ruling has been given, particularly in the case of a considered ruling. The new rules also provide that Presiding officers must (a) maintain and preserve the order of and the proper decorum in a joint sitting, and uphold the dignity and good name of parliament; (b) ensure the strict observance of these Joint Rules. I am not in agreement with the Applicant's contention that it will suffer irreparable harm at SONA where they will be at risk of being ordered to leave the chamber. Members ran that risk of expulsion under the old and similarly under the new rules - such risk was and is only manifest once a member disobey the rules and is asked to leave the Chamber. Thus logic dictates that a member will only be ordered to leave the Chamber if that member has not complied with the Rules. Logic further dictates that if that member wilfully disobeys the Rules by refusing to leave the Chamber, then their removal will be facilitated by the requisite controlling bodies as mentioned *supra*. Thus the ostensible harm which Applicant complains of would only manifest as a direct result of the Applicant's own wilful actions if it chooses to ignore or not be bound the the Joint Rules. One can hardly imagine a situation where the party who claims an entitlement to disobey rules seeks protection in the form of an interim interdict against the party or institution against whom such disobedience is perpetrated.

[35] The Respondents further contend that a suspension of Chapter 1 to 2A of the Joint Rules would leave the Presiding Officers powerless in a joint sitting to *inter alia* prevent members from acting in a deliberately disruptive or grossly disorderly manner, including by raising spurious and repeated point of order and privilege

intended merely to disrupt the proceedings. The balance of convenience thus does not favour the Applicant.

[36] In *Glenister v President of the Republic of South Africa and Others* 2009 (1) SA 287, the court held that intervention in the legislative process would be appropriate only if an applicant was able to show that he would have no effective remedy once the legislative process was complete, in other words he had to show that the resultant harm would be material and irreversible. In *casu*, this is not a legislative process in the sense that Parliament is in the process of deliberating on a Bill where the legislative process is still underway. I can find no reason why this court should intervene at this stage and venture into the domain of Parliament. There is also no reason for this court in this application to usurp the powers of Parliament in such a pre-emptive manner in which Applicant seeks this court to do.

[37] *Glenister* also holds that the Constitution is replete with provisions that make plain that ordinarily a court will not interfere with the functioning of Parliament.[18] That court also referred to Ngobo J in *Doctors for Life*[19] who noted, without deciding with regard to the exceptions to the principle that a court may not intervene in the legislative process, the following at para 41:

> On the one hand, it raises the question of the competence of this court to interfere with the autonomy of Parliament to regulate its internal proceedings and, on the other, it raises the question of the duty of this court to enforce the Constitution, in particular, to ensure that the law-making process conforms to the Constitution.

[38] If the application is not successful, no harm would befall the Applicant unless it is self created. They will still have an opportunity to challenge the constitutionality

[18] Glenister at para 39, 302D

[19] Doctors for Life International v Speaker of the National Assembly and Others 2006 (6) SA 416 (CC) at paras 68-69

of the impugned rules. They will also have an opportunity to be more specific about the rules challenged because as it stands now, all the rules in Chapter 1 to 2 A is sought to be interdicted from application. However, if the application is successful, all of the provisions under attack would have to be interdicted from implementation in circumstances where the Applicant has failed to deal with every single rule in the Chapter to warrant such drastic relief. That however is not all, should the interim interdict be granted, very real harm may befall the Respondents. As already indicated, the Respondents have indicated that the amendment of the rules were necessitated as a result of the unprecedented violence perpetrated by the members of the Applicant. In fact, the submission by the Respondents is that the members of the Applicant once stormed the stage upon which the President was conducting his Address. In any civilised democracy, the safety and protection of its President is paramount. In fact, the court takes judicial notice that most members of Parliament are afforded personal protection. It would therefore be an anomaly to suggest that measures are not put in place to protect the President whilst he is addressing the Nation. For the Applicant to suggest that the Rules protecting the integrity of the institution of Parliament and the safety of its members trumps its right to ‘robust’ engagement with the President, is disingenuous.

[39] The Respondents finally contend that the Applicant’s resort to disruptive and lawlessness, allegedly to hold the President accountable as they see fit, is contrary to the rule of law and the tenets of democracy, which are the founding values of the Constitution. I am fully in agreement with this contention.

[40] Curiously, the Applicant does not provide any evidence to substantiate the claim that the amended rules were only adopted as a means to 'target' them. No evidence is provided to say why it is only the Applicant that is targeted, given the majority of other political parties would also be subject to the impugned rules. There is also the contention that the adoption of the impugned rules is designed for an ulterior purpose. I can see no correlation between the adoption of the amended rules and a perceived ulterior political motive. There is also no link between the Applicant and the impugned rules and on what basis the Applicant contends that only it, is being targeted. Counsel for Applicant could also not refer me to any. Thus bar the allegation, there are no facts contained in the founding papers to support the conclusion that Applicant wishes me to make. It is also not for me to speculate. All political parties are subject to the same Joint Rules in the respective Houses and at Joint Sittings. The Applicant's contention that it and only it is entitled to '*robustly engage with the President*', when all of the remaining political parties with the majority of proportional votes have agreed to the amended Joint Rules as evidenced in the correspondence, is not sustainable.

[41] Since the Parliamentary address is ceremonial in nature, attended by all three arms of State together with *inter alia* local and foreign dignitaries, the Applicant in my view cannot claim that the right to free speech has been stifled, since as I have already stated, that all political parties have an opportunity soon thereafter to engage and debate with the President about the content of the Speech. The SONA is precisely that, an Address to the Nation. It is not a debate, it is not engagement, it is not a deliberation. It is the outlining of what the President envisages for the upcoming year, its challenges and its plan to fulfil those lofty ideals. Applicant and

the rest of the political parties are then entitled to, after a consideration of the substance of the Address, to engage in meaningful debate thereafter in the appropriate forum. There, political parties would then be able to fulfil their constitutional mandate on behalf of their electorate. One can hardly imagine any meaningful engagement with a speaker about the content of their speech whilst they are in the process of delivering same, much less 'robustly so'. The insistence by only the Applicant to do so at that specific time during the President's Address and without knowledge of the substance of the Address creates an inescapable conclusion that it is more about theatrics and disruption, than meaningful engagement. Thus no irreparable harm is engaged since the Applicant has known about this procedure since its participation in Government since 2014.

[42] Lastly, there was an attempt by the Applicant to argue that the adoption of the impugned rules in the Sixth parliament was not competent since, as the argument went, if an issued raised was not finalised in the Fifth Parliament, then it subsequently lapses. The Respondents contended that this issue was not raised in the founding papers and they were now prejudiced because had it been raised, they would have been able to comprehensively deal with those allegations. The only reference to this aspect is the averment by the Applicant in paragraphs 47 and 56 of its founding affidavit that '*It was noted that the request of the Chairperson of the Joint Rules Committee, the Joint Sub-Committee would prioritise amendments to Chapters 1 to 2A of the Joint Rules and that the aim would be to finalise Chapters 1 to 2A before the end of the year and the remaining chapters would be finalised before the end of the Fifth Parliament*….*The Sub-Committee also proposed that chapters 1, 2 and 2A be proceeded with and finalised by the Sixth Parliament and*

not stand over for decision by the incoming Seventh Parliament." I am in agreement that it does not behove an applicant to argue at the hearing an issue that has not been substantively placed in issue or raised as a point of dispute in their founding papers.

[43] For all of the reasons advanced, I am of the view that the Applicant has failed to satisfy the requirements for the relief sought. The courts have reiterated the separation of powers and the duty and obligation for all arms of State to at all costs, be mindful thereof, and not usurp its powers. It is also up to that organ of state to regulate its own procedures and processes. There are therefore no exceptional circumstances present which would allow me to breach the separation of powers doctrine. The Applicant has also not made out a case, which it sought orally during argument, for a suspension of the rules.

[44] In the circumstances I make the following Order:

1. The Application for an interim interdict is dismissed with costs, including the costs of two counsel.

DS KUSEVITSKY

JUDGE OF THE HIGH COURT

Appearances for Applicant	**Adv. Kameel Premid**
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