

"1041RS"

**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

Case no.: 393/2015

WCHC case no.: 12497/2014

In the matter between:

<b>HLAUDI MOTSOENENG</b>	First Appellant
<b>THE MINISTER OF COMMUNICATIONS</b>	Second Appellant
<b>THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED</b>	Third Appellant

and

<b>DEMOCRATIC ALLIANCE</b>	First Respondent
<b>THE BOARD OF DIRECTORS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED</b>	Second Respondent
<b>THE CHAIRPERSON BOARD OF DIRECTORS OF THE SOUTH AFRICAN BROADCASTING CORPORATION SOC LIMITED</b>	Third Respondent
<b>THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	Fourth Respondent
<b>THE SPEAKER OF THE ASSEMBLY</b>	Fifth Respondent
<b>THE PORTFOLIO COMMITTEE FOR COMMUNICATIONS OF THE NATIONAL ASSEMBLY</b>	Sixth Respondent
<b>THE PUBLIC PROTECTOR</b>	Seventh Respondent

**NOTICE OF MOTION**

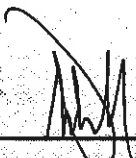
**TAKE NOTICE** that **CORRUPTION WATCH** ('the Applicant') hereby makes application to the President of the Supreme Court of Appeal for an order in the following terms:

1. That the Applicant is admitted as an *amicus curiae* in this matter;
2. That the Applicant is granted the right to present oral and written argument at the hearing of this matter;
3. Costs in the event of this application being opposed;
4. Further and/or alternative relief.

**TAKE NOTICE** further that the affidavit of **DAVID LEWIS**, together with annexures thereto, will be used in support of this application.

**TAKE NOTICE** further that the Applicant will accept notice and service of all documents in these proceedings at the address set out below.

DATED AT **BLOEMFONTEIN** ON THIS **10** DAY OF JULY 2015.

  
\_\_\_\_\_  
**CLIFFE DEKKER HOFMEYR**  
Attorneys for Corruption Watch  
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Johannesburg  
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Fax: (011) 562 1669  
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c/o **MATSEPES INC**  
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Email: [cynthial@matsepes.co.za](mailto:cynthial@matsepes.co.za)

**TO: THE REGISTRAR**  
Supreme Court of Appeal  
**BLOEMFONTEIN**

**AND TO: BOKWA ATTORNEYS**  
Attorneys for the First Appellant  
121 President Reitz Avenue  
**BLOEMFONTEIN**  
Tel: (051) 448 6369  
Email: lienkie@bokwa.co.za  
Ref: FJ Mostert

13 JUL 2015

9:35

**AND TO: THE OFFICE OF THE STATE ATTORNEY**  
Attorneys for the Second Appellant  
11<sup>th</sup> Floor, Fedsure Building  
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**BLOEMFONTEIN**  
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STAATSPROKUREUR  
P/SAK X20630 P/BAG  
10-07-2015  
BLOEMFONTEIN  
TEL: 051 400 4300  
STATE ATTORNEY

10400

**AND TO: RAMPAI ATTORNEYS**  
Attorneys for the Third Appellant  
7<sup>th</sup> Floor, Forum Building  
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**BLOEMFONTEIN**  
Tel: (051) 430 10651  
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Ref: KJ Masoha

10.07.2015  
11h11

**RAMPAI ATTORNEYS**  
63 KELLNER PARK • KELLNER STREET  
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**AND TO: SYMINGTON & DE KOK**  
Attorneys for the First Respondent  
169B Nelson Mandela Drive, Westdene  
**BLOEMFONTEIN**  
Tel: 051 505 6600  
Ref: De Buys Human / L Venter

ONTVANG SONDER BENADELING  
VAN REGTE  
10/7/2015  
SYMINGTON & DE KOK

**AND TO: HONEY ATTORNEYS**  
Attorneys for the Seventh Respondent  
Honey Chambers  
Norridge Mall  
Kenneth Kaunda Road  
**BLOEMFONTEIN**  
Tel: (051) 403 6600  
Ref: B.M. Jones

10h45 Nij  
**HONEY PROKUREURS**  
**ATTORNEYS**  
PROKUREURS, TRANSPORTBESORGFERS  
& NOTARIESE  
MEMBERS NORTHBRIDGE MALL  
KAUNDA ROAD BLOEMFONTEIN



**IN THE SUPREME COURT OF APPEAL OF SOUTH AFRICA**

Case no.: 393/2015

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In the matter between:

**HLAUDI MOTSOENENG**

First Appellant

**THE MINISTER OF COMMUNICATIONS**

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**THE SOUTH AFRICAN BROADCASTING CORPORATION**

Third Appellant

**SOC LIMITED**

and

**DEMOCRATIC ALLIANCE**

First Respondent

**THE BOARD OF DIRECTORS OF THE**

Second Respondent

**SOUTH AFRICAN BROADCASTING CORPORATION**

**SOC LIMITED**

**THE CHAIRPERSON BOARD OF DIRECTORS OF THE**

Third Respondent

**SOUTH AFRICAN BROADCASTING CORPORATION**

**SOC LIMITED**

**THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA** Fourth Respondent

**THE SPEAKER OF THE ASSEMBLY**

Fifth Respondent

**THE PORTFOLIO COMMITTEE FOR**

Sixth Respondent

**COMMUNICATIONS OF THE NATIONAL ASSEMBLY**

**THE PUBLIC PROTECTOR**

Seventh Respondent

**FOUNDING AFFIDAVIT**

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I, the undersigned,

**DAVID LEWIS**

do hereby make oath and state that:

1. I am the executive director of Corruption Watch.
2. Corruption Watch is a civil society organisation duly registered as a non-profit company in terms of the company laws of the Republic of South Africa with its head office at 4<sup>th</sup> Floor, Rosebank Corner, 191 Jan Smuts Avenue, Parktown North.
3. I am duly authorised to bring this application on behalf of Corruption Watch. I attach a copy of the signed resolution dated 27 November 2014 marked "DL1".
4. The facts contained in this affidavit are both true and correct, and within my personal knowledge unless the context provides otherwise. Where I make submission of a legal nature I do so on the advice of Corruption Watch's legal representatives.
5. Corruption Watch brings this application in terms of Rule 16(4) read with Rule 6(8) of the Supreme Court of Appeal Rules for leave to intervene as an *amicus curiae* in the appeal under case number 393/2015, in order to present written and oral submissions to this Court.
6. On 29 June 2015 Corruption Watch addressed letters to Mr Motsoeneng, the Minister of Communications, the South African Broadcasting Corporation

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(SOC) Limited ('SABC'), the Democratic Alliance ('DA') and the Public Protector, requesting consent to intervene in the matter and setting out an overview of the submissions that it intends to advance if granted consent to intervene. I attach copies of the letters marked "DL2" to "DL6".

7. On 2 July 2015 the SABC refused consent. It did so on the basis that in its view the submissions that Corruption Watch intends to make are the same as those advanced by the Public Protector. I attach a copy of the letter written on behalf of the SABC marked "DL7".
8. On 3 July 2015, the Minister of Communications refused consent on the basis that: (i) the issues that Corruption Watch seeks to canvas are in its view not issues before this Court on appeal; and (ii) the Public Protector's application for leave to appeal was refused by the court *a quo*. I attach a copy of the letter written on behalf of the Minister of Communications marked "DL8".
9. The DA and the Public Protector consented to Corruption Watch's proposed intervention. Copies of their letters are attached marked "DL9" and "DL10", respectively. Mr Motsoeneng has not responded to Corruption Watch's letter of 29 June 2015.

#### **CORRUPTION WATCH'S INTEREST**

10. Corruption Watch is a non-profit civil society organisation. It is independent and has no political or business alignment. Corruption Watch's ultimate objectives include fighting the rising tide of corruption and the abuse of public

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funds in South Africa, and promoting transparency and accountability to protect the beneficiaries of public goods and services.

11. Corruption Watch is governed by an independent board of directors comprising: me (executive director), Ms Vuyiseca Dubula, Mr Vusi Pikoli, Advocate Adila Hassam, Ms Mary Metcalfe, Ms Alice Brown, Ms Emma Mashinini, Mr Zwelinzima Vavi, Mr Mavuso Msimang, Archbishop Njongonkulu Ndungane and former Justice of the Constitutional Court, Ms Kate O'Regan.
12. Confronting corruption requires an active and engaged citizenry that is prepared to hold to account leaders who wield public power and control public resources, including those in the private sector who supply and distribute these resources. The investigation and exposure of malfeasance and corruption in the public sector is one of Corruption Watch's core objectives.
13. To this end, Corruption Watch endeavours to discharge its mandate of exposing corruption and the abuse of public funds, seeking to ensure that those who engage in corruption are held accountable and by developing and, importantly, fostering tools with which civil society can utilise to defend itself from *inter alia* the abuse of public resources intended for the use of millions of disadvantaged South Africans.
14. Corruption Watch does so in a number of ways, including utilising its available resources to investigate reports of corruption. In certain instances this entails Corruption Watch working with the Public Protector and law enforcement agencies.

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15. Corruption Watch is aware that the Public Protector's office addresses a high volume of large and small complaints of corruption. Her office has raised significantly the profile of corruption in South Africa. The Public Protector has publicly disclosed the outcomes of investigations as well as any non-compliance with any resultant recommendations. The effect is to create an environment in which corruption is recognised, reported and resisted. The Public Protector's efforts in the anti-corruption space can be singled out as a primary catalyst for improving accountability within all spheres of government.
  
16. Corruption Watch's efforts to fight corruption benefit significantly from the efforts of the Public Protector. In particular:
  - 16.1. Corruption Watch is able to consult the reports of the Public Protector to identify trends and 'hotspots' of corruption, thus enabling us to gain strategic direction for our work;
  
  - 16.2. Corruption Watch is able to collate those recommendations made by the Public Protector which are not adhered to by the state or state officials, and use our communications channels to expose non-compliance and demand accountability;
  
  - 16.3. In some instances, Corruption Watch refers reports of corruption that we receive to the Public Protector. In many cases, although a complainant reports the incidents to state law enforcement agencies, the only state body that institutes investigations is the Public Protector.

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17. Corruption Watch has a legal advocacy and policy unit that, where appropriate, will litigate in order to ensure that the laws of South Africa are developed and applied in a manner that serves to assist the fight against corruption through fostering transparency and accountability of both public and private persons or entities.
18. In this case, Corruption Watch has resolved to seek to intervene in relation to a narrow issue before this Court concerning the status of the Public Protector's remedial directions upon a finding of malfeasance or corruption in public administration.
19. Corruption Watch is concerned that the finding of the court *a quo* that the Public Protector's remedial directions are not binding, and may be rejected where the relevant organ of state has 'cogent reasons' for doing so, undermines the Public Protector's mandate to fight malfeasance and corruption in the public sector. Corruption Watch is also respectfully of the view, for reasons set out later in this affidavit, that the court *a quo*'s findings in this regard are incorrect.
20. The effect of the judgment of court *a quo* is that if the state, or a state official, rejects the Public Protector's remedial directions (with or without providing cogent reasons for doing so), those directions will not be obeyed unless a court reviews and sets aside the decision of the organ of state or state official to reject the directions.
21. The practical effect of the judgment is that non-compliance by the state or state officials with the Public Protector's remedial directions will not be visited with any consequences unless challenged by private parties in the courts. This

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undermines the ability of the Public Protector to hold the state and its officials accountable.

22. Private litigants, or the Public Protector, will have to approach the courts to review and set aside the decisions of the state or state officials to reject the Public Protector's remedial directions in order to enforce them. The practical obstacles to applications of this nature, not least of which being the cost of litigation, are considerable.

23. Corruption Watch accordingly has a clear interest in the status of the Public Protector's remedial directions, and it seeks leave to intervene to advance submissions relating to that issue only. It does so in its own interest, and in the public interest.

#### **CORRUPTION WATCH'S POSITION IN THESE PROCEEDINGS**

24. In keeping with its limited involvement as an *amicus curiae*, Corruption Watch does not take a position in relation to the merits of the relief sought by the DA in the court *a quo*.

25. Corruption Watch's position in these proceedings is that it endorses the Public Protector's contention that remedial directions issued by her office as regards the state and its officials are binding, subject to judicial review.

26. However, as I explain below, the submissions that Corruption Watch intends to advance are different to those advanced by the parties, including those advanced by the Public Protector, and on that basis it is submitted they will be of

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assistance to this Court. In addition to the novelty of the argument, Corruption Watch will draw the legislative history of the relevant legislation into its interpretation of the Public Protector's powers.

#### **SUMMARY OF CORRUPTION WATCH'S INTENDED SUBMISSIONS**

27. Corruption Watch has considered the submissions advanced by the parties in the court *a quo*, including those advanced by the Public Protector.
28. If it is admitted as an *amicus curiae*, the submissions that Corruption Watch proposes to make are different to those previously advanced by the parties. These submissions concern a novel interpretation of s 182(1)(c) of the Constitution not addressed directly by any of the parties, or dealt with by the court *a quo*.
29. In summary, if admitted an *amicus curiae*, Corruption Watch intends to advance the following submissions:
  - 29.1. The Public Protector is established to strengthen constitutional democracy. The principal function of her office is to protect the public against the abuse of power by the state. This includes malfeasance and corruption on the part of the state or state officials.
  - 29.2. The source of the Public Protector's powers to investigate and act upon corruption and malfeasance on the part of the state or a state official is located in s 182 of the Constitution.

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- 29.3. Section 182(1)(c) of the Constitution confers the power on the Public Protector to *"take appropriate remedial action"* in the face of a finding of malfeasance by the state or a state official. This necessarily includes taking *effective* remedial action, which includes issuing remedial directions that are binding on the state and its officials.
- 29.4. The Public Protector's remedial powers are reinforced by s 181(3) of the Constitution, which provides that all other organs of state must, through legislative and other measures, *"assist and protect"* the Public Protector to ensure the effective functioning of her office.
- 29.5. The Public Protector's remedial powers were included in the Final Constitution, and are to be contrasted to the 'soft' remedial powers previously located in s 112(b) of the Interim Constitution which provided for the Public Protector, following an investigation, *"to endeavour, in his or her sole discretion, to resolve any dispute or rectify any act or omission by – (i) mediation, conciliation or negotiation; (ii) advising, where necessary, any complainant regarding remedies; or (iii) any other means that may be expedient in the circumstances"*.
- 29.6. The 'soft' remedial powers under the Interim Constitution were enacted in ss 6(4)(b), (c) and (d) of the Public Protector Act, 23 of 1994 ('the Act'), which was enacted before the Final Constitution, and thus before the conferral of the powers in s 182(1)(c) of the Constitution on the Public Protector. A subsequent amendment to the

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Act did not amend the Public Protector's remedial powers to give effect to s 182(1)(c) of the Constitution.

- 29.7. The power conferred on the Public Protector under s 182(1)(c) of the Constitution to take remedial action is conferred on her office directly, and is not subject to the Act. This is confirmed by s 182(2) of the Constitution, which provides that the Public Protector has the "additional" powers prescribed by national legislation (i.e. under the Act).
- 29.8. The Public Protector does not perform a judicial function. Her function is to investigate complaints of abuses of power by the state and its officials, and to remedy those abuses.
- 29.9. Section 182(1)(c) of the Constitution designates her office as the state institution that has the power to remedy wrongs committed by the state, or its officials.
30. It is for these reasons that if it is admitted as an *amicus curiae*, Corruption Watch will contend that the remedial directions issued by the Public Protector against organs of state and state officials are binding.
31. The submissions that Corruption Watch intends to advance are thus different from those made by the parties, concern a novel point of interpretation not canvassed in the court *a quo*, and are directly relevant to the issues before this Court on appeal.

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32. The Minister's contention that the status of the Public Protector's remedial powers is not an issue before this Court is plainly incorrect. It is a central issue before this Court. In this regard, the Minister's practice note filed in this appeal states that one of the constitutional issues raised in the appeal concerns "[t]he proper interpretation of the nature and extent of the powers of the Public Protector, and the effect of remedial powers made by her, in terms of section 181(1)(c) of the Constitution, and s 6 of the Public Protector Act, 23 of 1994". This is echoed in the practice notes filed by the other parties.

#### CONCLUSION

33. I submit that Corruption Watch has satisfied the requirements for admission as an *amicus curiae*.
34. I pray for orders admitting Corruption Watch as an *amicus curiae*, and permitting it to present written and oral argument, as per the notice of motion that accompanies this affidavit.

  
 \_\_\_\_\_  
 DAVID LEWIS

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn before me at Johannesburg on the 9<sup>th</sup> day of JULY 2015, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

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**COMMISSIONER OF OATH**

**Designation and Area:**

**Full Names:**

**PHUMZILE ELIZABETH SOKHELA  
COMMISSIONER OF OATHS  
PRACTISING ATTORNEY RSA  
7th FLOOR BRAAMFONTEIN CENTRE  
23 JORISSEN STREET  
TELEPHONE (011) 403-2766**

**Street Address:**

*2024*





**RESOLUTION OF THE BOARD OF DIRECTORS OF CORRUPTION WATCH (RF)**

**NPC**

**Registration No: K2011/116829/08**

**Resolution No:**


**The Board resolved that:**

1. Corruption Watch will launch an application in the relevant Court for their admission as *amicus curiae* in the matter of the *Democratic Alliance // The South African Broadcasting Corporation Limited & 8 Others* (Case number 12407/2014) as well as advance written and oral submissions upon being admitted as such.
2. Attorneys Cliffe Dekker Hofmeyr be appointed to represent Corruption Watch in the abovementioned proceedings in the relevant Court and that the said attorneys do all things necessary in the application on behalf of Corruption Watch.
3. David Lewis and Leanne Govindsamy be authorised to depose to such affidavits in the said proceedings on behalf of Corruption Watch, as may be required and further that they be authorised to give instructions from time to time as they deem necessary to the said attorneys in relation to the proceedings.

**THUS DONE AND SIGNED at BRAAMFONTEIN on 27 November 2014.**

  
\_\_\_\_\_  
ALICE LYNN BROWN

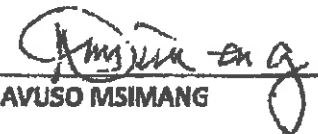
\_\_\_\_\_  
VUYISEKA DUBULA

  
\_\_\_\_\_  
ADILA HASSIM

  
\_\_\_\_\_  
DAVID HARRIS LEWIS

  
\_\_\_\_\_  
TANDI EMMA MASHININI

  
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MARY ELLEN METCALFE

  
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MAVUSO MSIMANG

  
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WINSTON NJONGO NDUNGANE

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CATHERINE MARY ELIZABETH O'REGAN

  
\_\_\_\_\_  
VUSUMUZI PATRICK PIKOLI

\_\_\_\_\_  
ZWELINZIMA JOSEPH VAVI

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- 7 In particular, Corruption Watch will make submissions to the effect that:
  - 7.1 Section 182(1)(c) of the Constitution empowers the Public Protector to take remedial action consequent upon a finding of impropriety or prejudice in the conduct of state affairs or public administration. This includes the power to direct an organ of state or state official to remedy any such impropriety or prejudice;
  - 7.2 This remedial action is binding on the organ of state or state official in question, subject to judicial review;
  - 7.3 Alternatively, section 182(1)(c) enjoins the legislature to confer on the Public Protector the power to take appropriate remedial action, including issuing remedial directives, which will bind the relevant organ of state or state official subject to judicial review; and
  - 7.4 To the extent that the Public Protector Act 23 of 1994 does not confer such remedial powers on the Public Protector, it should be declared inconsistent with the Constitution and Parliament should be called upon to remedy this deficiency.
- 8 Corruption Watch will argue that the foregoing is supported by: (I) the plain meaning of the relevant constitutional provisions; (II) the legislative history of these provisions; (III) the interpretations attributed by the courts to the pillars of South Africa's constitutional democracy, and the means that may be employed to preserve these.
- 9 If it is admitted, Corruption Watch accordingly intends to make submissions that it believes will assist the Court in making a proper determination of the status of the Public Protector's findings and recommendations. Given Corruption Watch's focus and experience, and having regard to the legal arguments raised by the parties to the litigation to date, these submissions are likely to be different from those of any of the parties.
- 10 Given the expedited time-frames in this matter, please advise us by close of business on Wednesday, 1 July 2015, whether your client consents to the intervention of our client as *amicus curiae*. We confirm that we will also approach the President of the Supreme Court of Appeal on an urgent basis for a directive as to the time periods for our client's proposed intervention. Corruption Watch will also seek leave to present oral argument at the hearing of this matter.
- 11 We look forward to hearing from you.

Yours faithfully



**TRICIA ERASMUS**  
**SENIOR ASSOCIATE, PRO BONO AND HUMAN RIGHTS**  
**CLIFFE SMITHS HOFFMEYER INC**

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- 7.4 To the extent that the Public Protector Act 23 of 1994 does not confer such remedial powers on the Public Protector, it should be declared inconsistent with the Constitution and Parliament should be called upon to remedy this deficiency.
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- 10 Given the expedited time-frames in this matter, please advise us by close of business on Wednesday, 1 July 2015, whether your client consents to the intervention of our client *amicus curiae*. We confirm that we will also approach the President of the Supreme Court of Appeal on an urgent basis for a directive as to the time periods for our client's proposed intervention. Corruption Watch will also seek leave to present oral argument at the hearing of this matter.
- 11 We look forward to hearing from you.

Yours faithfully

  
TRICIA ERASMUS  
SENIOR ASSOCIATE- PRO BONO AND HUMAN RIGHTS  
CLIFFE DEKKER HOFMEYR INC

PES *all*



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Also at Cape Town

Mr KJ Masocha  
Rampal Attorneys  
Attorneys for the Third Appellant

Per email: [info@rampalattorneys.co.za](mailto:info@rampalattorneys.co.za)  
CC: [info@malaypotorneys.co.za](mailto:info@malaypotorneys.co.za)

URGENT

Our Reference	J Cassele / T Erasmus
Account Number	01667394 / 9116433v1
Your Reference	KJ Masocha
Direct Line	(011) 682 1388
Direct Telex	(011) 682 1869
Direct Email	Tricia.Erasmus@dlacdh.com
Date	29 June 2015

Dear Sir

**REQUEST FOR CONSENT FOR INTERVENTION BY CORRUPTION WATCH AS AMICUS CURIAE: SOUTH AFRICAN BROADCASTING CORPORATION LIMITED V DEMOCRATIC ALLIANCE (WCHC CASE NO.: 12487/2014) (SCA CASE NO.:393/2015)**

- 1 We confirm that we act on behalf of Corruption Watch (RF) NPC ("Corruption Watch").
- 2 Corruption Watch is a non-profit civil society organisation. It is independent and it has no political or business alignment, and is governed by an independent board of directors.
- 3 Corruption Watch seeks to ensure that those who engage in corrupt activities are held accountable by developing and fostering tools for the public to report experiences of corruption. This includes the prevention of abuse by the state of its public powers.
- 4 One of the ways in which corrupt activities are investigated and perpetrators held accountable is through the office of the Public Protector. Corruption Watch therefore has an interest in the Public Protector's ability to take appropriate remedial action where he or she investigates and makes a finding of impropriety or prejudice in the conduct of state affairs or public administration.
- 5 As part of its mandate, Corruption Watch is authorised to litigate, including litigation as an *amicus curiae*. In this capacity, it seeks consent for admission as *amicus curiae* in respect of the above matter.
- 6 Corruption Watch seeks to intervene on the narrow legal issue of the status of the Public Protector's remedial directions.

CHAIRMAN AND PRESIDENT: GIBBY EXECUTIVE OFFICER: D W Ham DIRECTOR GENERAL OFFICER: M F Venter CHIEF FINANCIAL OFFICER: ES Burger

DIRECTORS: JORANESSBURG A Abo H Ahrli JA Aukema CD Bohl CA Dayley R Berman E Ester P Bhagatjee R Cornys GJ Dato TE Ehrhard H Burger CWJ Geyser M Ghoris GJ Dantel EP Dimpeter S de Vries ML de Preez L Erasmus BV Feber JJ Faria TS Fletcher L Fries T6 Fulmer F Galois MC Gideon BGE SS Goto J Govender AJ Houtzager G Haring WH Jacobs WH Jansen van Rensburg CM Jasselman JJA Jones TDM KGR J King V Kralman LJ Kruger J Lamb AM de Lange EE Loppin AG Louks BC Madsen Z Malaga G Mouton HW Munnis B Meyer WJ Michay R Moodley MBS Mouton EP O'Connor SJ Oosthuizen M Parnico A Pined JJ Pennington SH Pienaar V Pienar DE Potgieter AM Potgieter AH Pretorius AG Reid M Searles P Smit-Graham WTY Swank WHS Thyne NI van der Merwe JJ van Dyk WFS van Wyk NU van Wyk JG Webster DF Wilken JG Witzke DA Wilson E Williams LD Wilson JM Wills-Hardoon AD Yousie

DIRECTORS: CAPE TOWN AC Alexander RD Barendse TJ Brown MA Searley IER Goffin HC Dogut A de Lange LP Eysie GT Ford S Prins EP Pyle SAP Ste JY Dren AJ Havens AG Haring HJ Harington G Hirdley RG Horn B Immanuel JH Jacobs R Jago A Klerks M Lussing GCL Lutz RE Marcus SJ Meyer A Nicolini NW Nkomo J Nkomo FT Nelms G Orlif L Rhoads SB Rodgers BT Robinson EPA Stevens DM Thampson GY Williams TJ Winkler

EXECUTIVE CONSULTANTS: HG Cortese PV Donnell OH Ewing HD Jackson MI Jackson

CONSULTANTS: A Abertwistle JAG Bantifo ZU Kingston PF Nabe

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CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: ES Burger JA Cassele Z Omer CH Pienaar R van Esten MF Whelan B Williams

Offices: "Casselman" Cape Town Managing Partner

Cliffe Dekker Hofmeyr Inc, Reg No 2008/018025/21

Cliffe Dekker Hofmeyr is a member of DLA Piper Group, see website of local member

PES [Signature]

- 7 In particular, Corruption Watch will make submissions to the effect that:
- 7.1 Section 182(1)(e) of the Constitution empowers the Public Protector to take remedial action consequent upon a finding of impropriety or prejudice in the conduct of state affairs or public administration. This includes the power to direct an organ of state or state official to remedy any such impropriety or prejudice;
- 7.2 This remedial action is binding on the organ of state or state official in question, subject to judicial review;
- 7.3 Alternatively, section 182(1)(c) enjoins the legislature to confer on the Public Protector the power to take appropriate remedial action, including issuing remedial directives, which will bind the relevant organ of state or state official subject to judicial review; and
- 7.4 To the extent that the Public Protector Act 23 of 1994 does not confer such remedial powers on the Public Protector, it should be declared inconsistent with the Constitution and Parliament should be called upon to remedy this deficiency.
- 8 Corruption Watch will argue that the foregoing is supported by: (i) the plain meaning of the relevant constitutional provisions; (ii) the legislative history of these provisions; (iii) the interpretations attributed by the courts to the pillars of South Africa's constitutional democracy, and the means that may be employed to preserve these.
- 9 If it is admitted, Corruption Watch accordingly intends to make submissions that it believes will assist the Court in making a proper determination of the status of the Public Protector's findings and recommendations. Given Corruption Watch's focus and experience, and having regard to the legal arguments raised by the parties to the litigation to date, these submissions are likely to be different from those of any of the parties.
- 10 Given the expedited time-frames in this matter, please advise us by close of business on Wednesday, 1 July 2015, whether your client consents to the intervention of our client as *amicus curiae*. We confirm that we will also approach the President of the Supreme Court of Appeal on an urgent basis for a directive as to the time periods for our client's proposed intervention. Corruption Watch will also seek leave to present oral argument at the hearing of this matter.
- 11 We look forward to hearing from you.

Yours faithfully

  
TRICIA ERASMUS  
SENIOR ASSOCIATE, PRO BONO AND HUMAN RIGHTS  
CLIFF DEKKER HOEMEYR INC

PES 



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Also at Cape Town

Elzanne Jonker  
Minda Schapiro & Smith Inc  
Attorneys for the First Respondant

Per email: [Elzanne@mindex.co.za](mailto:Elzanne@mindex.co.za)

URGENT

Our Reference	J Cassette / T Erasmus
Account Number	01987394 / 9118442v1
Your Reference	E Jonker
Contact Line	(011) 582 1358
Contact Telefax	(011) 562 1669
Contact e-mail	<a href="mailto:Tricia.Erasmus@dlacdh.com">Tricia.Erasmus@dlacdh.com</a>
Date	29 June 2015

Dear Madam

**REQUEST FOR CONSENT FOR INTERVENTION BY CORRUPTION WATCH AS AMICUS CURIAE: SOUTH AFRICAN BROADCASTING CORPORATION LIMITED V DEMOCRATIC ALLIANCE (WCHC CASE NO.: 12497/2014) (SCA CASE NO.:393/2015)**

- 1 We confirm that we act on behalf of Corruption Watch (RF) NPC ("Corruption Watch").
- 2 Corruption Watch is a non-profit civil society organisation. It is independent and it has no political or business alignment, and is governed by an independent board of directors.
- 3 Corruption Watch seeks to ensure that those who engage in corrupt activities are held accountable by developing and fostering tools for the public to report experiences of corruption. This includes the prevention of abuse by the state of its public powers.
- 4 One of the ways in which corrupt activities are investigated and perpetrators held accountable is through the office of the Public Protector. Corruption Watch therefore has an interest in the Public Protector's ability to take appropriate remedial action where he or she investigates and makes a finding of impropriety or prejudice in the conduct of state affairs or public administration.
- 5 As part of its mandate, Corruption Watch is authorised to litigate, including litigation as an *amicus curiae*. In this capacity, it seeks consent for admission as *amicus curiae* in respect of the above matter.
- 6 Corruption Watch seeks to intervene on the narrow legal issue of the status of the Public Protector's remedial directions.

CHAMBERMAN/LEWY Pretoria: CHIEF EXECUTIVE OFFICER B Whittier CHIEF OPERATING OFFICER MF Whittier CHIEF FINANCIAL OFFICER BB Burger

DIRECTOR: JONASBERG A Also N Alid JA Aducci GO Beldt CA Bentley R Erasmus E Ester P Engelke R Bennet CJ Bots TE Edinger H Burger CHJ Chetty M Gertse DJ Dinko EF Dimpster B de Vries EL du Plessis L Erasmus BV Rober JJ Rols TB Ruetter L Prager TG Pieneman P Guitas EE Oelofse S CH SG Gora J Govender AJ Heiney QJ Honey WH Joubert WH Jansen Ransburg GA Janssens JCA Jones TTM KSB J King Y Klabon LJ Kruger J Labbe AS de Lange PE Leppan AB Lurie BG Maudslayi Z Mavros S Muzina MH Mwanza D Meyer WJ Molyneux R Mouton MB Mphahlele MP O'Connor SJ Oosthuizen H Pothoos A Pridg JS Pringleton GN Pinnar V Pless DA Plessel AM Pongratz JH Pretorius AB Reid H Esterhuysen P Strydom-Graham STV Swends WHH Thysa HR van der Merwe JJ van Dyk WPS van Wyk NJ van der Westhuizen KP Visser JG Vrede DA Wilson B Wilmans LD Wilson AJ Witte-Korffenaar MP Yzer

EXECUTIVE: GARET TONY AD Alexander RD Barendse TJ Bredas MA Brandy HR Collins HC Esop Arie Langa LF Esop GT Ford S Pardo DP Fyfe GAP Gie JW Groot AJ Hendriks AKH Heilberg FD Hesselberg GJ Hirdley RD Huis J Brouwer JH Jacobs R Jaga A Kalken JJ Loofting GC Lumb RE Mamas SE Steyer A Mouton MN Muller J Noye FT Norman S Orlitz L Pineda MG Rodgers BT Roodenrys BPA Strauss DS Thompson CIV Wilmans TJ Winstanley

EXECUTIVE CONSULTANTS: NS Oosthuizen CH Boring HS Jackson LG Joubert

CONSULTANTS: A Abernethy EVA Ebenhaer BJ Kingon FP Neco

CHIEF ACCOUNTANTS: G Schalkow-Schoups MA Bobel B Brown L Brunson K Gandy E Cheng HS Comie J de Vos VM Doornik L Engelbrecht T Erasmus TV Erasmus P Janz T Jordaan M Kessy JA Koga H Liang CJ Lewis M Looze NS Manganisa M Mhambane M Kja T Mouton CP Nator DJ Nkomo ON O'Connor AP Plessy KS Pless B Polakoff MA Potgieter JH Ripley-Dunn LJ Salt B Schneider BJ Sebra T Oultram PJ Toubekandis T Toon AJ Truitt M van Zeevi MP Ward HJ Zwane

CLIFFE DEKKER HOFMEYR SERVICES PROPRIETARY LIMITED DIRECTORS: BB Burger JA Cassette Z Omer CH Pienaar R van Eeden MF Whittier B Wilmans

South African - Dutch Cape Town Marketing Partner

City Office: Johannesburg Inc. Reg No 530801532321

Cliffe Decker Hofmeyr is a member of DLA Piper Group, an affiliate of local practices

PES [Signature]



- 7 In particular, Corruption Watch will make submissions to the effect that:
  - 7.1 Section 182(1)(c) of the Constitution empowers the Public Protector to take remedial action consequent upon a finding of impropriety or prejudice in the conduct of state affairs or public administration. This includes the power to direct an organ of state or state official to remedy any such impropriety or prejudice;
  - 7.2 This remedial action is binding on the organ of state or state official in question, subject to judicial review;
  - 7.3 Alternatively, section 182(1)(c) enjoins the legislature to confer on the Public Protector the power to take appropriate remedial action, including issuing remedial directives, which will bind the relevant organ of state or state official subject to judicial review; and
  - 7.4 To the extent that the Public Protector Act 23 of 1994 does not confer such remedial powers on the Public Protector, it should be declared inconsistent with the Constitution and Parliament should be called upon to remedy this deficiency.
- 8 Corruption Watch will argue that the foregoing is supported by: (i) the plain meaning of the relevant constitutional provisions; (ii) the legislative history of these provisions; (iii) the interpretations attributed by the courts to the pillars of South Africa's constitutional democracy, and the means that may be employed to preserve these.
- 9 If it is admitted, Corruption Watch accordingly intends to make submissions that it believes will assist the Court in making a proper determination of the status of the Public Protector's findings and recommendations. Given Corruption Watch's focus and experience, and having regard to the legal arguments raised by the parties to the litigation to date, these submissions are likely to be different from those of any of the parties.
- 10 Given the expedited time-frames in this matter, please advise us by close of business on Wednesday, 1 July 2015, whether your client consents to the intervention of our client as *amicus curiae*. We confirm that we will also approach the President of the Supreme Court of Appeal on an urgent basis for a directive as to the time periods for our client's proposed intervention. Corruption Watch will also seek leave to present oral argument at the hearing of this matter.
- 11 We look forward to hearing from you.

Yours faithfully

  
**TRICIA ERASMUS**  
**SENIOR ASSOCIATE: PRO BONO AND HUMAN RIGHTS**  
**CLIFF DEKKER HOFMEYR INC**

Res 

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Also at Cape Town

Andrew Molvar  
Adams & Adams Inc  
Attorneys for the Seventh Respondent

For email: Andrew.Molvar@adamsedams.com

URGENT

Our Ref: J Cassette / T Erasmus  
Account Number: D1087394 / 9116451v1  
Your Reference: Andrew Molvar  
Direct Line: (011) 582 1358  
Direct Telex: (011) 582 1888  
Direct e-mail: Tricia.Erasmus@dlacdh.com  
Date: 29 June 2015

Dear Sir

**REQUEST FOR CONSENT FOR INTERVENTION BY CORRUPTION WATCH AS AMICUS CURIAE: SOUTH AFRICAN BROADCASTING CORPORATION LIMITED V DEMOCRATIC ALLIANCE (WCHC CASE NO.: 12487/2014) (SCA CASE NO.: 393/2015)**

- 1 We confirm that we act on behalf of Corruption Watch (RF) NPC ("Corruption Watch").
- 2 Corruption Watch is a non-profit civil society organisation. It is independent and it has no political or business alignment, and is governed by an independent board of directors.
- 3 Corruption Watch seeks to ensure that those who engage in corrupt activities are held accountable by developing and fostering tools for the public to report experiences of corruption. This includes the prevention of abuse by the state of its public powers.
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- 5 As part of its mandate, Corruption Watch is authorised to litigate, including litigation as an *amicus curiae*. In this capacity, it seeks consent for admission as *amicus curiae* in respect of the above matter.
- 6 Corruption Watch seeks to intervene on the narrow legal issue of the status of the Public Protector's remedial directions.

GLOBAL LEAD: ANW Pretoria CHIEF EXECUTIVE OFFICER: S Welton CHIEF OPERATING OFFICER: MFW White CHIEF FINANCIAL OFFICER: ES Burger

DIRECTORS: JONAS FREEDUNG A Aben NABEN JA Anderson OD Baird CA Barclay R Bosman E Boxer P Ezeagwala R Domet GJ Bcha TE Bicker IN Bugar CWJ Chuter M Chwilo CJ Daniel EP Dompale B de Wier ML de Proos L Erasmus DV Fisher JJ Florin TS Fletcher L Frensch TG Furman F Gaton MZ Gubb S HJ HJ Gore J Gwerman AJ Hofmeyr G Honey WH Jacobs WH Jansen van Rensburg CM Jansen JCA Jansen TTB Kell J King Y Makman LJ Kruger J Latsky AM de Grange PEB Loope AG Louw BC Moolenaar Z Mphahlele G Mphahlele JN Mphahlele B Meyer WJ Mphahlele R Mphahlele MS Mphahlele BP O'Connor SJ Oosthuizen N Potho A Patel JG Perrenson GH Pienaar Y Pienaar DB Pienaar AM Pienaar AW Pienaar AG Reid M Sckozisa P Singh Chutani NNY Sivandi WSM Thoms HR van der Merwe JJ van Dyk WFS van Wyk MJ van Dyk JG Wepster SF Whitehead JG Whitehead DA Wilson B Williams LD Wilson MJ Wiso-Petersen SP Yessie

DIRECTORS: CAPE TOWN AG Alexander KD Erasmus TJ Swida MA Swinley SRT Coffin HD Engel A de Lange LP Egypt DT Ford S Frank CF Pyle SGP Ols JP Grant AJ Hearn AM Hofberg PB Macleod CJ Mordor RD Horn B Immetten JH Jacobs R Jago A Korten U Leung GC Lumb RE Mwanzi SI Meyer A Molman NNY Muller J Nkomo PT Nkomo G Orlor L Rhoads MB Rodgers BT Ruckstuhl BPA Skaane DM Thompson DW Williams TJ Whistler

EXECUTIVE CONSULTANTS: NS Coetzee PJ Connors CH Ewing NS Jackson MJ Jackson

CONSULTANTS: A Abceramide SAH Ebenitz EJ Kogon FF Kiba

SENIOR ASSOCIATES: G Bantsho-Bardoo MA Bosh B Brown L Brunton K Cadby E Cheng NS Compe J de Vos YH Dooden L Engelbrecht T Erasmus TV Erasmus P Jani Y Jordaan KJ Keedy JA King W Lang GJ Leno RJ Looz NS Marmolot N Mchutu N Mla T Moodley CP Muller DJ Ndlovu CM O'Connor AP Piny Ml Pits B Polakoff RA Proran JR Ripley-Evans LJ Sakie S Schneider RJ Sardo T Sillman FJ Tubbano T Tson M Tsvuich M van Zyl SA Vard M Zeeko

CAPE TOWN: DIRECTOR: MFW White PROPRIETARY LIMITED DIRECTORS: ES Burger JA Cassette Z Omer CH Pienaar R von Entsch MFW Whitehead B Williams

Branch: Capetown \*Dutch \*Cape Town Managing Partner

Office: De la Rey Hollands Ave. Pkg No 2028/16/19/201

DLA Cliffe Dekker Hofmeyr is a member of DLA Piper Group, the only one of its kind in South Africa

PES. [Signature]

4. We trust you will find the above in order.

Yours faithfully,



MCHUNU ATTORNEYS

2011  
PES

"DL8"

**The State Attorney  
Die Staatsprokureur  
iGqweta IikaRhulumente**

4<sup>th</sup> FLOOR / 4<sup>de</sup> VLOER  
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CAPE TOWN / KAAPSTAD / KAPA  
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Your Ref./ U Verw./ Isalathiso sakho:

82001

3 July 2015

**Cliffie Dekker Hofmeyr**

Attention: J Cassette / T Erasmus

Email: [Tricia.Erasmus@dlacdh.com](mailto:Tricia.Erasmus@dlacdh.com)

**RE: SABC & OTHERS / DEMOCRATIC ALLIANCE – SUPREME COURT  
OF APPEAL CASE NO. 393/2015**

Further to your letter dated 29 June 2015.

We are instructed that our client does not consent to your client, *Corrupt Watch*, being joined as *amicus curiae* in the above matter.

The issues to which your client wishes to make submissions are issues which are not on appeal before the Supreme Court of Appeal since the court *a quo* refused the Public Protector's application for leave to appeal.

PES 2014

Yours faithfully  
STATE ATTORNEY

Per: ~~J. Manuel~~

PES <sup>acc</sup>

"DL9"

*Minde*

MINDE SCHAPIRO & SMITH

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E: [elzanne@minde.co.za](mailto:elzanne@minde.co.za) | [www.minde.co.za](http://www.minde.co.za)

Our Ref: DEM16/0269/ELZANNE JONKER | Your Ref: J Colette / T Erasmus | Date: 29 June 2015

CLIFFE DEKKER HOFMEYER

PER EMAIL: [Tricia.Erasmus@dlacdh.com](mailto:Tricia.Erasmus@dlacdh.com)  
[Richard.Chemaly@dlacdh.com](mailto:Richard.Chemaly@dlacdh.com)

Dear Madam

**REQUEST FOR COSENT FOR INTERVENTION BY CORRUPTION WATCH AS AMICUS CURIAE: SABC / DA (WCHC CASE NO: 12497/14) (SCA CASE NO: 393/2015)**

Pursuant to your letter of this morning, we have taken instructions and our client hereby consents to your client's request for the intervention as amicus curiae both in respect of written and oral argument.

Yours faithfully  
MINDE SCHAPIRO & SMITH INC.

per :



Minde Schapiro & Smith Incorporated | Attorneys Notaries Conveyancers & Mediators since 1926 | Registration number 2010/025182/21

Directors: Gerhard van Roenen | Louis Meyer B Juris LLB | André Pople B Comm LLB | Heinrich Crous BA LLB | Samantha Solomons B Proc  
Roselle Smit B Comm LLB | Elzanne Jonker BA LLB | Rick O'Kennedy B Comm LLB | Jonathan Rubin B Comm LLB LLM  
Senior Associate: Gerhard Lourens BA LLB  
Associates: Maretha Brand LLB | Disha Govender B Comm LLB | Gertrina Van Zyl LLB  
Generalist: Madlene Olivier B Comm LLB LLM

Val registration number: 4580257436 | Ato of Greenacres, Port Elizabeth

*PE.S. day*

"DUO"

PATENT, TRADEMARK, COPYRIGHT, COMMERCIAL,  
PROPERTY & LITIGATION ATTORNEYS

# Adams & Adams

## EMAIL MESSAGE

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From: [andrew.molver@adamsadams.com](mailto:andrew.molver@adamsadams.com)

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Our Reference: ANM/SBN/djc/qim/LT1854

Your Reference: J Cassette / T Erasmus

Date: 30 June 2015

*This message contains information which is confidential and/or legally privileged. It is intended for the addressee only. If you are not the addressee and you have received this mail in error, you may not read, use, disseminate, distribute or copy its information. Please notify us immediately and we shall arrange for the return thereof at our own cost.*

**CLIFFE DEKKER HOFMEYR INC**  
Sandown

**ATTENTION: TRICIA ERASMUS**

Dear Sirs

**DEMOCRATIC ALLIANCE / SOUTH AFRICAN BROADCASTING CORPORATION (SOC)  
LTD & EIGHT OTHERS**

1. We refer to the above matter and your letter to us of 29 June 2015.
2. We confirm that our client consents to your intervention in the above matter as an *amicus curiae*.

Yours faithfully  
**ADAMS & ADAMS**

**A MOLVER**

Checked and signed by author and sent electronically

Frederic Johnson-Thurg, Espe Toren, Doreen, Muzambane (AKPQ), Angolo, Tsumura, Farnazi, Gumbren (JMP), Zolwani, Loo-ndle, Harshie, Swaziland, Nanya, @hane & Nigoric  
 Paritwa, Gavin Kuba, Harold Rogers, Darle Tsimbal, Jehan du Pruis, Colin Mofokande, Nofa Holman, Mariette du Ploois, Samantha Capoling, Gérard du Ploois, Phil Pie  
 Loula van der West, Gerné le Roux, Russell Bagnall, Simon Brown, Suzann Lubig, Grégoir Wolfer, Joseph Scahris, Traj de Villers, André Vreier, Nicholas Gobez, Eugene Honey  
 Darren O'Mear, David Schryvers, Megan Moorjik, Markus Guber, Kelly Thompson, Holo Khochena, Janice Gohard, Jishi Chetty, Lucy Signorini, Steven Van der Merwe, Johnny Phandiso  
 Leander Opperman, Jerry Fikarar, Dasha Dofman, Alida Apoolakhe, Ethia Ruvosa, Mochira Muzimbe-Madoko, Debbie Merviot, Michael Gweta, Laura Ross, Dain Hooley  
 Mandy Gordon, Ricard Gwede, Nozelle Koch, James Davies, Nkoy Gwede, Michon Flisy, Godfrey Budal, Dieter Weibagen, Ferdi Myburg, Somaya Khan, Tizvase Wright, Jee Kwee  
 Darik Stobben, Nthobekeng Phisoana, Mahan Singh, Mark Mole, Wanda Gilman, Sijdshe Gumbindan, Peter Visagie, Joshua Andson, Jani Grorjé, Wilhelm Phisoana  
 Khatho Bhebe, Jean-Paul Rudi, Andrew Mober, Veronique Mameo  
 Zandor Caron-Jacobs, Ewald du Ploois, Merin Robwee, Stephen Farnitz, Chris-Job, Craig Forbes, Iza Dijkster  
 Anandolobé, Deborah Mwekano, Delana Berthaso, Lindie Sweritor, Gadi Reig-Jeter, Therdan Davis, Clive Bothma, Stephen Halle, Alida Katini, Kgoleho Mngweni, Gerda Bouter  
 Nabeela Wright, Alida Oosthuizen, Udi Poley, Anissa Siffman, Andrie Phisoa, Nicole Svanbergger, Renzo Mearer, Tibery Conley, Ghari Marale, Mordumiso Mchimeng, Paul Maseal  
 Laxilia van Dierenter, Jean-Louis La Grange, Wyndie Pauze, Vuyolosi Maseko, Jan-Harm Swenepoel, Suroya Veerasingh, Datsile Luthanzi, Dennis Mubila, Wenzel Britz  
 Ken Ranyarwadh, Lizzal Mesteri, Thamsanqa Gwender, Zandor O'Mear, Lita Hill-Cornell, Kerry Redgerson, Nicole Keworth, Catharina Wojanitz, Richard Wiers, Ashlin Perumal  
 Karamea Shuk  
 Assisted by: Ade Groff, Jovonne Booyen, Fensha Rawool, Melissa Dwyer, Danielle Oosthuizen, Karen Lam, Zemeluhle Soidwele, Teyyiba Ntsh, Lize Ntsh, Farzahn Marjoo  
 Thando Mamerito, Gabi Mokuha, Nozi Parker, Neveolvi Poley, John Ndlovu, Jeanette Visagie, Dabinda Daniels-Naudé, Rameesh Ghani, Francois Luchman, Nicqen Dintzis, Shnel Gwender  
 Gillian Gribbho, Kozferine Harding, Amla Noyanah, Maita Post, Khayolisa Nkomo, Dines Mafibedi, Heigard James Van Randenburg, David Gause, Jan Lushworth, Lezann Dutoy  
 Ghadi van der Bijl  
 Chief Operating Officer: Dave Forbes

Lauri & PDS&S Contributor rating

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