



**PARLIAMENT**  
OF THE REPUBLIC OF SOUTH AFRICA

**MMUSI MAIMANE**

Leader

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Friday, September 28, 2018

Mr Cyril Ramaphosa  
President of the RSA  
Tuynhuys  
Parliament  
Cape Town  
8000

Dear President Ramaphosa,

You will be aware that, during 2017, the Democratic Alliance instituted litigation against the then President concerning the rationality of appointments to the Cabinet. Our contention was – and remains – that all constitutional acts must be rational, and this includes appointments in terms of section 91(3) of the Constitution of members of the Cabinet. It follows, so we argue, that such appointments can be reviewed.

We brought this action following the dismissal by then President Zuma of Mr Pravin Gordhan from the Cabinet for manifestly irrational reasons. As you know, the first stage of a review application is to seek a Rule 53 record of the decision, which the Presidency failed or refused to provide. The Gauteng North High Court ordered in our favour that the record be provided, and this aspect is now pending before the Constitutional Court.

The DA withdrew the substantive application because the matter became moot due to Minister Gordhan's re-appointment to the Cabinet when you were elected President. We do however persist in our belief that manifestly irrational appointments to the Cabinet are reviewable, and we will test this again if necessary.

You will also be aware that two separate Courts (the North Gauteng High Court and the Constitutional Court) have found that two of the members whom you appointed to the Cabinet (Mr Malusi Gigaba and Ms Bathabile Dlamini) have lied under oath. In Minister Dlamini's case, the Constitutional Court has made serious pronouncements with regards to Minister Dlamini's conduct and has also ordered that a copy of the Inquiry Report be forwarded to the National Director of Public Prosecutions, to consider whether Minister Dlamini lied under oath and, if so, whether she should be prosecuted for perjury.

The unanimous judgment by the Constitutional Court states (par 12): "(...) *at best for her, her conduct was reckless and grossly negligent,*" and that (par 15) "*the Minister misled the Court to protect herself from the consequences of her behaviour.*" In the view of the court (par 15), she "*used her position as Minister of the Department to place herself between constitutionally enshrined rights and those entitled to them.*"

Similarly, Minister Malusi Gigaba has committed perjury. In *Fireblade Aviation (Pty) Ltd v Minister of Home Affairs*, Judge Neil Tuchten of the North Gauteng High Court found that Gigaba, when he was still Home Affairs Minister, "*deliberately told untruths under oath*" and that "*he committed a breach of the constitution so serious that I would characterize it as a violation*". The Honourable Judge went further to say that "*a violation of the Constitution by a high officer in the Executive, fundamental to the decision of a court case, is an exceptional circumstance. I say that because it is such a departure from the standards which the Constitution enjoins be applied in this country that it constitutes something exceptional*".

We respectfully submit that, as much as it is irrational to appoint a manifestly unsuitable person to the Cabinet, it is equally irrational to retain such a person in the Cabinet, especially when the Constitutional Court and the High Court has made the pronouncements that they have. For that reason, we earnestly request that you discharge these two members from your Cabinet and act to defend the integrity of the Executive.

Failure on your part to do so by 5 October 2018 may result in the DA embarking on similar litigation referred to above.

It is simply not tolerable for such people, who undermine and besmirch the honour of the high office they hold, to continue in government.

Your commitment to cleaning up your administration has been oft repeated, as recently as this week in New York. This is an opportunity to show the seriousness of your words.

We trust that you will treat this correspondence with the seriousness it deserves.

Kind regards

A handwritten signature in black ink, reading "Mmusi Maimane". The signature is written in a cursive, flowing style.

**MMUSI MAIMANE MP**  
**Leader of the Official Opposition**