

**IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)**

Case No.

In the matter between:

DEMOCRATIC ALLIANCE

Applicant

and

MANDLAKAYISE JOHN HLOPHE

First Respondent

SPEAKER OF THE NATIONAL ASSEMBLY

Second Respondent

JUDICIAL SERVICE COMMISSION

Third Respondent

UMKHONTO WESIZWE

Fourth Respondent

**ALL OTHER PARTIES REPRESENTED
IN THE NATIONAL ASSEMBLY**

Fifth Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

HELEN ZILLE,

do state under oath that:



I INTRODUCTION

1. I am the Chairperson of the Applicant's (**the DA**) Federal Council.
2. The contents of this affidavit are true and correct and are within my personal knowledge or appear from documents that are in the public domain. I make legal submissions based on the advice of the DA's legal representatives. I believe that advice is correct.
3. This is an application in two parts:
 - 3.1. **Part A** seeks to urgently interdict the First Respondent (**Dr Hlophe**) from taking up a seat in the Judicial Service Commission, pending the outcome of Part B.
 - 3.2. **Part B** seeks to review and set aside the decision of the National Assembly to designate Dr Hlophe as one of its representatives to the JSC.
4. The reason the DA seeks this relief is simple:
 - 4.1. In February this year, the National Assembly resolved to remove Dr Hlophe from his position as a judge. It reached that conclusion based on the finding of the JSC that Dr Hlophe was guilty of gross misconduct for seeking to influence the outcome of a case concerning former President Jacob Zuma.
 - 4.2. Dr Hlophe now serves as an MP for uMkhonto weSizwe (**MK**), the official opposition headed by Jacob Zuma. MK nominated Dr Hlophe to serve



as its representative to the JSC. The National Assembly – over the strenuous objections of the DA – accepted that nomination.

4.3. The National Assembly was wrong to do so:

4.3.1. It is irrational and inconsistent with the independence of the judiciary for the National Assembly to designate a removed judge to serve on the JSC and participate in the process for the appointment of judges. It undermines the role of the JSC, and therefore undermines the integrity and independence of the Judiciary for Dr Hlophe to sit on the very body that found him guilty of gross misconduct as a judge and recommended his impeachment, and to play a role in choosing new judges.

4.3.2. The National Assembly wrongly seems to have taken the view that it had no choice but to accept MK's nomination of Dr Hlophe. It erred. It was for the National Assembly to decide, after considering nominations from the relevant political parties, whom to designate – the only constitutional limitation is that three of the designated MPs must belong to opposition parties.

5. The relief in Part A is urgent. The JSC will sit from 7 to 11 October this year to interview candidates and advise the President on who to appoint. That includes the position Dr Hlophe vacated – Judge President of this Division – and a vacancy on the Constitutional Court – where he is currently challenging his removal from office. Dr Hlophe's participation in the October 2024 interviews will render them unlawful. It is therefore vital that he be prevented from participating until the legality of his participation is determined.

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6. That does not preclude MK from being represented on the JSC. It is free to nominate any other MP to be designated to sit on the JSC. But it is not entitled to designate Dr Hlophe.
7. The remainder of this affidavit sets out the case for the relief sought under the following headings:
 - 7.1. **Part II** describes the parties;
 - 7.2. **Part III** sets out the relevant factual background;
 - 7.3. **Part IV** explains why the designation of Dr Hlophe is unlawful;
 - 7.4. **Part V** justifies interim relief; and
 - 7.5. **Part VI** addresses remedy and costs.

II THE PARTIES

8. The Applicant is the Democratic Alliance, a registered political party that holds 87 seats in the National Assembly. The DA is committed to the rule of law and to the upholding of South Africa's democratic constitution. The DA brings this application in its own interest, in the interests of its members, and in the public interest.
9. The First Respondent is **MANDLAKAYISE JOHN HLOPHE**. Dr Hlophe is a former Judge of the High Court and the former Judge President of this Division. He is currently a member of MK, a member of the National Assembly, and the Leader of the Opposition. He is served at his official address at Parliament,

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Room 4/015, 4th Floor, 90 Plein Street, Parliament, Cape Town. The Application shall also be served electronically at mhlophe@parliament.gov.za.

10. The Second Respondent is the **SPEAKER OF THE NATIONAL ASSEMBLY**. The Speaker is cited in her official capacity as the representative of the National Assembly. She is served at Parliament. The Application shall also be served electronically at speaker@parliament.gov.za.
11. The Third Respondent is the **JUDICIAL SERVICE COMMISSION**. No relief is sought against the JSC. It is cited for any interest it may have. It is served at its official address at 188, 14th Road, Noordwyk, Midrand. The Application shall also be served electronically at enquiries@judiciary.org.za.
12. The Fourth Respondent is **UMKHONTO WESIZWE**, a political party represented in the National Assembly. No relief is sought directly against MK. It is cited because it nominated Dr Hlophe to be designated to serve on the JSC and therefore has an obvious interest in this litigation. The Application shall be served on the Fourth Respondent, care of the First Respondent on the 4th Floor, 90 Plein Street, Parliament, Cape Town and also electronically at info@mkparty.co.za.
13. The Fifth Respondent is **ALL OTHER PARTIES REPRESENTED IN THE NATIONAL ASSEMBLY**. These are:
 - 13.1. African National Congress;
 - 13.2. Economic Freedom Fighters;
 - 13.3. Inkatha Freedom Party;

MA

- 13.4. Patriotic Alliance;
 - 13.5. Freedom Front Plus;
 - 13.6. ActionSA;
 - 13.7. African Christian Democratic Party;
 - 13.8. United Democratic Movement;
 - 13.9. Rise Mzansi;
 - 13.10. Build One South Africa;
 - 13.11. African Transformation Movement;
 - 13.12. Al Jama-ah;
 - 13.13. National Coloured Congress;
 - 13.14. Pan Africanist Congress of Azania;
 - 13.15. United Africans Transformation; and
 - 13.16. GOOD.
14. No relief is sought against these political parties. They are cited because they are represented in the National Assembly and for any interest they may have. They are all served through their official email addresses at Parliament.

A

III THE FACTUAL BACKGROUND

15. I will first describe how Dr Hlophe was impeached. I then explain the process for his designation to the JSC. Finally, I address what occurred since he was designated.

THE IMPEACHMENT OF DR HLOPHE

16. Dr Hlophe was appointed as a Judge of the then Cape Provincial Division of the Supreme Court of South Africa on 1 January 1995. After serving for a few months as the Deputy Judge President, he was appointed as the Judge President with effect from 1 May 2000.
17. Eight years later, in June 2008, all the Justices of the Constitutional Court lodged a complaint against Dr Hlophe at the JSC. They alleged that he had approached then Acting Justice Jafta and Justice Nkabinde and sought to influence them to decide an upcoming case concerning a search warrant of Mr Zuma's and his attorney's premises.
- 17.1. The SCA had held that Mr Zuma's attorney could not claim professional privilege.
- 17.2. When he visited Justices Jafta and Nkabinde, Dr Hlophe sought to persuade them that the SCA had erred and that the Constitutional Court should correct the error. He told Justice Jafta "*sesithenbele kinina*", meaning "you are our last hope". He told Justice Nkabinde that he "*had a mandate*" to talk to her and also tried to convince her the SCA had erred.

18. The Constitutional Court Justices' complaint, unfortunately, took nearly sixteen years to resolve. The details of the delay are irrelevant to this application.
19. Ultimately, the JSC referred the complaint to a Judicial Conduct Tribunal (**JCT**). It heard evidence and delivered its recommendation to the JSC in April 2021 (**DA1**). It unanimously concluded that "on an objective and proper consideration of the facts and probabilities" Dr Hlophe had "*improperly attempted to influence the two Justices of the Constitutional Court to violate their oaths of office*". It found that this conduct "*seriously threatened and interfered with the independence, impartiality, dignity and effectiveness of the Constitutional Court*", and "*threatened public confidence in the judicial system.*"
20. The JSC considered the JCT's findings. In July 2022, a majority of the JSC issued its ruling (**DA2**) agreeing with the Tribunal that Dr Hlophe was guilty of gross misconduct. It concluded that Dr Hlophe's "*conduct was an attempt to defeat or obstruct the administration of justice. That constitutes a serious interference with the constitutionally protected independence of the judiciary*" (para 66.8).
21. Despite receiving the JSC's finding in 2022, the National Assembly delayed its determination of whether to remove Dr Hlophe as a judge until February 2024. On 21 February 2024, the National Assembly debated the issue. It voted overwhelmingly – 305 to 27 – to call on the President to remove him from office. I attach the Committee's Report to the National Assembly as **DA3**, and the unrevised Hansard as **DA4**.
22. With effect from 1 March 2024, the President removed Dr Hlophe from his office as a judge (**DA5**).



23. To give a complete picture, I should note that Dr Hlophe has brought two challenges against his impeachment or the steps leading to it:

23.1. He brought an application to review and set aside the finding of the JSC that he was guilty of gross misconduct. That application was dismissed by a Full Bench of the High Court (*Hlophe v Judicial Service Commission and Others* [2022] ZAGPJHC 276; [2022] 3 All SA 87 (GJ)). Dr Hlophe was granted leave to appeal, but he was unable to prosecute the appeal and it has since lapsed.

23.2. In early 2024, Dr Hlophe brought an application in the Constitutional Court to set aside the National Assembly's decision to proceed with the process to remove him from office. Despite the fact that the National Assembly subsequently completed that process and impeached him, and the President removed him from office, I understand that Dr Hlophe is persisting with that application. The Constitutional Court called for submissions on whether some of its judges were required to recuse themselves. It has not been set down for hearing. The DA is opposing the application.

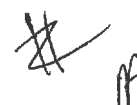
24. These pending matters do not affect the relief sought in this application.

THE DESIGNATION OF DR HLOPHE TO THE JSC

25. MK was formed in 2023. Its current President is Jacob Zuma.




26. Dr Hlophe was not on MK's list of candidates for the National Assembly which was provided to the Electoral Commission prior to the election. There was no indication prior to the election that he would take up a seat that MK might win in the election. MK won 58 seats in the National Assembly.
27. After the election seven members of MK who would have received seats in the National Assembly either resigned from the Party or were expelled. In addition, 162 members who were on MK's list and would have received seats stated that they were not available to accept a seat in the National Assembly. This action was clearly planned to allow MK to supplement its list with other members who were never presented to the electorate, including Dr Hlophe. As the DA has entered into the Government of National Unity, MK is the official opposition and Dr Hlophe has been designated as MK's Chief Whip and the Leader of the Opposition.
28. The DA believes the process by which Dr Hlophe was made an MP was inconsistent with the purpose of the Electoral Act, even if it complied with its letter. It also violated the right to vote as MK effectively forced members not to assume seats so that it could allow new people to take those seats. The DA reserves the right to challenge this process in separate proceedings. However, for the purpose of *this* application, the DA accepts that Dr Hlophe was lawfully elected to the National Assembly.
29. When it has previously designated members to serve on the JSC, the National Assembly has determined which parties are entitled to representation in terms of s 178(1)(h) and then accepted the nominations of those parties. It has not previously questioned those nominations.

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30. This year, the National Assembly determined which parties were entitled to representation (2 from the ANC, 1 from the DA, 1 from MK, 1 from the EFF and 1 from ActionSA) and asked those parties for nominations. Previously the designation was simply an acceptance of the nominations in plenary.
31. However, when the MK nominated Dr Hlophe, the DA objected. The issue was initially on the National Assembly's agenda for 2 July 2024. Because of the DA's objections, the ANC's Chief Whip asked the Speaker to remove the matter, which she agreed to do. I attach the relevant portion of the unrevised Hansard marked **DA6**.
32. The matter was again placed before the National Assembly on 9 July 2024. I attach the unrevised Hansard marked **DA7**. Because the DA objected to the National Assembly designating Dr Hlophe, it called for a division (a parliamentary term for requiring debate and a vote). The DA's Chief Whip (George Michalakis MP) explained why the DA objected to Dr Hlophe's nomination:
- 32.1. The decision was not merely a political one, "*but the exercise of the public power aimed at contributing to the establishment of the ... JSC*". Accordingly, the NA was required to "*act in a reasonable and rational manner*." It was not rational to designate Dr Hlophe just months after the NA had impeached him.
- 32.2. There was a real risk that, if Dr Hlophe was designated to serve on the JSC, that "*a large number of applicants to be interviewed by the JSC ... will object and apply for the recusal of Dr Hlophe*". That would create "*the risk of paralysing the JSC and tying it up in endless review processes*."

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33. Several other parties appeared to speak in support of the DA's position, particularly the FF+, ACDP, IFP, ActionSA, Rise Mzansi, and BOSA.
34. The arguments in favour of designating Dr Hlophe were threefold:
- 34.1. The representatives for MK and the EFF emphasised his qualifications – the fact that he has a doctorate in law and had served as a judge.
- 34.2. They also argued that the Constitution creates no qualification criteria for designation to the JSC other than being a member of the National Assembly.
- 34.3. The ANC argued that *"in instances where the Rules of Parliament or the Constitution has not clearly defined a particular position, we are going to have to live on the basis of the established Rules and practices of Parliament."* Essentially the argument was that *"there is a lacuna or there is a gap in our Rules as well as the Constitution"*. The ANC did not say that it was rational or consistent with judicial independence to designate Dr Hlophe; it said only that it did not believe it could deviate from the existing practice without an amendment to the Constitution or the NA's Rules.
35. The National Assembly voted in support of the resolution to designate the six members to the JSC, including Dr Hlophe, with only the DA, the FF+ and the ACDP voting against it (even though BOSA and Rise Mzansi had spoken against designating Dr Hlophe).



EVENTS FOLLOWING DR HLOPHE'S DESIGNATION

36. The DA immediately took advice from its legal representatives about whether the NA's decision to designate Dr Hlophe to serve on the JSC was reviewable. It was advised that it was, for the reasons I set out below.
37. The DA was aware, through its own representative to the JSC, that a committee of the JSC would sit on Monday 15 July 2024 to shortlist candidates for the interviews in October. It wanted to avoid a situation where Dr Hlophe sat on that committee which would taint the shortlisting process, and perhaps any interviews and appointments that followed.
38. On 11 July 2024, the DA therefore wrote to the Chief Justice as the Chairperson of the JSC (**DA8**). It informed him that the DA intended to bring an application to interdict Dr Hlophe from sitting on the JSC pending the determination of an application to review and set aside the NA's decision to designate him. It asked that the Chief Justice confirm that Dr Hlophe would not serve on the Screening Committee.
39. On 12 July 2024, Ms Mondlane on behalf of the Secretariat of the JSC responded (**DA9**). She informed the DA that Dr Hlophe is not part of the JSC's screening committee. There was, therefore, no immediate risk to the legitimacy of the JSC's screening process.

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IV THE DESIGNATION OF DR HLOPHE IS UNLAWFUL

40. The designation of members of the National Assembly to serve on the JSC is regulated by s 178(1)(h) of the Constitution. It reads: "*There is a Judicial Service Commission consisting of - ... (h) six persons designated by the National Assembly from among its members, at least three of whom must be members of opposition parties represented in the Assembly*".
41. The Constitution grants the power to the National Assembly to designate who amongst its members should serve on the JSC. It does not specifically constrain that power, other than to require that half of the members are from opposition parties. The Constitution does not state that the National Assembly must designate whichever MPs political parties designate. It gives the power to designate to the National Assembly as an institution, not to political parties.
42. The National Assembly's power to designate MPs to the JSC therefore remains constrained by the other provisions and principles in the Constitution:
- 42.1. The National Assembly must act rationally. This is a requirement of the principle of legality. Rational action must be rationally connected to the purpose for which the power is exercised.
- 42.2. The National Assembly "*must assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.*" That is an express requirement of s 165(4) of the Constitution.
- 42.3. The National Assembly must act lawfully. If it acts on the basis of a material error of law, it acts unlawfully and contrary to the principle of legality.



43. The National Assembly's Rules do not address the issue at all. The issue is dealt with in terms of the NA's general process and not in any specific process.
44. As I stated above, it has been the practice of the NA to accept the nominations of parties' members. However, that practice developed in a context in which none of the MPs previously nominated to serve on the JSC had been removed from public office for gross misconduct.
45. Against that background, the NA's decision is unlawful for three reasons:
- 45.1. It is substantively irrational;
- 45.2. It is inconsistent with the obligation to promote the integrity and independence of the Judiciary; and
- 45.3. It was based on a material error of law.
46. It does not matter for the purposes of the DA's grounds of review whether the NA's decision is "administrative action" or not. All three grounds of review apply whether the decision is administrative, or is another type of exercise of public power.

THE DESIGNATION WAS IRRATIONAL

47. The JSC has a range of functions. Most importantly, it is responsible for the appointment and disciplining of judges. In terms of s 178(5) of the Constitution, Dr Hlophe would only sit on the JSC when it considers the appointment of judges. Accordingly, the purpose of designating members of the NA relates solely to the appointment of judges.

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48. To be appointed as a judge, a person must be appropriately qualified and “a fit and proper person”. It is a requirement for the JSC to assess not only a candidate’s qualification and ability, but also their ethics. A person who has a history of ethical breaches will not be fit and proper to be a judge.
49. This is reflected in the JSC’s *Summary and Explanation of the Criteria and Guidelines used by the Judicial Service Commission when Considering Candidates for Judicial Appointment (DA10)*, adopted in 2022. It explains that assessing whether someone is a fit and proper person requires
- a holistic assessment of a candidate’s suitability for appointment to the bench, with reference to a broad and cumulative reading of multiple factors, which will include integrity, knowledge, scholarship, experience, dignity, humility, judgement, wisdom, independence, character, courage, forensic skill, capacity for articulation, diligence, energy and industry. Character includes considerations such as whether a candidate is honest, truthful, trustworthy and whether they keep their word.*
50. A person designated to serve on the JSC must be capable of judging whether another person has the appropriate character to serve as a judge.
51. It is irrational to appoint a person who has himself been found guilty of gross misconduct and therefore not fit and proper to serve as a judge. How can a person who has demonstrated that he will breach fundamental judicial ethics be trusted to evaluate whether candidates for judicial office have the character required of judges? There is no rational connection between the NA’s decision (designating Dr Hlophe) and the purpose for which the Constitution confers the power on the National Assembly (identifying MPs who can reliably select fit and proper people for judicial appointment).

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52. It is particularly irrational for the National Assembly which, just five months ago voted overwhelmingly that Dr Hlophe was unfit to be a judge, to then conclude that Dr Hlophe is fit to participate in the selection of new judges.

INCONSISTENT WITH DIGNITY AND INDEPENDENCE OF THE JUDICIARY

53. To perform its constitutional function, the Judiciary must have public trust and respect. The public must believe that judges are trustworthy and honest, and that they were selected through a legitimate process. They must believe that judges who do not demonstrate the qualities and character required of judicial office will be removed.
54. All organs of state have an obligation to "*assist and protect the courts to ensure the independence, impartiality, dignity, accessibility and effectiveness of the courts.*" The National Assembly fulfilled that obligation by calling for Dr Hlophe's removal from judicial office.
55. But it violated the obligation by designating him to serve on the JSC. By permitting an impeached judge to participate in selecting new judges, the National Assembly undermines public faith and confidence in the Judiciary. It diminishes the Judiciary's dignity, independence and effectiveness, contrary to its obligation under s 165(4) of the Constitution.

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A MATERIAL ERROR OF LAW

56. It is sometimes difficult to determine the reasons of a multi-member body that may vote for different reasons. However, in this case we know why the ANC supported the designation of Dr Hlophe – because it believed there was a gap or lacuna in the NA Rules or the Constitution.
57. That was a material error of law. As I have explained above, although the Constitution does not expressly set separate criteria for the designation of MPs, the National Assembly: (a) is not bound to accept parties' nominations; and (b) must act rationally and consistently with s 165(4). It was, at the very least, open to the National Assembly not to designate Dr Hlophe and to require MK to identify a different MP.
58. The ANC controls 159 seats. If it had appreciated that the absence of express provisions in the NA Rules or the Constitution did not mean it was obliged to accept whomever MK nominated, it may well have voted together with the DA to oppose Dr Hlophe's designation. If it had done so, Dr Hlophe would not have been designated. I do not know how the ANC would have voted if it had correctly appreciated that the law, at the very least, did not oblige it to accept Dr Hlophe's nomination and therefore permitted it to reject the nomination. But the decision was taken on the basis of a misapprehension of the law. If this ground of review is upheld and the first two are rejected, the appropriate approach will be to remit the issue to the National Assembly to take the decision afresh.

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RELIEF

59. The relief the DA seeks in Part B is simple – an order reviewing and setting aside the National Assembly’s decision to designate Dr Hlophe as a member of the JSC in terms of s 178(1)(h) of the Constitution.
60. If either of the first two grounds of review are upheld, the consequence will be that Dr Hlophe can never be designated under s 178(1)(h). However, no further relief is required – the judgment will have that effect.
61. If only the third ground of review is upheld, that means that it may be possible for the National Assembly to designate Dr Hlophe, but it must take the decision afresh based on a proper appreciation of the legal position. The proper order then is to remit the issue to the National Assembly.

V URGENT INTERIM RELIEF

62. The JSC will hold interviews for candidates for judicial office from 7-11 October 2024. That includes interviews for the Judge President of this Division, four judges of this Division, one judge of the Constitutional Court, and three judges of the Supreme Court of Appeal. (I attach the JSC’s call for nominations marked **DA11**).
63. Without relief from this Court prior to those dates, Dr Hlophe will participate in those interviews and vote on which candidates the JSC should advise the President to appoint. That creates multiple problems:

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- 63.1. If his participation is unlawful because he was unlawfully designated to represent the National Assembly, then his participation will render the JSC's advice to the President unlawful.
- 63.2. His participation will undermine the integrity of the JSC and the public perception of its ability to perform its constitutional function.
64. The DA accepts that it will not obtain final relief in Part B before the October interviews. Even if it is able to obtain a determination by this Court, any judgment will be appealed, and it is impossible that all appeals will be resolved before 7 October 2024. The DA also accepts that the final relief it seeks is of public importance, that the Respondents must have a proper opportunity to answer it, and that it should not be determined hastily.
65. The DA therefore seeks an interim interdict that would prevent Dr Hlophe from serving on the JSC until the final determination of Part B. To be clear, the relief is directed only at Dr Hlophe. The DA has no objection to MK nominating a different member to be designated by the National Assembly to serve on the JSC while the Courts determine whether Dr Hlophe's designation was lawful.
66. I have been advised that a court will consider four factors in deciding whether to grant interim relief.
67. First, the DA must demonstrate the existence of a **prima facie right**, although open to some doubt. The DA relies on three rights:
- 67.1. The right to lawful conduct by the National Assembly that it asserts in Part B. The DA submits that it has strong prospects of success in Part B and that this satisfies the requirement of a prima facie right for interim



relief. However, the DA also relies on two further rights that require protection in the interim.

- 67.2. The DA has a right to an effective remedy if it succeeds in Part B. Without interim relief, Dr Hlophe will participate in the JSC until the final determination of Part B which may take years. He will participate not only in the October 2024 interviews, but likely several further sets of interviews. It will not be practically possible to undo that illegality in Part B. The only way to do so would be to reverse the appointment of all the judges where Dr Hlophe participated. But that will never be just and equitable. The DA therefore requires interim relief to ensure that, when it succeeds in Part B, the remedy will in fact prevent the illegality.
- 67.3. Finally, the DA relies on the right to an independent and impartial judiciary. For the reasons given above, Dr Hlophe's participation in the selection of judges will undermine that constitutional right. To prevent that risk, the DA requires interim relief while it has his designation to the JSC set aside.
68. Second, the DA must show that **irreparable harm** to itself, or to the public interest will result if interim relief is not granted. The DA does not rely on harm to it directly, but on harm to the public interest. That harm is manifest:
- 68.1. The appointment of all judges flowing from the October 2024 process (and any future process) will be subject to challenge by disappointed nominees, civil society bodies or disgruntled litigants. It will create immense uncertainty for those who are appointed, for the Judiciary, and for the public.

- 68.2. Dr Hlophe's participation in the selection of judges creates the risk that judges will be selected who do not have the necessary character and integrity to serve as judges. Obviously Dr Hlophe will be just one voice and one vote on the JSC. But it is not only his vote, but his ability to influence other Commissioners that matters in the selection process. His presence matters, not only his vote. If it is irrational to put him on the JSC because he cannot be trusted to abide by the JSC's own Guidelines for appointment, then his presence there creates a real risk of irreparable harm.
69. Without interim relief, there is a risk of irreparable harm whatever remedy is granted in Part B. If the appointment of judges is set aside, it will cause disruption and uncertainty. If it is not set aside, judges improperly appointed will remain in office. The way to safeguard the integrity of the Judiciary is to exclude Dr Hlophe from the JSC until the resolution of Part B.
70. Third, there is no **alternative remedy** for the DA. As I have explained, whatever remedy the DA obtains in Part B, without interim relief there will be irreparable harm.
71. Fourth, the **balance of convenience** must favour granting the interim relief. In this case it plainly does:
- 71.1. The DA's prospects of success in Part B are strong, for the reasons given above.
- 71.2. The harm that will flow if there is no interim relief is to the Judiciary, and the public as a whole.

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- 71.3. By contrast, the harm if interim relief is granted is limited. It will mean only that Dr Hlophe cannot serve on the JSC until Part B is resolved. MK can nominate another MP to serve to ensure that it is represented in the interim. Dr Hlophe will not lose any benefits – he will remain an MP, and the MK’s chief whip and the leader of the opposition.
72. Ultimately, interim relief is the appropriate mechanism to protect the rights at stake until the substantive dispute is finally resolved.
73. Part A is self-evidently urgent. It must be determined – at the latest – by 7 October 2024. If it is not, then the purpose of interim relief will be undermined, and the DA will be unable to obtain substantial redress in due course.
74. The DA has brought this litigation promptly. The decision was taken on 9 July 2024. This application will be launched just six court days later on 18 July 2024.
75. The application also affords all the respondents adequate time to answer the application. It seeks a hearing in early September on the semi-urgent roll. That is an appropriate timetable for an application of this nature.


 HELEN ZILLE

I certify that on the 19 day of **JULY 2024** and at **CAPE TOWN** the above deponent appeared before me and that she acknowledged to me that she knows and understands the contents of the above Affidavit, which Affidavit was signed and sworn to in my presence in accordance with the requirements of Regulation No. R1428 dated 16 November 1984, as amended, which have been fulfilled.


 COMMISSIONER OF OATHS
 MALIKA ALLIE
 Commissioner of Oaths / Kommissaris van Ede
 Practising Attorney and Conveyancer /
 Praktiserende Prokureur en Aktebesorger R.S.A.
 HEROLD GIE ATTORNEYS / HEROLD GIE PROKUREURS
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