

**IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION, JOHANNESBURG**

CASE NO: _____

In the matter between:

VUSIMUZI RIGHT PETER SKOSANA

Applicant

and

GAUTENG PROVINCIAL LEGISLATURE

First Respondent

SPEAKER: GAUTENG PROVINCIAL LEGISLATURE

Second Respondent

FOUNDING AFFIDAVIT

I, the undersigned

VUSIMUZI RIGHT PETER SKOSANA

do hereby make oath and state:

1. I am an adult male currently residing at 23 Angelica Avenue, Glenvista, Johannesburg.

2. I am the applicant in the matter, therefore the facts contained herein, unless stated otherwise, are within my personal knowledge.

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3. Where I make submissions of a legal nature, I do so on the advice provided by my legal representatives which advice I accept and consider to be true and correct.

THE PARTIES

4. I am the applicant in the matter as stated above.
5. The first respondent is the **GAUTENG PROVINCIAL LEGISLATURE** which is a provincial legislature in the province of Gauteng that is established to *inter alia*, to make laws for Gauteng, to oversee the work of the Gauteng Provincial Executive, and facilitate public participation to ensure that the people of Gauteng participate in the decisions affecting their lives, and has its offices situated at 43 Rissik Street, Johannesburg ("the GPL" or "the second respondent").
6. The second respondent is the **SPEAKER: GAUTENG PROVINCIAL LEGISLATURE**, who is also the Executive Authority of GPL, who has her offices at 43 Rissik St Johannesburg, 2000 (hereinafter referred to as "the Speaker" or "the second respondent").
7. I intend on dealing with this application in the following manner:
 - 7.1. First, I will outline the purpose of the application.
 - 7.2. Second, I will deal with the brief factual matrix.
 - 7.3. Third, I will deal with breach of contract.
 - 7.4. Finally, I will deal with the conclusion.

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PURPOSE OF THE APPLICATION

8. This is an application brought by myself seeking to compel the first and second respondents to comply with the terms of the settlement agreement entered into between myself and the first respondent on the 5 April 2024. Alternatively, I seek from this honourable court an order of confirmation of cancellation of the agreement due to the respondents' breach.

9. This application is premised on a breach of contract and thus the relief I seek is one of breach of contract, or a contractual dispute. It will be noted that the relief that I seek is one that does not prejudice the respondents because as an alternative to compelling them to perform, the agreement can be cancelled, and they would no longer need to perform.

10. Accordingly, I am seeking to obtain a declaratory order against the first and second respondents where I will be demonstrating to this court that I am entitled the relief of specific performance of the settlement agreement entered into, alternatively confirmation of cancellation of the agreement.

11. In addition to the above, I am praying for an order declaring the first and second respondents to be in breach of the provisions of the agreement. In more context, the relief sought is outlined as follows.

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11.1. The respondents are in breach of the settlement agreement entered into between the applicant and the second respondent on 5 April 2024.

11.2. The second respondent is ordered to comply with the contractual obligations in the settlement agreement, namely by paying all amounts due to the applicant in terms of the settlement agreement within 5 (five) working days from the date of service of this court order,

11.3. Alternatively, the respondent is held to be in breach and therefore the agreement is cancelled,

11.4. The respondents are both liable to pay the costs of this application on an attorney and client scale.

11.5 Granting the applicant further and alternative relief.

12. I intend to provide a factual background to why the settlement agreement was entered into, and its subsequent breach by the second respondent. Thus, I will demonstrate to the above Honourable Court that there are sufficient grounds that reveal a breach of contract by the second respondent and, grounds that necessitate the granting of the order of specific performance sought, or cancellation of the agreement

13 It is against this backdrop that the applicant has instituted the current application. This will be expatiated upon herein below.

BRIEF FACTUAL MATRIX

14. I deem apposite to begin by mentioning that the brief factual matrix that I will outline herein in great detail is to provide the court with reasons as to why the agreement in question was entered into, the conduct of the second respondent leading up to, and after, the conclusion of the settlement agreement and how the second respondent clearly exhibited *mala fide* intentions in entering into this agreement, which *mala fide* intentions still exist to date.

15. I was initially employed by the first respondent on the 1 February 2008 as the Secretary to the Legislature (Accounting Officer). I was reappointed to the same position after due recruitment processes on the 1 July 2016 and 1 July 2021 for a period of five years per term, i.e., 1 July 2016 to 30 June 2021 and 1 July 2021 to 30 June 2026. The duration of my employment relationship with the second respondent would commence on 01 July 2021 and end on 30 June 2026, thus running for a period of five years. Accordingly, I have worked for the first respondent for a period of 16 years, two months and four days

16. In my position as the Accounting Officer and Secretary to the first respondent, my duties were to, *inter alia*,

16.1.1. Prepare and present to the Executive Authority a draft strategic plan covering inter-alia, priorities, objectives and outcomes for each

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programme including a multi-year projection of revenue and expenditure (budget), performance measures and indicators for assessing the Legislature administration,

16.2. Maintain adequate accounting records within the second respondent,

16.3. To ensure an effective, efficient and transparent system of financial and risk management and internal control,

16.4. To have a system of internal audit, controlled and directed by an audit Committee,

16.5. To ensure functional, effective and productive administration, including ensuring with all Code of Conduct and Ethics, policies and laws,

16.6. To exercise proper budgetary control, by having systems that ensure sure that there is a prevention of overspending,

16.7. To submit all reports, returns, notices and other information to the second respondent in her capacity as Executive Authority of GPL who will authorise submission of the reports to other Oversight structures,

16.8 Ensuring that the annual financial statements fairly present the state of affairs of the first respondent,

16.9 We further report to oversight committees on the financial state of affairs of the first respondent,

16.10 Ensuring that the funds of the second respondent are spent reasonably and in accordance with Government policies and the Financial Management of Parliament and Provincial Legislatures (FMPPLA), and

17. Further to the above, one of my duties was to assess and scrutinize travel claims already submitted and paid to the relevant body, I was further tasked with reporting an alleged conduct of fraud or irregularities in the spending of finances on travel claims.

18 It is apposite to begin by stating that the Legislature Services Board had taken a decision that due to financial constraints that the matters of 13th Cheque of the employees of the first respondent, during the years 2021/2022 to date could not be paid to the employees. Thus, this became a topic in most meetings held over the years until the year 2023 to such an extent that some members of GPL and National Education, Health and Allied Workers' Union ('NEHAWU') to the GPL approached the CCMA and obtained an award from the Commissioner compelling the GPL to pay the 13th cheque last year September.

19. Unhappy with this decision, the Legislature Services Board (LSB) approved the proposal that GPL must institute review proceedings in the Labour Court. The matter in the Labour Court had to be withdrawn due to the upcoming elections,

and address the tension that prevailed between members of NEHAWU and the GPL Management regarding the issue of the 13th Cheque.

20. On 05 October 2023, I received a letter from Mr Lesego Makhubela (Chief Whip of the Majority Party, African National Congress) inviting me to what he referred to as a follow up meeting with members of the NEHAWU scheduled on 09 October 2023.

21. The notice indicated that the meeting had been "postponed several times due to non-availability of the Speaker". No Agenda was attached to the invitation – but I assumed that the key issues will be the building relations between Management and Organised Labour which has previously been raised by the Chief Whip. Unfortunately, this meeting was also postponed due to non-availability of the Speaker.

22. The meeting was subsequently held on 11 October 2023. The meeting was attended by the following people:

22.1. Mr Lesego Makhubela (Chief Whip of the Majority and the Chairperson of the meeting.

22.2. Ms. Sizakele Nkosi-Malobane (the GPL Chairperson of Committees and Office Bearer),

22.3. Mr. Mpapa Kanyane (the Deputy Chairperson of Committees),

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22.4. Ms. Nomvuyo Mhlakaza – Manamela (the Deputy Speaker).

22.5. Ms. Lentheng Mekgwe (the Executive Authority and the Speaker)
and

22.6. Mr. Panyaza Lesufi (the Chairperson of the ANC Gauteng and
Premier)

23. The following issues were raised in this meeting:

23.1. that there had been engagement between the Member Makhubela as Chief Whip of Majority Party (ANC) and NEHAWU GPL Branch in which NEHAWU raised concerns about "restructuring at GPL without consultation",

23.2. the 13th cheque matter in the Labour Court.

23.3. that the relationship between Management and NEHAWU has broken down leading to a toxic work environment.

24. Accordingly, in this meeting it was resolved that:

24.1. A political Task Team led by the Chief Whip Mr Makhubela, including Ms Mekgwe, Mr Kanyane and the leadership of NEHAWU will engage to find an amicable solution to the issue of payments of the 13th cheque to employees of the second respondent,

24.2. That the GPL should obtain an opinion on the legal, financial and other implications of the political decision to withdraw the 13th cheque case from the Labour Court; and

24.3. That the political leadership exert pressure on Provincial Treasury to provide money for settling the 13th cheque.

25. Accordingly, due to the nature of the issues to be discussed, I was recused from the meeting as the leadership was due to meet with NEHAWU and the GPL Branch leadership.

26. In the meeting, before such recusal, and in addition to the issues raised above, the matter of the disciplinary processes related to the Subsistence and Travel (S & T) cases involving about 34 employees which had started was raised and it was proposed that "the disciplinary processes should be delayed whilst resolving the 13th cheque.

27. I raised objection to the conflating of the 13th cheque and argued that disciplinary processes are a responsibility of Management and should not be linked to the 13th cheque and we must avoid politicizing it.

28. The disciplinary processes had been implemented following an investigation into travel and subsistence claims by some GPL employees during COVID – 19 period. The findings were that there were fraudulent and corrupt claims that had already been paid for. All employees were given an opportunity to substantiate their claims and those who complied were excluded from the

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disciplinary process after further verification. The 34 who were subsequently charged refused to provide further information.

29. I also pointed out that the Auditor General will be following up on this matter as it was raised in the 2022/2023 audit report. Mr Makhubela informed me that the S & T disciplinary matter was a political instruction and I reminded him that I do not account to him but to Ms Mekgwe (Speaker and Executive Authority).

30. I briefed the second respondent about the outcome and the discomfort that I had in the meeting, especially the "delaying" of the disciplinary hearing as this amounted to political interference which is unlawful and unreasonable.

31. I further stated in the meeting that the issue of delaying the S & T investigation until the resolution of the 13th cheque was not good. I reiterated that disciplinary processes are a management responsibility and that once the Presiding Officers are appointed to hear the cases, they (Presiding Officers) become custodians of the disciplinary process and must ensure compliance with Promotion of Administrative Justice Act (PAJA), Labour Relations and GPL Disciplinary Policy and the process should not be politicised, and that the Union is aware of the process.

32. On 15 November 2023, I sent the second respondent a report outlining the engagements between GPL Management and NEHAWU Gauteng based on

disciplinary process after further verification. The 34 who were subsequently charged refused to provide further information.

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the decision of the Political Task Team to resolve the 13th cheque of 2021/2022 and withdraw the matter from Labour Courts.

33. The report indicated that two meetings were held between the parties and Management proposed to settle the matter by paying the 13th cheque in two tranches (December 2023 and March 2024) based on the available finances – a proposal that was rejected by NEHAWU as they demanded not only the 13th cheque for 2021/2022 but also for 2022/2023 and 2023/2024.

34. A follow up meeting was scheduled on 13 November 2023 to consider the report of GPL Management Team and NEHAWU. I had sent the second respondent the report of the meeting via WhatsApp on 10 November 2023 to the effect that GPL Management and NEHAWU had reached a stalemate on finding a solution to the 13th cheque.

35. In response to the second respondent's enquiry regarding the S & T enquiries that were proceeding (a concern that was raised by Mr Makhubela following a WhatsApp message from NEHAWU), I informed the second respondent that indeed the disciplinary hearing was proceeding.

36. In my engagement with the second respondent on the S & T enquiry, I insisted that the disciplinary processes should not be politicized and should be left to the Administration as a Management responsibility. I also emphasized that the instruction to delay the disciplinary processes was unlawful, unreasonable and irrational.

37. After the meeting, the second respondent sent me a WhatsApp message that came from Mr Makhubela responding to the message that he had received from NEHAWU about the disciplinary hearings that were proceeding. The message read: **"Morning, we will convene an urgent meeting on Monday. And if comrade Peter Skosana continues in the manner, he is doing we would have to get guidance from Caucus as we already have the blessings of the ANC to deal with this"**.

38. I pointed out to the second respondent that the forwarded message was very concerning and demonstrated a determination by some in the leadership of the ANC GPL Caucus to interfere in the administration of disciplinary processes, despite my advice that such interference is unlawful, unreasonable and irrational.

39. I have consistently submitted Quarterly Investigations Report to the first respondent, as Executive Authority and Human Resource Development (HRD) Committee highlighting all investigations underway and progress on each of the cases. One of those reports related to the investigation on S & T claims that the Gauteng Provincial Legislature investigated relating to payments made for S & T claims during the hard lockdown during the COVID-19 pandemic. This matter was investigated by an external service provider and the final report was submitted to the institution for further action on the findings.

40. The findings revealed that 125 claims were processed, and others were paid during this aforesaid period. 69 of the claims were cleared in that they were in

accordance with the S & T Policy. 38 claims were of employees who were found to have breached the S&T Policy in their submission of claims. The amount claimed during the period in question is more than R4 million.

41. As the Accounting Officer, I approved the recommendations of the external investigators that all affected employees be disciplined for breaching the relevant policies. The nature and reasons for the discrepancies identified include inflated claims, no supporting documentation attached to travel claims and that the departure and/or destination points were not specified in these travel claims.

42. The disciplinary hearings commenced in October 2023 and are continuing. Organised Labour used delaying tactics and the anticipated completion of the matters will be delayed.

43. I pointed out to the second respondent that in line with Section 68 (2) of Financial Management of Parliament and Provincial Legislatures (FMPPLA), I, as the Accounting Officer have a duty to:

43.1. Investigate any allegations of financial misconduct against an official unless it obviously unfounded; and

43.2. If the investigation warrants such step, institute disciplinary proceedings within 30 days in accordance with any applicable systems and procedures.

44. The S & T investigations met the requirements of Section 68 of FMPPLA, and although the process to appoint the presiding officers and initiators took longer, the decision to utilise officials from other provinces proved cost effective for GPL compared to the initial tender process which would have more costly.
45. As reflected, above, one of the decisions taken by the Political Task Team was to delay the disciplinary processes which were already underway. Without belaboring the point, that I had always insisted that the disciplinary processes are better left to be managed by the Administration and that politicians should hold the administration accountable.
46. Despite these warnings, the second respondent insisted that I should delay or stop the disciplinary processes, which I pointed out repeatedly that it is political interference that is unlawful, unreasonable and irrational.
47. I also informed the second respondent that what was also the reason for us to conduct the running of the hearings was a finding by the Auditor General of South Africa (AGSA) on the S & T investigations and that the AG would follow up on this matter.
48. The reason for bringing this matter to the attention of the second respondent was to remind her that I am a custodian of public money and must ensure every cent is accounted for, and that where there is financial misconduct, I, as the Accounting Officer must recover it, failing which she should hold me accountable and ensure that I pay it back. It was also to remind her of her role and commitment to the AGSA to ensure that the first respondent retains a clean audit.

49. On 13 December 2023, the second respondent requested a list of all staff charged and the names of the teams who had conducted the hearings and the details of the legal costs involved. This report and all costs were subsequently submitted to the second respondent. The zipped information requested by the second respondent was sent to her on 15 December 2023.

50. I was surprised that almost 3 days after I provided clarity to the second respondent, she sent me a message stating: "**maybe there is no appetite to stabilised** the institution from your side", and further informed me that the Provincial Office Bearers (POB) of ANC Gauteng requires an audience with me at 10:00am on the 15 December 2023. I was reliably informed that the ANC leadership, including the second respondent met on the 14 December 2024 and resolved that my employment contract should be terminated.

51. I attended the meeting, which was also attended by the second respondent, Mr. Makhubela (chairperson of the session), Ms. Thoko Magagula (Deputy Chief Whip of the Majority Party), Ms. Nkomo – Ralehoko (Member of Executive Council (MEC): Health and Wellness, and ANC Gauteng Deputy Chairperson, and Ms. Mosupyoe (MEC: Sport, Arts, Culture and Recreation, and ANC Gauteng Treasurer).

52. Mr. Makhubela informed me that he was conveying a decision of the ANC that I should leave the Legislature and that all efforts will be made to ensure that I

am not disadvantaged by my departure and that I should propose a settlement agreement.

53. Therefore, in line with the decision of the 15 December 2023 that there must be mutual separation, I submitted the settlement agreement to the second respondent on 8 January 2024, the first reopening of the Legislature after December leave, and did not receive any feedback from the second respondent until February 2024 when the second respondent informed me that she was still waiting for the meeting with the Premier and Chief Whip to discuss my proposed settlement agreement.
54. Subsequent to that, I received a phone call from the Premier to attend a meeting with the second respondent and the Chief Whip after the House Sitting on 27 February 2024.
55. I expressed appreciation to the information that he provided and indicated that I am grateful to the ANC but that I want a clean break and not to burden the ANC. I informed the meeting that I will not want to settle for anything less than the outstanding period of my contract and all due increases and bonuses in line with what I was informed by Mr Makhubela that the settlement must not disadvantage me.
56. The second respondent provided me with feedback stating that the Political Management Team (PMT) comprising of the second respondent, Mr Lesufi and Mr Makhubela had considered my proposed settlement agreement, and

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resolved that I was asking for a lot of money which GPL did not have, and that I should consider 16 or 18 months as a maximum as compensation, or that I return to work.

57. I informed the second respondent that I had decided to continue working, and that I actually had been at work since the 8 January 2024 whilst awaiting feedback from her.

58. On 5 March 2024 I was informed that, after a House Sitting wherein MEC Mamabolo tabled the Budget for 2024/2025, an urgent meeting of the ANC Caucus was convened to discuss my continued presence at work. The second respondent also attended the ANC Caucus meeting. I am informed that several accusations relating to my proposed settlement agreement were levelled against me, and that I should be charged. A Political Task Team was established to find possible charges against me.

59. I pointed out to the second respondent that whilst I respect her decisions to meet with any employee of GPL, I expressed my disappointment which were that I had noticed that she continued to plan and have meetings with my subordinates to discuss or plan my fate and to make arrangements for agreements that I am not informed about such as an agreement to settle the S & T disciplinary hearings with NEHAWU. She was clearly informed that I did not agree with this.

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60. Given that I had refused to delay the S & T hearings on 7th March 2024 I was then issued with a precautionary suspension letter by the second respondent. A copy of this letter is attached hereto marked 'FA1'.

61. On 13 March 2024, I then instructed my attorneys of record to send a letter to the first respondent on my behalf challenging the reasons for the suspension. The letter was then sent on even date, which stated:

"We refer to your letter dated 7 March 2024, titled "Precautionary Suspension- Charge Sheet" and directed to Mr Peter Skosana (hereinafter referred to as "our client").

In terms of the aforementioned letter, our client was requested to provide a response, within 5 working days from the date that he received the letter, as to why he should not be placed on precautionary suspension. We, however, note and place on record that clause 4.4 (iv) of the Disciplinary Policy of the Gauteng Provincial Legislature (hereinafter interchangeably referred to as "GPL" or "the Employer") provides for a period of 7 working days in which an employee should respond to a notice of precautionary suspension.

The following charge has been brought against our client:

"Charge 1

Insubordination

The Gauteng Provincial Legislature instituted disciplinary proceedings against thirty four (34) employees who were charged with Fraudulent Subsistence and Travel Claims. You were requested to provide a list with

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financial implications to allow the Speaker to take a decision whether the amounts in question align to the fees to be paid in lieu of legal costs on the process. This has disabled the Speaker from making an informed decision on the matter.

It is further alleged that you wilfully and defiantly failed to obey a reasonable and lawful instruction issued to you by Ms. Ntombi Lentheng Mekgwe, the Speaker of the Legislature to enter into a Settlement Agreement with NEHAWU to bring this matter to finality. The matter remains outstanding and unresolved. It has further brought the institution into disrepute."

Our client's response to the charges above

It is common cause that our client is the Administrative Head or the Accounting Officer of the GPL.

Therefore, as Accounting Officer, our client has certain duties and responsibilities, which he must adhere to in terms of, inter alia, the Financial Management of Parliament and Provincial Legislature Act (FMPPLA) and the National Treasury Guide on Fruitless and Wasteful Expenditure (2015).

Section 68 (2) of FMPPLA provides that the Accounting Officer must: Investigate any allegations of financial misconduct against an official unless it is obviously unfounded; and

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If the investigation warrants such step, institute disciplinary proceedings within 30 days in accordance with any applicable systems and procedures.

Furthermore, the FMPPLA and the National Treasury Guide on Fruitless and Wasteful Expenditure (2015) prescribe that the Accounting Officer must ensure that unauthorised, irregular, and fruitless and wasteful expenditure and other losses are prevented, and appropriate steps are taken where such expenditure has occurred to recover the public money.

We are instructed that:

On 13 December 2023, immediately after the meeting with Treasury (MEC and his team) which was held in the boardroom of the Speaker, the Speaker instructed that both Mr Skosana and the Executive Director of Corporate Support Services (ED: CSS) remain behind. In that meeting the speaker requested for the following:

All names of the employees that were charged; and

Legal costs for the process.

Our client instructed us that he reiterated to the Speaker, when the request for the above was made, that the matter of consequence management remains a management function as outlined in the Financial Management of Parliament and Provincial Legislature, Act 10 of 2009 which clearly outlines the responsibilities of the Accounting Officer.

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Our instructions are further that our client went on to state that The Public Audit Act as amended, Act 05 of 2018, amongst others, stipulates that where there are irregularities in financial expenditure, such can be recouped from the Accounting Officer.

Despite this being construed as going beyond the roles and responsibilities of the Executive Authority, our client informed us that he still carried out the instruction and submitted a zipped file of all charge sheets as well the memo that stipulated the funding for the legal costs to the Speaker in an email on Friday, 15th December 2023 on or around 12:26.

It is therefore our submission that the action of instituting consequence management to fraudulent activities falls within the purview of the Accounting Officer and that our client was well within his rights to exercise this function (especially in light of an Investigation Report, where disciplinary action was recommended by BDO, a firm who tasked to conduct an investigation into the allegations of fraudulent subsistence and travel claims).

By neglecting to take disciplinary steps against the 34 individuals, our client would have failed to comply with relevant applicable laws, protect the diminishing public funds and the resources of the institution and additionally render our client liable for the irregular and fraudulent expenditure.

In response to the allegation that our client wilfully and defiantly failed to obey a reasonable instruction to enter into a settlement agreement with NEHAWU to halt the disciplinary hearings of the 34 Employees who were charged for fraudulent conduct, our client's response is as follows:

The Speaker, as Political Head or the Executive Authority of the GPL, should not be interfering in the administrative responsibilities of the Accounting Officer. The instruction therefore cannot be said to be a lawful instruction.

Our instructions are that our client only became aware of the "instruction" from the Speaker on 4 March 2024 when an email was sent to our client and the ED:CSS.

On 5 March 2024, our client was alerted that the Speaker had convened a meeting with NEHAWU and all Presiding Officers which was scheduled to take place on 6 March 2024. Our instructions are that our client was not made aware nor invited to the said meeting. Our client's submission is that the very nature of the meeting called by the Speaker nullified the unlawful and unreasonable instruction.

We wish to refer you to the case of Mogothle v Premier of the North-West Province and Another [2009] 4 BLLR 331 (LC) , where the Labour Court noted that suspension of an employee pending an inquiry into an alleged misconduct, is equivalent to an arrest, and should therefore be used only when there is a reasonable apprehension that the employee will interfere

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with the investigations or pose a threat of some kind. Only in exceptional circumstances should an Employee be suspended pending a Disciplinary Inquiry.

The Court held further that suspensions must, as a minimum requirement satisfy the following three criterion - the first two relate to substantive fairness and the third relates to procedural fairness –

The employer must have a justifiable reason to believe, prima facie at least, that the employee has engaged in serious misconduct (“first criterion”);

There is some objectively justifiable reason to deny the employee access to the workplace based on the integrity of any pending investigation into the alleged misconduct, or some other relevant factor that would place the investigation or the interests of affected parties in jeopardy (“second criterion”); and

The employee is given the opportunity to state a case or to be heard before any final decision to suspend is made (“third criteria”).

Based on the explanations provided above, we request that you confirm, as a matter of urgency, that our client will not be placed on precautionary suspension.

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Kindly note that our client is open to an amicable discussion in order to find a fair and just solution acceptable to both parties.

Finally, we place on record that should our client be placed on precautionary suspension, we hold instructions to launch an urgent court application to nullify the suspension.

In the meantime, all our client's rights remain reserved.

We look forward to receiving your urgent response."

62 A copy of this letter is attached hereto marked "FA2".

63 After sending the very detailed and well substantiated letter as to why I should not be put on precautionary suspension, the second respondent sent me directly, and not my attorneys with a withdrawal of suspension letter on 18 March 2024. The letter stated.

"WITHDRAWAL OF PRECAUTIONARY SUSPENSION: MR PETER SKOSANA

Reference is made to the above.

Kindly be informed that the precautionary suspension preferred against you and communicated to you on the 07 March 2024 is hereby withdrawn until further notice. Notwithstanding the above, the Executive Authority may still elect to reinstitute same, at any time, should such be warranted and in keeping with the prescribed procedure. Further be informed that I

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have noted a letter from your legal representative(s) on the stated matter but reserve my right at this stage not to engage its contents."

64. A copy of this letter is attached hereto marked "FA3". It will be noted that subsequent to my attorneys providing a detailed answer to their precautionary suspension notice, the suspension was withdrawn.
65. Following the withdrawal of the precautionary suspension, the second respondent sent me a WhatsApp message on the 27 March 2024, "**Greetings. The offer is accepted. I will talk to you tomorrow about modalities**" to which I responded "Greetings Madam Speaker. I will await your talk (call) - I will be in the office tomorrow.
66. I also sent the second respondent a WhatsApp message as a follow up saying "**I am keen to know what time are you going to talk to me as there are institutional events taking place tomorrow (28 March 2024) Standing Committee of Chairpersons and Launch of E-Petition**". I made another follow up on the 28 March asking for the time for meeting the second respondent, and she indicated that she was in her office and that we should meet quickly as she has another meeting at 16:00.
67. I refer the court to the attached WhatsApp correspondence whereby the second respondent requested me to provide her with a response to her messages and possible meeting. These are attached marked "FA4".

68. On the 28 March 2024 the second respondent and I met and we agreed to mutually part ways and a settlement agreement was entered into. A copy of this agreement is attached hereto marked "FA5".

THE BREACH OF CONTRACT

69. The settlement agreement was entered into and signed by myself and signed by the second respondent in her representative capacity as the Executive Authority and Speaker of the first respondent, on behalf of the first respondent.

70. It will be noted that material and implied terms contained in the agreement were *inter alia*:

70.1. The first respondent and myself had decided to terminate my employment agreement prior to the expiration of the contract.

70.2. It was further stated that the second respondent is delegated by the first respondent to sign the agreement.

70.3. That the second respondent and I considered the agreement to be in our best interests to resolve the matter amicably and to avoid possible and protracted litigation and costs associated with the need to bring stability to the first respondent.

70.4. Calculate all monies due to me, consult with me or my representative and obtain a tax directive from SARS within 5 working days from the date of signing the agreement and effect payment after deducting the

tax in line with the tax directive. The net payment was to be deposited into my bank account within 14 working days from the date on which the second respondent and I signed the agreement.

70.5. I would be paid all monies due to me based on the terms of the agreement which included

70.5.1. My salary *in lieu* of twenty months covering part of the remainder of my contract period with an adjusted annual increment of 6% for each year or pro-rate thereof,

70.5.2. Payment *in lieu* of the accrued annual leave days up to and including the date of signature of the agreement,

70.5.3. Performance bonuses for the following outstanding periods: 2021/2022 FY, 2022/2023 FY, 2023/2024 FY as well as for the 2024/2025 FY and 2025/2026 FY at 7.5% of the annual salary as stated in the IPMS Policy,

70.5.4. A general increment due for the 2024/2025 and 2025/2026 (pro-rate) financial year at 6% in line with the multi-year agreement signed, and

70.5.5. Any other monies due to me including the monthly salary until termination of the agreement.

70.6. It was further agreed that should either of the parties, being myself or the respondents, be of the view that the other has breached the terms thereof, a demand shall be made in writing on the other party to remedy such breach within seven (7) days of receipt thereof. Should

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the breach not be remedied then the other party shall be entitled to take further legal steps to enforce their rights. If the nature of the breach is such that an urgent application would have to be launched by either party, then the period shall be reduced to 24 (hrs) or shorter depending on the urgency thereof.

71. In terms of the aforementioned clauses, they placed an obligation on the respondents to perform and this was agreed to between the parties. Subsequent to the signing of the agreement, on 05 April 2024 I officially left t I returned all my work items including *inter alia*, work files, work laptop and all other work-related items to the second respondent and officially left the employ of the first respondent as per the terms of the agreement.

72. I have since complied with the terms of the agreement.

73. However, despite the above, the respondents failed to honour their obligations in terms of the agreement. Thus, breaching the contract. As a result of the above breach, on 23 April 2024, I sent a letter to the second respondent informing her of the breach. The letter stated:

"SUBJECT: BREACH OF SETTLEMENT AGREEMENT - INTENTION TO APPROACH COURT OF LAW

Dear Madam Speaker,

I am writing this letter, in line with Clause 9.1 of the Settlement Agreement between GPL and myself (Vusimuzi Right Peter Skosana) to bring to your attention that you have breached the settlement agreement signed

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between myself, Peter Vusimuzi Right Skosana (Employee) and yourself, as the Employer representing GPL on the 5th of April 2024.

According to the settlement agreement, you were obligated to:

- I. Calculate all monies due to me, consult with me or my representatives and obtain tax directive from SARS within 5 working days of signing of the Settlement Agreement and effect payment after deducting the tax in line with tax directives, and deposit the net payment into my banking account within 14 days from the date on which the you (Employer) signs the agreement (Clause 3.6 of Settlement Agreement)**
- II. The Employee (Mr Skosana) will be paid all monies due to him based on contents of Clause 4.3 and the monies due shall include.**
- III. Salary in lieu of twenty months covering part of the remainder of my contract period with adjusted annual increment of 6% for each year or pro-rata thereof Clause 4.3.1).**
- IV. Payment in lieu of the accrued annual leave days up to and including the date of signature of the Settlement Agreement (Clause 4.3.2).**
- V. Performance bonuses for the following outstanding years 2021/2022 FY, 2022/2023 FY, 2023/2024 FY, as well as for the 2024/2025 FY and 2025/2026 FY at 7.5 of the annual salary as stated in the IPMS Policy (Clause 4.3.3).**
- VI. General increment due to for the 2024/2025 and 2025/2026 (pro-rata) financial years at 6% in line with the signed multi-year agreement (Clause 4.3.4)**

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VII. Any other monies due the employee (Mr Skosana) including the monthly salary until the termination of the Agreement (Clause 4.3.5).

You as the Employer (representing GPL, has failed to implement Clauses 3.6, 4.3.1, 4.3.3,4.3.4 and 4.3.5, which mandate the consultation with the employee or his representatives, obtaining a tax directive from the South African Revenue Service (SARS), and depositing the net payment into the employee's bank account within specific timeframes.

The Employer was required to complete the aforementioned obligations within 5 working days of signing the agreement and deposit the net payment within 14 days from the date on which the employer signed the agreement.

Given the breach of these clauses and the failure to fulfil the obligations within the stipulated timeframes, I hereby notify you that I intend to approach the court of law to enforce the settlement agreement. This action is necessary to ensure that the terms and conditions of the agreement are upheld and that my rights are protected.

I trust that GPL will take immediate action to rectify the breach and fulfil its obligations in accordance with the settlement agreement. Failure to do so will leave me with no choice but to seek legal recourse to enforce the

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agreement and seek appropriate remedies, including interest for each day passed without payment of my monies.

I will appreciate a prompt response to this letter, confirming your understanding of the breach and providing a plan of action to rectify the situation.

Please consider this letter as a formal notice of the breach and my intention to pursue legal action if necessary.

Thank you for your attention to this matter."

74. A copy of this letter is attached hereto marked "FA6". Despite sending this letter, the respondents failed to remedy the breach.

75. I then instructed my attorneys of record to send further correspondence to the first respondent requesting compliance with the terms of the agreement. Thus, on 03 May 2024, my attorneys of record sent a letter to the first respondent stating:

"We refer to the abovementioned matter and confirm that we act herein on behalf of Mr Peter Skosana, hereinafter referred to as "our client".

Our instructions are that:

Our client entered into an employment relationship with the Gauteng Provincial Legislature (hereinafter referred to as "GPL" or "the

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Employer") on 1 July 2021 for a period of 5 years, which would have resulted in his contract terminating on 30 June 2026;

Our client and the Employer mutually agreed to terminate the employment relationship before the end of the contract period and entered into a Settlement Agreement on 5 April 2024.

Attached hereto is a copy of the Settlement Agreement, for your ease of reference.

The most pertinent terms of the Settlement Agreement are:

Clause 3.6, which states that the Employer is obligated to calculate all monies due to our client, consult him or his representative and to obtain a tax directive from SARS within 5 working days from the signing of the Settlement Agreement and to effect payment to our client after deducting the tax in line with the tax directive. The net payment had to be deposited into our client's banking account within 14 days from the date of the signing of the settlement agreement by the Employer.

Clause 4.3 states that our client is entitled to all monies due to him which shall include:

Salary in lieu of 20 months covering part of the remainder of his contract period with adjusted annual increment of 6 % for each year or pro rata thereof;

Payment in lieu of the accrued leave days up to and including the date of signature of the Settlement Agreement;

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Performance bonuses for the following outstanding periods: 2021/2022 Financial Year, 2022/2023 Financial Year, 2023/2024 Financial Year, 2024/2025 Financial Year and 2025/2026 Financial Year at 7.5% of the annual salary as stated in the IPMS Policy;

General increment due for the 2024/2025 and 2025/2026 (pro rata) financial years at 6% in line with the signed multi-year agreement signed;

Any other monies due to our client including his monthly salary until the termination of the Agreement.

Our instructions are that the Employer has failed and/or neglected to obtain a tax directive from SARS and pay the net amounts due to our client within the timeframes agreed upon in the Settlement Agreement.

Thus, resulting in the Gauteng Provincial Legislature being in breach of contract.

Our instructions are therefore to demand, as we hereby do, immediate compliance with the terms of the Settlement Agreement and to pay all monies due and payable to our client, failing which, we hold instructions to institute formal legal action without any further notice to you.

Please acknowledge receipt of our letter."

76. A copy of this letter is attached hereto marked "FA7".

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77. I wish to draw to the court's attention that despite my letter and my attorney's letter, the respondents have failed to comply with the terms of the agreement.

78. The second respondent called me on the 2nd May 2024 requesting that I should meet with her. Unfortunately, I could not meet as I had a prior engagement. She called again on the 6th May 2024, but I could not take her call. I responded to the WhatsApp messages of the second respondent on the 8th March 2024 and informed her that she had breached the agreement and that she should be communicating with my attorney on any matter that she would like to discuss with me. A copy of these WhatsApp messages, are annexed hereto marked "FA8".

79. On 16 May 2024, my attorneys of record sent a further letter following up to the letter dated 03 May 2024. In the same letter we further informed the respondents that we would be instituting legal action against the respondent for their breach of contract. A copy of this letter is attached hereto marked "FA9".

80. On 16 May 2024 the second respondent, responded to my attorney's letter acknowledging receipt of the letters above and further denied the authority of the second respondent to enter into the settlement agreement. Thus, indicating that they could not comply with the agreement, despite having entered into it due to the second respondent not having the requisite authority. This is further evidence of an act of breach of contract. This is in spite of the executive powers and authority conferred on the second respondent by the first respondent to make **"proper, valid and effectual" decisions**" on behalf of the first respondent as prescribed by the Legislature Services Act, Act No. 05 of 1996.

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81. A copy of this letter is attached hereto marked "FA10". In the event that the court finds that there is a breach or that it is accepted that the second respondent did not have the requisite authority to enter into the agreement, I seek a relief of confirmation of cancellation of the agreement.
82. It will be noted that the agreement does not provide a cancellation clause. Thus, I humbly seek for an order cancelling the agreement.
83. On 22 May 2024, my attorneys of record, in response to the second respondent's letter above, informed the second respondent that if the second respondent did not have authority to enter into the agreement, then I should return to work immediately due to the agreement being null and void, alternatively I return to work whilst the respondents attempt to ractify the agreement. A copy of this letter is attached hereto marked "FA11".
84. It will be noted that the settlement agreement was entered into on 05 April 2024 and therefore the respondent had an obligation to perform in terms of the agreement within 14 day working days from the date of signing the agreement which, therefore, the last day to perform was 19 April 2024.
85. The respondents have accordingly failed to comply with the terms of the agreement and are in breach. Despite demand and numerous correspondence sent by myself and my attorneys of record, the respondents have refused to comply with the terms of the agreement.
86. I am left with no option but to approach this honourable court for its intervention in the matter seeking to hold the respondents in breach of the agreement.

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CONCLUSION

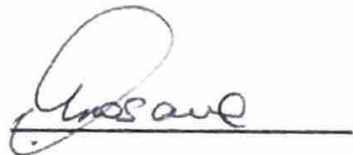
87. It is submitted that I have proven the requisite non-compliance of the agreement on the part of the respondents and that they have thus committed an act of breach of contract.

88. I seek from this court an order of specific performance whereby the respondents are ordered to comply with the agreement, alternatively, that the agreement is cancelled as a result of the breach, and I am to return to work.

89. In the circumstances I submit that a proper case has been made for an order holding the respondents to be in breach of the agreement and for an order of specific performance by the respondents.

90. I seek from this court an order against the respondents to pay all costs of this application on client and attorney scale.

WHEREFORE I pray that this Honourable Court grant an order in terms of the Notice of Motion annexed hereto.



DEPONENT

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I certify that the deponent to this Affidavit has acknowledged that she knows and understands the contents of this Affidavit which was signed and sworn to before me at

on the _____ day of _____ 2024,

the regulations contained in Government Notice No. R1258 of 21 July 1972 as amended by Government Notice No. R1648 of 19 August 1977 having been complied with.

For
Alwyn Sef

COMMISSIONER OF OATHS

I certify that the above statement was sworn by me and that the deponent has acknowledged that he/she/it knows and understands the contents of this statement. This statement was sworn to in my presence and the deponent's signature and fingerprint was placed thereon in my presence.

Alberton *2024-05-23* *on 06/10*
716 4802
Alwyn Sef


HANDTEKENING: KOMMISSARIS VAN EDE
SIGNATURE: COMMISSIONER OF OATHS

VOLLE VOORNAAM EN VAN IN BLOKSKRIF
FULL FIRST NAME AND SURNAME IN BLOCK LETTERS

56 Verrinck Ave

BESIGHEIDSADRES (STRAATADRES)
BUSINESS ADDRESS (STREET ADDRESS)

Alberton

SK
RANKURANK

POLISIERING
POLICE LEAD

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2024-05-23
ALBERTON
SOUTH AFRICAN POLICE SERVICE

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