BEFORE THE HIGH COURT OF SOUTH AFRICA

WESTERN CAPE DIVISION

HELD IN CAPE TOWN

IN THE MATTER BETWEEN **Case Number:**

David Robert Lewis **(Complainant)**

and

Michael Halton Cheadle **(First Respondent)**

National Prosecution Service of South Africa **(Second Respondent)**

Cape Law Society **(Third Respondent)**

Judicial Service Commission of South Africa **(Fourth Respondent)**

AFFIDAVIT

I, the undersigned

DAVID ROBERT LEWIS

hereby make oath and state as follows:-

1. I am an adult male residing at 41 Royal Rd, Muizenberg, Cape Town with identity number 6802155194080

2. The facts contained are, save where otherwise indicated, within my personal knowledge and are to the best of my belief true and correct.

3. I lodge this complaint against:-

3.1 MICHAEL HALTON CHEADLE

3.2 CAPE LAW SOCIETY

3.3 NATIONAL PROSECUTION SERVICE OF SOUTH AFRICA

3.4 JUDICIAL SERVICE COMMISSION

Introduction

4. The purpose of this Affidavit is to review decisions (or lack thereof) made *inter alia*, by the Judicial Services Commission ("JSC"), the National Prosecution Authority ("NPA"), the Cape Law Society ("CLS") and the response thereto, of Acting Justice Michael Halton Cheadle.

5. The case is an important test of article 33 'right to just administrative justice', and also 34 'right to access to courts'. It therefore reaches beyond simple procedural fairness and due process towards substantive issues regarding judicial impartiality and the independence of the judiciary.

5.1 Article 33 states: .

> (1) Everyone has the right to administrative action that is lawful, reasonable and procedurally fair.

5.2 It also imposes a duty on the state to give effect to these rights

5.3 Article 34 affirms:

> Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate,

another independent and impartial tribunal or forum.

6. **Relief Sought**

a) Declare that the First Respondent adjudicated a case before the Labour Court of South Africa whilst being the director and shareholder of a labour brokerage and/or human resources and financial services firm, and consequently did not possess the requisite authority to delegate nor derive any authority to adjudicate the law by virtue of his holding an ‘office of profit’ at these firms.

b) Declare that the First Respondent, adjudicated a case in which the opposing party was a client of the adjudicator’s law firm, and furthermore, was involved in several joint business ventures and thus the primary business of First Respondent’s associates and partners (external to the profession of law), and therefore that the First Respondent failed to exercise judicial impartiality;

bb) by favouring his client and thus the opposing party in the matter, in conducting judicial proceedings or judicial functions.

c) Declare that the First Respondent, being a card carrying member of a political party and/or a long-time party functionary and/or a drafter of laws, was engaging in a

legislative and/or executive function of the state at the same time that he proceeded to adjudicate a matter before the courts in order to interpret these very same statutes, in contravention and contempt of the letter and spirit of the law, if not the rule of law.

d) Declare that the Respondent failed to recuse himself from the proceedings before the honourable court and/or failed to disclose facts pertinent to a recusal.

e) Declare the Respondent is in breach of trust with regard to an improper inducement to do or not to do anything with regard to a recusal and/or any formal applications and submissions which may have been required in this regard.

f) Declare the Respondent failed to perform a judicial function; by

> ff) indirectly accepting, agreeing or offering to accept a gratification from another person, for the benefit of himself or for the benefit of another person during or over the course of a case before the Labour Court of South Africa, held in Cape Town 4-6 November 2009 & 20–21 January 2010, that amounted to the illegal, dishonest, unauthorised, incomplete, and biased performance of duties.

g) Declare the Respondent abused a position of authority; via

gg) the misuse of information or material acquired in the course of the, exercise, carrying out or performance of powers, duties and functions arising out of a constitutional, statutory, contractual or legal obligation, to achieve an unjustified result.

h) Declare that the Respondent was engaged in or was party to an act of Forgery; and consequently;

hh) the forging and uttering of documents, “the process of making, adapting, or imitating objects, statistics, or documents, with the intent to deceive.”

hhh) and/or knowingly used forged documents, “the process of making, adapting, or imitating objects, statistics, or documents, with the intent to deceive.”

i) Declare the Respondent violated a legal duty or a set of rules;

ii) to achieve an unjustified result in a decision affecting the life, freedoms, rights, duties, obligations, customs and character of the Complainant.

j) Declare the Respondent overstepped the secular authority inherent to the position of

acting-judge and/or adjudicator, and thus is in breach of the authority of the secular courts, and that he consequently acted without the necessary authority of the aforementioned court.

k) Direct the professional entity affected, namely the Cape Law Society to discipline its member and affiliate according to its disciplinary procedures and codes.

l) Direct the juristic and legal body namely, the Judicial Service Commission to bar its member and/or affiliate from adjudicating any further cases before the Labour Court of South Africa or any other court of law or tribunal and/or to bring impeachment proceedings.

m) Direct the National Prosecution Authority to bring criminal proceedings against the Respondent, in respect of any criminal charges and/or misprision and/or malfeasance in office arising from this complaint and/or to issue a *nolle prosequi* certificate in this regard.

n) Direct the Labour Court and/or Labour Appeal Court to rescind its decisions in the matter on the basis as outlined above.

7. In support of the above, this Affidavit deals with:

7.1 Introduction

Relief Sought

The Parties

7.2 The Facts

The Resolve Group;

A Networked Media Company;

The Rupert, Bekker, Stofberg relationship;

The Mea Culpa;

The Questionable Transaction;

A Questionable Partnership;

The Law Firm;

Schedule 1 offenses;

The Criminal Case;

The Public Protector;

The National Prosecution Authority;

The Judicial Service Commission;

7.3 The Law

The Judicial Service Commission Act;

Prevention and Combating of Corrupt Activities

Conflict of Interest and the Separation of Powers;

Judicial Deference;

Judicial Impartiality

7.4 Conclusion and relief sought.

The parties

8. The Complainant is a journalist, whistleblower and anti-apartheid activist. He has worked for various publications and is a struggle veteran and former member of several organisations banned by the former apartheid regime, including *inter alia*, New Nation, Grassroots, South Press, COSAW and SACHED. In particular his membership of End Conscription Campaign, South West African People's Organisation (SWAPO) solidarity group, The People's Culture Festival (Affiliate), Cultural Workers Congress, Earthlife Movement (founding member), Koeberg Alert, People's Health Movement (former steering committee) and other current and similar activist groups is relevant to these proceedings. He is also a University of Cape Town alumnus and holds a degree conferred by this institution.

9. The First Respondent is the former director of the Resolve Group, a labour brokerage, human resources and financial services firm. He is also a practising attorney and director of Bradley Conrade: Halton Cheadle (“BCHC”) and was a director at the time of Cheadle Thompson Haysom (CTH”) a law firm operating in Cape Town. In addition, he is former Professor of Public Law at the University of Cape Town, now retired, and is a longstanding party-political functionary for a well-known political party, namely the African National Congress (“ANC”)

10. The Second Respondent is the Cape Law Society which is a statutory body governing the law profession in the Western Cape bound by the The Legal Practice Council and its Provincial Councils.

11. Third Respondent is the National Prosecution Authority set up in terms of Section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), which created a single National Prosecution Authority (NPA). The mandate according to this body is to “Institute and conduct criminal proceedings on behalf of the State.”

12. The Fourth Respondent is the Judicial Service Commission established in terms of section 178 of the Constitution and responsible for administering the judiciary and handling complaints against its members.

The Facts

13. This complaint arises from Complainant's attempts to seek justice in an unfair discrimination case brought before the Labour Court of South Africa in 2007 (C88/07) and heard during 2010, in the expectation that any application brought by a civilian would be heard by an impartial, independent and secular authority. The matter thus arises as a result of the First Respondent acting as a justice of the Labour Court of South Africa, in a proceeding held in Cape Town and heard on 4-6 November 2009 & 20–21 January 2010 and also 4 May 2010.

14. With regard to the process of judicial review. Leave to appeal the decision of 04 May 2010, handed down in Complainant's absence, and where he was not informed of the date of the hearing, was denied despite extensive submissions. Complainant reserves his right to make further submissions regarding the lack of due process in this regard. A further petition to the Labour Appeal Court on 27 July 2011 (CA11/2011) was also turned down without reasons given and Complainant was not given an opportunity to give oral evidence nor to argue the merits of an appeal, and was not present, nor was he informed of the date of the petition hearing nor was he ever represented by a legal professional.

Judicial Services Commission (Complaint One)

15. On 15 June 2011 Complainant wrote a letter to the Judicial Services Commission, Chairperson Chief Justice Sandile Ngcobo, complaining about the conduct of the First Respondent.

16. On 30 June 2011 Complainant received a letter per fax (DRL1) signed by Lynette Bios, Secretariat of Judicial Service Commission on behalf of the chairperson of the Judicial Conduct Committee informing me the "complaint has been referred to the Cape Law Society for their attention, as that body has jurisdiction to discipline its members." The communication included a copy of a JSC letter to the Cape Law Society referring the complaint to them for their attention.

17. The JSC did not provide any further advice, more importantly, **it did not claim that it lacked jurisdiction over the affairs of the judiciary and its members and affiliates** but rather that the CLS, as a professional body governing legal practitioners, was empowered to deal with the matter. It should be noted here that the First Respondent had not acted in his capacity as legal practitioner whilst on the bench, but rather in the capacity of judge and/or adjudicator, whose capacity is that of the judiciary.

Cape Law Society

18. Complainant then received a letter from B S Mkumatela ("Mkumetela") of the Disciplinary Department of the Cape Law Society dated 5 July 2011 (DRL2), thanking Complainant for his letter "which was received on 30 June 2011". Mkumatela requested that Complainant 'advise whether an application was made' to have First Respondent "recuse himself in the matter, if not why was the application not made."

19. On 10 July 2011 Complainant responded to Mkumatela confirming that an application for recusal of the First Respondent had not been made at the time because he "*did not did not disclose any information which would have been pertinent to an application for recusal at the time.*"

20. On 16 August 2011 Mkumatela advised Complainant that First Respondent had not responded to a letter dated 5 July 2011 from the Law Society (DRL3), in this regard, stating: "*We have today sent another letter and have required him to respond by 30 August 2011*."

21. On 14 September 2011 (DRL4) Mkumatela provided Complainant with a copy of a report dated 6 September 2011 (DRL5) received from the First Respondent and requested my comments on the report "particularly with regard to paragraph 6 of his

report which reads, "*It is also correct that when these issues were raised in chambers with Mr Lewis and Adv Kahnovitz (sic) and his instructing attorney Glen Cassels of Maseremule Inc, representing Media 24, I offered to recuse myself. In the discussion that followed, I do recall stating that I had no part in the brief from Media24 and that I felt that I would be able to preside impartially. Both parties agreed to my presiding over the matter*." Mkumatela also requested written comments "with particular reference to your affidavit dated 25 January 2011, paragraph 7".

22. The report provided by the First Respondent ("the report") confirmed that the opposing party in the labour matter, Media24 was a client of CTH, the law firm of which the First Respondent, was still at the time a director. In paragraph 6 of the report the First Respondent states: "*It is correct that Mr Lewis had approached the law firm for assistance at an early stage of the proceedings and that the firm had advised him that Media24 had been a client ...*" *First Respondent then claimed the firm "had only been briefed once for an opinion".*

23**. First Respondent therefore acknowledged in writing that he was a party to the privileged attorney-client relationship involving the opposing party in the labour matter, in a case before the Labour Court in which he was also acting judge**. This represents a material breach of Article 12 of The Code (see below point 95). The judicial

officer in the matter was thus now effectively being briefed twice by his client either on the same matter and/or on a separate matter. This fact alone represented grounds for immediate recusal.

24. The recusal from duty should have been affected by the adjudicator himself and/or the judicial officer in question (see Article 13 of The Code), and should have been considered automatic. It would be bad law to consider the Complainant, a lay-person, without access to privileged information pertaining to the adjudicator's day-to-day business activities to have affected such a recusal. It is not the professional duty of the Complainant to apprehend wrong-doing.

25. In any event, by his own admission, First Respondent claims to have "offered to recuse himself" at the same time as claiming "no part in the brief" of his client. **The offer made in this manner, at the face of it, represents an improper inducement to "do nothing in regard to a recusal" and/or an application for recusal and thus was a breach of trust and abuse of a privileged position.** Either the party was a client, or had never been a client, there should have been no possibility of a grey area, and thus an acting judge, entertaining a *non sequitur*, as an argument in his defence. (Please see attached Addendum drafted in relation to First Respondent's statements recorded in the transcripts of the Proceeding 'point 5', at page 7 from line 15)

26. In order to **document the correct sequence of events, Complainant provides below some discussion of the First Respondent's report and business relationships revealed therein, the impact on the investigation, before taking up the story of the Cape Law Society Decision below at point.**

The Resolve Group

27. The report confirmed the First Respondent's directorship at the Resolve Group, a labour brokerage and financial services group, where he received fees, emoluments and remuneration. It also provided an organogram of the Kagiso Group (Annexure B to the Report) (DRL5) who were at the time majority partners in Resolve and whose main focus of business is media and attempted to explain away several links and relationships between Media24 and the business affairs of the Resolve Group, in particular as it related to the business interests of its directors and owners.

28. The Resolve Group (DRL6), until 2012 when it was taken over by Ernst & Young Advisory Financial Services, provided "*a suite of human resources and labour relations services.*" In the process the First Respondent created a "total solution in workforce management" that included, it appears, managing cases before the Labour Court of South Africa. A history on the company website archived from 2010 states:

"ResolveWorkplaceSolutions was the brainchild of David Storey, Clive Thomson (sic) and law firm Cheadle, Thomson and Haysom (CTH)." That this was clearly more than simply a venture outside of the legal world for the director of CTH is apparent. The history goes on to state: "*Kagiso's involvement spelt the end of the Group's consolidation phase and ushered in the second growth phase. In 2004, we evaluated our growth over the last 7 years from 2 to 140 professionals, with an annual compound earnings growth of 80,3% year on year, and decided that this new growth phase should sharply focus on generating long-term sustainable revenue streams and profitability.*"

29. The Resolve Group included Resolve Workplace Solutions, Resolve Encounter Consulting, Tokiso Dispute Management, Converse Consulting, Mediaworks, Resolve Career Transition, CCI Growthcon and Resolution Logic, all involved in the employment, placement and management of workers and professionals. Services offered by the Resolve group included: Labour performance management, training programmes and services, private dispute resolution, recruitment and outsourcing, adult education and training, career transition and outplacement, psychometric testing and operational performance improvement. The CCI Growthcon website proudly proclaimed, without a hint of irony: "By performance improvement we mean revenue growth, service delivery, cost reduction/ deferral and/or capital reduction/deferral." Resolution Logic on the other hand, perversely offered its clients "dynamic financial modelling and people strategies for your employee segmentation, human capital and

workforce planning needs."

30. During the investigation conducted by the Complainant, at his own expense, it became clear that the Resolve Group was more than simply a subsidiary of Kagiso, a company active in the same sector as the First Respondent's client and thus the opposing party in the labour matter. It was at the time, part of an interwoven conglomerate (DRL7) whose business interests included Sanlam, Remgro, Caxton, Naspers and Media24 ("The Cartel"). The investigation, conducted by the Complainant, revealed the activities of Kagiso, as a party and subsidiary to the Cartel, i.e. a combine or group, with *de facto* and ultimate control over the First Respondent's business and that of the business of his client. The ownership structure of the various entities, when considered together, represents a consolidated power block with common interests, ownership and a modicum of control over the business affairs of the First Respondent and his client, and thus the opposing party to the Complainant's application at Labour Court. The period of review thus covers what is now referred to as the Pre-Kagiso-Tiso era. Any subsequent restructuring of the overall business (Kagiso-Tiso), including the unbundling of the Resolve Group, is not important to the gist of the complaint. The result however, is included for reference purposes (DRL8).

A Networked Media Company

31. Kagiso Equity Investments at the time owned a substantial holding in Naspers, and this comprised some 8% of the fund as at 31 March 2015. The fund is partly owned by Kagiso VenturesTrust which in turn is owned by Kagiso Ventures LTD in a complex financial scheme. The Kagiso Group are thus vested in Naspers. There are a number of such equity funds apparent in the Group.

32. The Kagiso Group was in several partnerships with First Respondent's client at the time and during the period of review. In particular the following:-

32.1. Kagiso owned a 10% stake in Metropolitan, a joint venture with a stakeholder in the holding company of the opposing party in the matter (First Respondent’s Client), namely Sanlam.

32.2 Sanlam has the 50% (DRL9) majority controlling interest in the Wheatfields 221 holding vehicle which along with Keeromstraat 30 and Naspers Beleggings Ltd (Nasbel), controls Naspers which is the holding company of Media24, and is a partner in Metropolitan alongside Kagiso. Media24 director Boetie van Zyl for instance was listed on the Sanlam board of directors during the period of review.

32.3 Kagiso at the time had a 50% interest in Acceleration Media which is a partnership between Kagiso Media and Lagardère Active Radio International (LARI), a division of the Lagardère Group. Lagardère was in partnership with the Opposing Party (Media24) at the time of review and had common brand share and ventures. Media24 (Women360) is or was the local publisher of Psychologies magazine in South Africa, a brand owned by Lagardère which also publishes Femina magazine until recently also published by Media24 via its 50% partnership in Jane Raphaely and Associates. It appears the Acceleration stake has since reverted to Times Media. Media24 currently licences the Elle brand from Lagardère via a joint venture with Ndalo Media, a print and digital media company that owns and publishes Destiny and Destiny Man magazines and the business and lifestyle social networking site DestinyConnect.com. The resulting company is thus a 'joint venture between Khanyi Dhlomo and Media24'. (DRL10).

32.4 More importantly, Kagiso via its 51.12z% interest in its Urban Brew subsidiary "runs several channels for the MultiChoice/M-Net Group: community channels, Soweto TV and 1KZN, One Gospel and Dumisa on DSTV, and Lokshin Soapie, Zabalaza on Mzansi Magic, Inkaba. In 2011, Urban Brew, through its new division Urban Fixion, produced the first telenovella on Mzansi Magic, Inkaba. Channel 318 ED is the first channel owned by Urban Brew on Dstv."[1] **Thus the majority partner of the First**

[1] http://kagisomedia.co.za/what-we-do/content/

Respondent's labour brokerage firm was clearly involved in the production of media for the opposing party and/or the party's principal owner, in the labour matter. When the fact of the complainant's previous involvement with newspaper titles owned and run by the late director of Urban Brew became known, at least during the court proceedings if not earlier, the First Respondent should have at least availed himself of the opportunity to recuse himself on this fact alone.

33.

Remgro, the parent company of Kagiso, during the period of review, owned an effective 37.86% interest in Kagiso. Remgro also own 37.66% of Kagiso Trust Investments, who in turn own 100% of Kagiso Trust Enterprises, who own 27.4% of Resolve. On this leg alone, the adjudication of a case involving a media company by a director of a company in business with a partner owning the above media assets, was in and of itself, improper and unlawful.

34. Remgro has an effective holding of 31.9% in Sabido which has a range of media interests, which include South Africa's only private free-to-air television channel, e.tv, its sister news service, eNews Channel Africa (eNCA), free-to-air satellite platform Platco Digital, Gauteng-based radio station, Yfm, and various studio facilities and production businesses.

Sabido's media interests, like Kagiso Media, are packaged on the Multichoice television system owned and operated by MIH a subsidiary of Media24.

The Rupert, Bekker, Stofberg relationship

36. In 1970 two pro-apartheid competitive Sunday newspapers, The Image (in Naspers possession) and Dawn (in Perskor's possession), merged as Report to "end the bitter struggle between the newspapers." The combined paper's first issue appeared on 29 November 1970. Thus Perskor was gradually absorbed by Naspers.

37. The sanctions-busting Rembrandt Group comprises Remgro and Richemont. Remgro owns a 37.86% interest in Kagiso. (DRL11) (DRL12)

38. Bidco comprises RMB Investments, Remgro and Caxton directors Terry Moolman and Noel Coburn. It was involved in the recent buyout of ElementONE, a major Caxton shareholder.

39. Johann Rupert via Independent Online, said Remgro had an effective shareholding of "less than 7 percent" in Caxton. "These are shares that we acquired about 20 years

ago when there was a huge fight between Naspers and Perskor."[2] This shareholding represents a significant cross-shareholding within The Cartel, and a direct business link when the Perskor-Caxton stake is considered.

40. Remgro has long held a 1,7% stake in Caxton, a legacy of the old Perskor Group[3]. Caxton subsequently acquired Perskor and vice versa.

41. The Rupert, Bekker, Stofberg relationship began in the early 1990s when Rupert selected pay-TV as the third leg for the family's offshore business, Richemont[4].

42. Jacobus "Cobus" Stofberg at the time was a major Naspers shareholder via Sholto Investments, a non-executive Naspers director, and a senior executive at MIH Holdings Limited, a Naspers subsidiary. (DRL9)

43. In 1994 Rupert entered into a business partnership with Bekker (DRL13), via a 50-50 Rupert Bekker holding company, NetHold, which held the multichoice assets which would later become MIH. Rupert's Remgro stake however was subsequently spun-off into Canal+ in a complex equity deal which effectively removed Remgro

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[2] Retrieved 11 April 2015
http://www.iol.co.za/business/companies/rupert-hits-out-at-the-anc-1.1616316#.VSjnM-HvakA
[3] Retrieved 11 April 2015
http://www.financialmail.co.za/fmfox/2013/12/05/rupert-denies-grand-media-scheme-at-remgro
[4] Retrieved: 9 April 2015
http://www.bdlive.co.za/businesstimes/2015/03/15/stock-talk-caxton-takes-another-shot-at-naspers

control over the entity.

44. Caxton, a major newsprint distributor and printer merged with Perskor, during July 1998, shortly after acquiring CTP (Cape and Transvaal Printers) in 1995. The Competition Tribunal recently heard evidence regarding issues to do with the collapse of Gold-Net News, a community newspaper in competition with Media24 “fighting brands”, in a case involving abuse of a dominant position in the industry. The Competition Tribunal also granted Caxton and CTP Publishers and Printers Limited permission to participate in the hearing of a merger between Media24 (Pty) Ltd, Paarl Media Holdings (Pty) Ltd and Paarl Coldset (Pty) Ltd. In the merger Media24 intended to “purchase a 5% share in Paarl Media Holdings as well as a 12,63% share in Paarl Coldset.” The resulting entity has now been listed on the JSE as Novus. During September 2015, Media24 was found guilty of exclusionary or predatory behaviour in regard to its supposed ”competitors”.

The Mea Culpa

45. On 25 July 2015, Media24 CEO Esmare Weideman publicly apologised for Naspers’s role in apartheid: “*We acknowledge complicity in a morally indefensible political regime and the hurtful way in which this played out in our newsrooms and boardrooms.*” Weideman however only made reference to one case-limited example of

an employee, Conrad Sidego, “the first reporter of colour at Die Burger” who had experienced difficulties with separate facilities. No further apology to any other individuals was forthcoming, nor were any other similar incidents discussed in public.

46. The decision of 2010, essentially written up by the First Respondent’s own client, had attacked the Complainant's credibility on the basis of his opposition to apartheid, in particular it stated at paragraph 98: “*His evidence is unreliable because he is engaged in a campaign against the Respondent for its support of apartheid and its refusal to apologise for doing so before the Truth and Reconciliation Commission. That is clear from his pleadings, the documents he compiled, the evidence he gave and the emotion with which he displayed in conducting his case. This is what drove him and the evidence of his personal engagement with the Respondent was shaped to advance this campaign. His evidence was tendentious.*”

47. **As such, the decision clearly repeated and uttered words that were taken verbatim and issued in defence of the First Respondent's client, who at the time, opposed the Truth & Reconciliation Commission and its Report, in the process violating a set of rules to achieve an unjustified result.** Please see my submissions to the Equality Court EC19/2015 in this regard.

48. Apartheid is an historical fact, and in no way can the tragic effects of such a system

of separate development and race segregation be misconstrued as a “tendency”, an ‘Act of God’, nor an “accident of nature.” Race segregation is not a teaching of the Catholic Church, nor any contemporary religion.

48.1 Complainant notes here the vicious attacks against his person by the First Respondent's client via its representative, during the labour court proceedings, including degrading remarks to the effect that he is somehow a “Hindu” and/or thus a polytheist due to hairstyle and/or appearance and/or is not a Jew, and/or is a “Jew in breach of his religion” due to his not conforming to religious laws, eg, wearing Kipput and/or by driving a company car and/or by attendance at a mixed race nightclub on the Sabbath and consequently, **this was merely a religious matter, involving not secular, nor cultural but rather religious identity** and ergo simply a case of an individual ‘hiding behind religion”, furthermore, a monolithic religion to which he was not entitled to claim any affiliation. (Please see Addendum)

48.2 In particular the decision memorialised apartheid-era justifications for ongoing race segregation and/or maintenance of race privileges, (at paragraph 75), and/or similar justifications in the aftermath of apartheid and on the basis of race, and by effectively reiterating apartheid theology (heresy) that ‘race segregation is divinely inspired by God’, and/or merely an ‘accident of nature’ or words to that effect. Thus the evidence of *de facto* race segregation and race profiling presented by the Complainant,

was simply *'a coincidence of homogeneity in the aftermath of a racialised past'* (recorded at page 312 line 9 of the official transcripts). Accordingly the decision contradicted the TRC report demonstrating policies of separate development implicating the Respondent's client and its participation in this regard, in the process violating a set of rules to achieve an unjustified result. The preamble to the Constitution specifically states: "*We, the people of South Africa, recognising the injustices of the past ...*" The decision thus violated the preamble to the Constitution, and created an anti-morality, in which apartheid was no longer considered a "crime against humanity" and where the injustice of the past, was a mere figment of the Complainant's imagination. (Please refer to my Affidavit before the Constitutional Court in this regard, s82 s83 s84, and EC19/2015).

The Questionable Transaction

49. During the hearing and drafting of the decision a merger occurred between units of the First Respondent client's holding company Sanlam, and Kagiso, with First Respondent's partners and thus First Respondent's office profiting extensively from an improved financial position. Metropolitan and Momentum had announced their intention to merge on 31 March 2010 and the share structure was finalised on 18 November 2010, with a listing as MMI Holdings on 1 December 2010. According to Claude van Cuyck, Head of Equities & Portfolio Management at Sanlam (Media24), the

company at that stage owned a 3.2% minority stake in the new entity, which merged Momentum and Metropolitan in a billion rand deal.

50. The transaction at very least represented an indirect inducement by the First Respondent's client to provide fixation of the matter and/or to determine the outcome, resulting in improper and undue influence and manifesting in the corrupt manner in which the case was generalised, the specifics ignored and evidence squashed and/or altered to confirm to the client's views.

A Questionable Partnership

51. The "executive profile" of David Storey, the CEO at the time of Resolve Group and a 17.204% shareholder, listed consulting work for Resolve for a number of corporations including the Discovery Group. The Discovery Group is a unit of Rand Merchant Bank Holdings, now wholly owned by the then newly formed MMI Holdings. (DRL14) (DR15)

52. Nicola Galombik, a 1,5% shareholder at the time in the Resolve Group was the Managing Director of Converse, a management consulting business within this Group. She is the executive director of Yellowwoods, an investment holding company of several businesses in the financial services sector as well as in the restaurant and

leisure sector. It appears that Yellowwoods, a marketing firm, majority owned by TBWA Hunt Lascaris, and which lists Media24 as a key client, is related to this entity. In other words, Media24, in addition to being owned by an umbrella involved with Sanlam, Remgro, Caxton and Kagiso was in all likelihood, also a client to several underlying subsidiaries of the Resolve Group, and this relationship is reflected in the business holdings of the shareholders. (DRL14) (DR15)

53. Murphy Morobe at the time a 5.7% shareholder in the Resolve Group is an independent Non-Executive Director of Remgro. He held a previous position as Chief Executive Officer of Kagiso and claims to be a “spokesperson for Former President Thabo Mbeki”. Several partners and shareholders, including the First Respondent, thus had close ties to the ruling party, which alone disqualified the adjudicator from the proceedings. (DRL14) (DR15)

54. Pascal Moloi a 5,7% shareholder in the Resolve Group was at the time a member of the National Planning Commission, a government policy think-tank operated by the ruling party. (DRL14) (DR15)

55. Both Peter Harris (14,25%) and Sivan Maslamoney (1,5%) held positions at the SABC at the same time they were ostensibly drawing salaries and/or emoluments at Resolve. (DRL14) (DR15)

56. The report failed to explain the presence of the above (DRL14) (DR15) shareholders, and in particular it failed to explain the presence of a then member of the national executive and at the time, the speaker of the House of Assembly, Max Sisulu who was a director and 5,7% shareholder of the Resolve Group and a major force behind Urban Brew. The report thus failed to examine the implications of this relationship on the matter, and the undue influence exercised upon the judiciary by the ruling party and its organs.

57. The report further confirmed the relationship of the Kagiso Group to Resolve, and thus the fact that the late Zwelakhe Sisulu for whom the Complainant had worked whilst employed at Sached/New Nation during the anti-apartheid struggle, was at the time a director at Kagiso, as well as a director of Urban Brew, a media company owned by this entity, and involved with various business ventures with the opposing party in the matter.

58. The report failed to explain the presence of N M Rothschild, a subsidiary of Kagiso who own a 50% stake in the company and the implications of this shareholding with regard to a dispute involving Secular Humanistic and/or Progressive Judaism and a corporation which, it is claimed, or commonly held to be by reputation, to either represent or be associated with, persons who refer to themselves as Orthodox Jews.

59. NM Rothschild, a global financial services group, is bound up with the State of Israel, and the decision in this regard, in particular First Respondent's failure to admit expert testimony from a female Jewish Rabbi and/or Doctor of Hebrew Studies, blatantly favoured the all male Rabbinate and then current administration in Israel. Complainant wishes to point out the joint venture Rupert & Rothschild Vignerons, which is a combined wine estate owned by Johann Rupert (Remgro) and the Rothschild family who are invested in N M Rothschild.

The Law Firm

60. CTH was started in 1979 by 'three legal academics from the University of the Witwatersrand". According to the firm's website: "*Since then the firm has grown from a human rights and labour law practice into a leading South African law firm with offices in Johannesburg and Cape Town providing a diverse range of legal services*." At the time, the First Respondent was listed as a director and founder of the company, which bears his name. Although WhoseWho South Africa currently list the First Respondent as "Director for Cheadle Thompson and Haysom Attorneys" First Respondent's name is missing from the company's current directors page. This may be in part due to a recent involvement in another law firm, known as "Bradley Conrad: Halton Cheadle", ("BCHC") a firm apparently 'specialising in labour matters'. A biography on the BCHC

sites refers to the First Respondent's involvement with the International Labour Organisation as an "expert". The biography also states the First Respondent "is a Professor of Public Law and a Professor Emeritus at the University of Cape Town "*where he is currently on twenty percent part time appointment allowing him to engage actively in private practice* ".[my emphasis]

61. The involvement of CTH and thus the First Respondent, with Kagiso is a long and illustrious one. Not so clear is the manner in which the company itself and/or the First Respondent was involved in the brokering of legal and financial services behind the creation of the Kagiso Remgro stake, and also the Kagiso – Media24 venture, and thus the setting up of the Resolve Group operation. It appears little more than a means to profit from the resulting internecine conflicts of interest and super-exploitation of labour that was part and parcel of the previous era -- and thus what may also be referred to by some, as simply the "rewards" to be gained from various lucrative deals handed out by the previous regime to the incumbents. At very least, it appears to have been a strategy of preserving state capture, i.e the stake in the economy garnered by the previous regime via corrupt means, and thus the maintenance and continued involvement by a small cabal of Afrikaner businessmen, in the political affairs of the country.

62. Following the repudiation of the complainant's legal insurance pursuant to the

alleged defamation claim made by the opposing party in the labour matter, (confirmed by the Ombud for Short Term Insurance) and thus lacking the means to procure an attorney, the Registrar of the High Court referred the Complainant to the offices of CTH on 2 October 2009 in terms of an *in forma pauperis* application[5] (IFP) application (DRL16). Complainant thus met with Mr Jason White, who informed him that since '*Media24 was or had been a client, the firm would not be in a position to represent him'*, this whilst the First Respondent above, was still a director of the law-firm. Mr White did not tackle the merits of the case, nor did he submit a report to the Cape Bar Council in terms of any IFP rules.

Schedule 1 offences

63. It is not the purpose of this submission to go into any details of the substantive issues of the related labour case, suffice to provide some indication of the remiss and unfairness which occurred. Complainant reserves his right to provide further evidence and testimony. The following are thus delicts which occurred during the course of the

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[5] A second referral to Chennells Albertyn Attorneys elicited a report reiterating a determination of no reasonable prospects by Michael Baynham Attorneys, the Complainant's erstwhile attorney who had withdrawn from the matter. Both determinations failed to consider the opinion of Adv Andrew Caiger. While Caiger's opinion was devoid of facts, it averred an alternative of unfair dismissal. The case was a "fairly arguable case", regarding discrimination, and thus a "serious question to be determined". However it was not fair on the complainant to not allow him to amend his documents in the alternative.

proceeding:-

64. During the proceeding, presided over by the First Respondent, a brief from a paralegal and/or legal advisor was fraudulently amended by the opposing party in the matter and accepted as such by the First Respondent above, without the necessary consent of the Complainant, and in order to conform to his client's characterisation of the Complainant's religious affiliation. (DRL17) Please note, **Complainant is not an Orthodox Jew per se**[6], nor is he an adherent to the Orthodox version of religion. He reserves all rights to freedom of religion, and also freedom from religious rule and to accordingly enter further argument and evidence here.

65. Complainant's signature was fraudulently attached to the back page of a document purporting to be a contract of employment and accepted as such by the First Respondent. The dispute about the signature (SAPS C88/3/2010) is noted in the pre-trial minute (DRL18).

65.1 The signature of the Employer and two witnesses for the Employer thus appear on page 10 of a document dated 1 April 2006 while the signature of the complainant and another two witnesses **appears on a separate page** 11, but of a different document,

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[6] Even if I was an Orthodox Jew, defined by a piece of paper issued by the Beth Din, why would I be a Conservative and not a Liberal? In any event, the Temple no longer exists, there is no college of Rabbis or Sanhedrin, capable of passing religious laws.

and dated 7 April 2006. There is no connection between the content and the two items thereto attached, and hence the pages and the contract signed by the complainant and the preceding 10 pages offered up as the evidence. In order for any forensic examination to occur, for example, to substantiate and verify if the contract and the page upon which the Complainant's signature appears, was printed on the same type of bond with the same ink, it would have been necessary to provide Complainant with the original document. The purported copy provided by the opposing party in the matter was not certified as a copy of the original, and never attested to as such. While the decision notes this dispute at paragraph 49 - 54: "*He said that he had repeatedly asked for the original contract but it had never been supplied. He said that the document purporting to be his contract in the Respondents bundle was a fraud because they had removed an offending clause. The document purporting to be his contract (RB 515) filed by the Respondent was a mere facsimile*..." (and one should add, a facsimile of a purloined and inadmissible document), the court took a leap into the realm of speculation and fiction by its own reliance on the document.

66. For example, the decision then proceeds to claim at paragraph 54 that I contradict myself in regard to the terms therein, on the basis *inter alia* that the witness claims it is "common for sub-editors to write content" and therefore it follows that it is also acceptable to commandeer original submissions and interviews under the complainant's own byline and copyright, and all this, **in terms of a contract whose**

terms cannot be relied upon, and whose existence has not been established.

According to the perverse circular illogic recorded by the First Respondent, it is rather the Complainant who is the one 'relying upon the contract document' in order to substantiate his case, thus at paragraph 96. "*He claimed that the copy of the contract filed in the Respondents documents was a fraud even though he relied on certain of its provisions and he admitted that it was his signature on the last page*."

67. To provide a further taste of some glaring epistemological errors [errors of fact] and ontological problems [errors of understanding of our very being in philosophy], the decision incorrectly refers to statements at paragraph 69 allegedly made in connection to "Die Burger", an Afrikaans language newspaper, in order to dissipate the case filed at court. The evidence provided by the records and the truth is rather different, it is a fraudulent document handed up as a "contract of employment" which has the words "Die Burger Contract of Service for Temporary Staff, Fixed Term" at its head, apparently the Complainant's former employer. There is however, no direct connection between Die Burger and WP Koerante, the Complainant's former place of employment, except for the fact that they are indirectly owned by the same company. At the bottom of the disputed document appear the words Media 24, followed by "lid van Media24 beperk" and a list of directors: Bekker JP, Bosman HR, Brand FHJ (Besteurende/Managing), Swardt SS, Gerwel GJ, Groepe FF, James WG, Landman GM, Malherbe JL, Pacak SJZ, Retief LP, Van Zyle JJM, Vosloo T (Voorsitter/Chairman).

68. To provide background. The Complainant does not write in Afrikaans, and this language is merely a second spoken language. It is outrageous to suggest that he would have made a case in regard to the day-to-day operations of an Afrikaans daily newspaper. Complainant's command of the Afrikaans language is mainly conversational and in no way is he able to conduct himself formally in this language. He hereby places his objection on record, to the manner in which this issue of the identity of the parties has manifested, in particular to the history of the oppressor and Complainant's decades long refusal to deploy the language as such until after liberation. With regard to the disputed contract, the contract itself is a nullity, none of the pages are notarized and in any event, the contract however so construed, was *void ab initio*.

69. Consequently, the uttering of falsehoods, including:-

69.1 That "*Die Burger targeted the white Afrikaans community;*." at paragraph 69 appear words incorrectly attributed as words emanating from the Complainant, and are thus not supported by the record.[7]

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[7] Further falsehoods and utterances, problems raised by so-called evidence and Complainant's rebuttal of such. evidence, are tackled in Complainant's Affidavit before the Constitutional Court,

70. The forgery and uttering of documents was accomplished under First Respondent's purview with the intention of deceiving the public. First Respondent's shabby account of his financial affairs was nothing less than a plea of ‘plausible deniability’ while attempting to lower the test by which judicial officers are held accountable. The amounts involved and issues at stake were clearly not *de minimus.* Instead of coming clean, the First Respondent chose to obfuscate his many business relationships.

71. Paragraph 6 of First Respondent's report (DRL5) states: “*The nub of his complaint is that I failed to disclose the fact that I was a director and shareholder in Resolve (Pty) Ltd, a human resource consultancy, and the fact that other shareholders of Resolve (Kagiso linked companies) had links with other companies (Metropolitan and the Legardere Group) that had links with Sanlam Ltd, which had an interest in Naspers Ltd, which owns Media24*.” First Respondent, thus failed to make use of this opportunity to come clean, by disclosing the many direct links illustrated above. These further links only became clearer upon discovery and thus the report was anything but a full and satisfactory account of the First Respondent's business affairs and dealings, and his response was dishonest to say the least.

The Cape Law Society Decision

72. On 28 September 2011 Complainant responded to a request from Mkumatela with regard to the recusal stating: *“I have no recollection of the alleged facts referred to by Cheadle in chambers. Cheadle merely noted that I had approached his law firm and that he did not feel this compromised his ability to preside impartially..”*

72.1. At the time, “Cheadle did not disclose his shareholding in the Resolve Group, in particular the group's relationship to the respondent and also to a well-known politician.”

72.2 “The report merely confirms the basis for my complaint.”

72.3 “If it were inappropriate for Jason White to represent me, then it should have been even more inappropriate for Cheadle to preside over the matter.”

73. On 18 November 2011 Mkumatela (DRL19) responded with a letter containing a further response from the First Respondent dated 02 November 2011 (DRL20), and stating: “*You may not respond or comment to Mr Cheadle’s response as we are of the view that the information received from both you and Mr Cheadle was sufficient for the*

Disciplinary Committee to make a finding." The letter also advised that "*we are attending to the assessment of the matter after which same will be referred to the Disciplinary Committee for consideration*."

73.1 First Respondent's correspondence responded to questions regarding:-

73.1.1 "the appropriateness of his presiding in the matter" and, the allegation of misconduct, "*especially the many errors contained in the text of decision resulted from my having a compromised business relationship with the respondent*;"

74. On 14 March 2012 Mkumatela (DRL21) correspondence reverted, requesting documents in the matter, further facts to support an averment of bias, and "*advise whether you were aware that your attorney did not accept Mr Cheadle's offer to recuse himself in chambers*"; and "*obtain a statement from your attorney concerning the discussion in chambers*."

75. On 29 March 2012 the entire case file before the Labour Court and submission on appeal was handed over to Mkumatela. In particular a response in respect of the question pertaining to Michael Baynham Attorneys who had served "Notice of Withdrawal as Attorney's of Record," on 25 September 2007 (DRL22). Complainant

asserted: There is thus no possibility that my attorney “did not accept Mr Cheadle's offer to recuse himself in chambers,” since Complainant was not represented by a legal professional at the time.

76. On 23 May 2012 Complainant received a letter (DRL23) from Mkumatela stating: “*The Disciplinary Committee considered the above matter at its meeting on 14 May 2012 ... The Committee, noting that the above complaint was founded on the judgment handed down by Mr Cheadle and that the correct course of action for you was to obtain legal advice on the civil legal processes available to you, found that a finding of unprofessional conduct could not be made on the information and documentation before it.”*

77. A subsequent request for access to the case file of the disciplinary hearing in terms of the Promotion of Access to Information Act (PAIA) addressed to the Cape Law Society earlier that year, was not acknowledged and thus was ignored by the disciplinary committee.

78. Following the above complaint further evidence came to light, in particular the public assertion by the judicial officer via the daily press[8] that he is the “principal author of the Labour Relations Act” and hence the architect of the Labour Relations

[8] www.bdlive.co.za/national/labour/2013/08/02/labour-sea-change-needed-in-sa-says-cheadle

dispensation in South Africa, which at the face of it, disqualified him from adjudicating proceedings in the Labour court since he was thus barred by the Constitution from interpreting the very same statutes which would have been drafted by his own hand.

79. A complaint in regard to corruption and lack of due process was filed at the South African Human Rights Commission (SAHRC) on 28 August 2012. The commission however denied the Complainant access to relief in terms of its mandate and declined to assist the Complainant in any way, and this decision on appeal to the SAHRC was again affirmed on receipt of its decision on 10 February 2014. The SAHRC on its own authority however, awarded the Complainant a 180 judicial review process, in which to file a petition in order to overturn the SAHRC decision. Complainant however did not possess the means to accomplish such a review at the time.

80. Similarly, a letter dated 11 September 2014 accompanying the 131 page Affidavit before the Constitutional Court of South Africa, addressed to the Judge President, noted:-

80.1 "*I wish to notify the Judge President that I also wish to lodge the Affidavit with the Constitutional Court of South Africa and serve an application to have the judgment set aside, on the other party, but am unable to comply with the rules of the court specifying an address of service within 25 km of the court*."

81. The ConCourt Affidavit lists the numerous errors of fact and the inadmissibility and fraud in regard to evidence, and the many problems related to the abrogation of rights guaranteed by the constitution. Complainant reserves his rights to make further submissions in this regard.

The Criminal Case

82. On 7 October 2014 a docket CAS 1566/10/2014 was opened at Cape Town Central at SAPS Commercial Fraud Branch. The same case and supporting documents were also forwarded to the National Prosecution Authority (NPA), the Judicial Service Commission (JSC) and the Public Protector. I therefore deal with these three bodies and their various statements in turn, (points 83-107) below:-

The Public Protector

83. On 1 December 2014, (DRL24) Complainant at first received email communication from Thomas Mogoba Senior Investigator for the Public Protector, acknowledging the complaint, noting the earlier determination by the Cape Law Society, and advising that I approach the Office of the Chief Justice and also the Judicial Service Commission by stating: "*Complaints are lodged and dealt with by the Judicial Conduct Committee,*

which is composed of the Chief Justice as Chairperson of the Committee, the Deputy Chief Justice and four other Judges."

84. Complainant then received correspondence acknowledging simply receipt of a complaint to the Public Protector of South Africa, (DRL25) postmarked 9 February 2015 from L Sekele Snr manager Intake Assessment and Customer Service Unit, and dated 10 October 2014 wherein: "*The matter you have raised will be assessed to establish whether the law allows us to investigate your complaint. As soon as this process is complete, we shall revert to you and advise you accordingly*." The communication also stated that the protector could not 'litigate on my behalf or represent me in any proceedings'. Thus On 25 February 2015 Complainant responded, noting the period of time, four months (4) which has passed since the letter was dated and delivered by the Post Office, and providing further submissions. To date no further response has been forthcoming.

The National Prosecution Authority

85. Complainant received correspondence (DRL26) dated 5 December 2014, from M. Silas Ramaite SC, Deputy National Director of Public Prosecution (NDPP), National Prosecution Service (NPS), ref 9/2/12-386/2014 acknowledging communication dated 7 October 2014.

The letter advised that the NPDD had *"taken the liberty to forward your representation to the Director of Public Prosecutions, Western Cape for his attention and disposal of the matter.*" and "**Should you not be satisfied with the outcome**" …. complainant "**may approach this Office again for a review thereof."**

86. On 8 January 2015 (DRL27) Complainant received communication from E Davids, on behalf of the DPP Western Cape stating inter alia: "*You will have to lay a formal charge at the South African Police Service to have the matter investigated, should you wish to take the criminal allegations further.*" The letter also went on to state: "*I am proceeding to close my file*."

87. On 16 January 2015, Complainant therefore notified the DPP that the case docket had already been opened at Cape Town Central (Caledon Square).

88. On 6 March 2015 Complainant received telephonic contact from an Adv Theron inquiring about the case, apparently on behalf of the DPP, in particular with regard to "the lateness in filing the complaint." Complainant asserted that "apartheid is a crime against humanity" and "there is no statute of limitations on such crimes". He then referred Theron to recent correspondence with the Public Protector, and pointed out that an earlier case had also been filed at Woodstock police station against the First

Respondent's client and in particular a Mr Taljaard (C88/3/2010) but no further investigation by SAPS was made.

89. Theron provided Complainant with a reference number for the case at 115 Buitengracht Street, the offices of the DPP, and involving the referral by Silas Ramaite, and also inquired as to which police station the fraud docket had been filed. Complainant responded, Cape Town Central. As to whether or not Complainant was an Orthodox Jew, he replied, "*I am not an Orthodox Jew per se. This is the crux of my submission before the Labour Court and also the ConCourt*."

90. Complainant received a letter dated 18 March 2015 (DRL28) signed Mrs D Anthony, Director of Public Prosecutions, Western Cape, Office of the Director of Public Prosecutions. It inquired about various annexures and whether Complainant wished to "submit anything else". Complainant submitted the annexures requested and a further two annexures in the form of an Affidavit confirming the founding Affidavit and original complaint.

91. Then Complainant received a letter dated 24 June 2015 (DRL29), signed by Mrs J Pienaar, for the Director of Public Prosecutions, Western Cape stating: "**I decline to prosecute as there are no reasonable prospects of a successful prosecution**."

92. On 7 October 2015 the Complainant responded to Silas Ramaite SC, and his earlier offer above of a review, in the event I should not be satisfied with the outcome of the aforesaid Director's decision stating: Since the Director of Public Prosecutions, Western Cape, has declined to prosecute … I am not satisfied in the slightest. **I therefore request an urgent review of the decision**."

93. On 4 November 2015 (DRL30) Complainant received a letter from Adv N Jiba, Deputy National Director of Public Prosecutions (DNDPP) acknowledging my correspondence with the NDPP and advising that 'this Office has requested a report on the matter' from the DPP.

94. On 20 April 2016 (DRL31) another letter from the DNDPP advised that the DPP "*has advised this Office that the relevant docket cannot be traced at the SA Police Service archive, therefore a report on the matter cannot at this stage be furnished to this Office." It also added: "The search for the docket is however ongoing and the matter will duly be attended to upon receipt of the said docket.*"

95. On 13 July 2016 (DRL32) Complainant received an email from the DNDPP on behalf of the NPA acknowledging receipt of my communication dated 28 June 2016, and advising the search for the missing docket continues. (The correspondence is curiously signed and dated at bottom 13/7/11)

96. On 16 October 2017 (DRL33), Complainant received a letter via email from Adv Mzinyathi Acting DNDPP on behalf of the NPA stating: "*The DPP Western Cape has again advised us that the search for the missing docket continues. He has also indicated that the search not yield any results in due course, a new docket should be opened.*"

97. On 14 November 2017 (DRL34) Complainant received another letter from the acting DNDPP stating "*The DPP Western Cape has now advised us that he has requested the Provincial Commissioner to direct that a duplicate docket be opened in an effort to expedite the matter*."

98. On 13 February 2018 (DRL36) Complainant received a letter from the Acting DND PP Adv S Mizanyati acknowledging receipt of my communication of 12 February 2018. "*Please note that the DPP Western Cape has since approached the provincial commissioner with a request that a duplicate docket be opened in an effort to expedite the matter. .. You will be advised of further developments in this regard at our earliest opportunity."* The letter was signed and dated 12 Second 2018.

99. On 5 April 2018 (DRL37) Complainant received another letter from Adv S Mizanyati acknowledging receipt of my communication dated 3 April 2018. "*Please*

note that the delay experienced in the finalization of the matter is regretted. A Copy of your communication has been forwarded to the DPP Western Cape with a request that his Office immediately liaise with you in order to aprise you of the steps they have taken thus far in attending and expediting your representations. .. ***You may expect a further communication from the DPP in due course*.”**

100. On 17 September 2018 (DRL38) Complainent received a letter from DPPWC “*Your letter dated 12 February 2018 a**nd my response dated 4 May 2019 refer***.”

*“I received **the docket and forwarded it together with a report** to the Deputy National Director of Public Prosecutions*.” [my emphasis]

101. On 5 December 2018 (DRL39) Complainant received a letter signed by Silas Rimaite SC, dated 04 December 2015 (sic) wherein “***having considered your representations and in consultation with the Director of Public Prosecutions Western Cape, I agree with the decision of the DPP to decline to prosecute in the aforementioned matter***”. [my emphasis]

102. The letter went on to state ‘*no criminal proceedings can be instituted as there are no reasonable prospects of success*.” [my emphasis] Instead of providing a copy of the report and issuing a *nolle prosequi* certificate, the writer went on to state further:

"*Our file is herewith closed as this matter is now regarded as having been finalised*."

103. 24 December 2018 (DRL40) in response to my letter to the DPPWC dated 24 October 2018 and apparently their letters dated 4 May and 17 September 2018, I received correspondence including a copy of their letter dated 4 May 2018 sans the report: "*The acting National Director of Public Prosecutions has informed me that* ***he has agreed with my decision to decline to prosecute*****" [my emphasis].**

104. The letter went on to state "*Both the Acting National Director of Public Prosecutions and I have closed our files and* ***no further correspondence will be entertained.*****"[my emphasis]**

105. It is denied that the DPP WC ever bothered to mail the letter dated 4 May 2018, and this was the first time that Complainant got to see its contents.

105.1 Wherein it is stated:

> 'You letter dated 12 February 2018 refers
>
> "*I am still awaiting the completion of the docket by the SA Police Service. I have again taken up the matter with the Provincial Commander of their Commercial*

Crime Unit will revert to you once I am in a position to re-evaluate the docket."

106. Neither the docket nor the report were made available to the Complaint at this time.

107. Instead of issuing a *nolle prosequi* certificate, the authority chose to 'finalise' the matter without examining the merits, in effect seeking to remove and/or to dissuade the Complainant's right of private prosecution, according to section 7 of the Criminal Procedure Act, "Private prosecution on certificate nolle prosequi". One would at very expect there to be a modicum by which the complainant is to exercise his rights *viz. vi.* the NPA and according to the related category (a) "*any private person who proves some* ***substantial and peculiar interest*** *in the issue of the trial arising out of some injury which he individually suffered in consequence of the commission of the said offence*;"[my emphasis]. The finalisation without reference to the allegations, constitutes a breach of the complainant's 'right to just administrative action' under section 33 and is also an abuse of the broad discretionary powers vested in the authority, since clearly a determination of 'no reasonable prospects' flew against the face of the facts at hand.

108. Without admitting any limitation on the right of the complainant to enter a private prosecution application, it is denied that the complainant is a 'private prosecutor' *per*

se since clearly it is not my job to apprend wrongdoing within the justice system itself, nor to engage in the affairs of court as an 'officer of the court.'

The Judicial Service Commission (Further Complaints)

109. Following the earlier complaint (above at point 14) and the proceedings before the Cape Law Society and NPA, a further complaint was made to the JSC similarly to those above. Thus on 13 January 2015 (DRL35) Lynette Bios, Snr State Law Advisor, Secretariat of the Judicial Service Commission once again acknowledged receipt of Complainant's complaint against First Respondent on behalf of the JSC stating: "*Your complaint will be forwarded to the Judicial Conduct Committee for consideration*." No information pertaining to any consideration of the Complainant's predicament was forthcoming.

110. A further complaint was therefore lodged in this regard with the JSC via registered letter and also email, 22 September 2015.

111. On 22 September 2015 L Bios reverted via email: "Dear Mr Lewis Is this another complaint against Acting Judge Cheadle?" To which Complainant answered in the affirmative. Nothing further, nor any information from the body was forthcoming. (DRL)

112. On 10 July 2018 Complainant received a letter from L Bios Secretariat, who once again acknowledged receipt of his complaint. "*Your complaint will be forwarded to the Judicial Conduct Committee for consideration. The secretariat will notify you of the outcome in due course.*" (DRL)

113. On 5 September Complainant issued a letter requesting reasons to be supplied for the delay in attending these matters. "*Can you please supply reasons for the delay in reaching an outcome?*" (DRL) The letter was not acknowledged. To date there has been no further information forthcoming from the JSC secretariat regarding the several complaints, and no reasons have been supplied. There is thus an established pattern in which complainant's complaints are at first acknowledged by the JSC and/or diverted to other bodies, but where no further information is supplied by the body and especially follow-up advice in regard to due process. This constitutes a breach of the complainants right to just administrative action under section 33.

The Law

The Judicial Service Commission Act

114. The Judicial Service Commission Act 1994 ("JSC Act") provides for the establishment and composition of a Judicial Conduct Committee, to give effect to

s177(1) of the constitution which provides for the removal of a judge from office, inter alia, for reasons of incapacity, gross incompetence or gross misconduct.

115. According to the JSC Act, it is necessary to create procedures, structures and mechanisms in terms of which -

> complaints against judges could he lodged and dealt with appropriately;
>
> allegations that any judge is suffering from an incapacity, is grossly incompetent or is guilty of gross misconduct could be investigated”

116 The JSC Act is emphatic about Judicial conduct and the need to preserve the independence and impartiality of persons holding such an office:-

> **Judicial conduct**
>
> **11 Judge not to hold other office of profit or receive payment for any service**
>
> **(1) A judge performing active service -**

(a) may not hold or perform any other office of profit; and may not receive in respect of any service any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge:

117. The 'restraint on trade' on holding any other 'office of profit' is so stringent, that judges discharged from active duty "*may only with the written consent of the Minister, acting after consultation with the Chief Justice, hold or perform any other office of profit or receive in respect of any fees, emoluments or other remuneration or allowances apart from his or her salary and any other amount which may be payable to him or her in his or her capacity as a judge*."

118. The manner in which any form of "written consent" may be granted is further limited by professional vocation and tenure, since such consent as contemplated in subsection (2) "may only be given if the Minister is satisfied that the granting of such consent will not

(I) adversely affect the efficiency and effectiveness of the administration of justice, including the undermining of any aspect of the administration of justice, especially the civil justice system;

(II) adversely affect the image or reputation of the administration of justice in the

Republic;

(III) in any manner undermine the legal framework which underpins the judge for life concept;

(I) result in any judge engaging in any activity that is in conflict with the vocation of a judge; and

(I) bring the judiciary into disrepute or have the potential to do so

119. The JSC Act further envisages a **Code of Judicial Conduct** ("The Code") to be tabled by Parliament and reviewed every three years, and "to serve as the prevailing standard of judicial conduct, which judges must adhere to,"

120. In order to deal with practicalities regarding the general restraint on holding business interests or engaging in trade that might conflict with the duties of the office of judge, the JSC Act further creates a "**Register of Judges' Registrable Interests**" along with a "**Registrar of Judges' Registrable Interests**" to administer the register. This presumably, to avoid any potential conflicts, in particular the situation where a judge adjudicates a matter in his or her own interest and/or affecting his or her, material assets and/or the assets of his or her immediate family

13(3) Every judge must disclose to the Registrar, in the prescribed form, particulars of all his or her registrable interests and those of his or her immediate family members.

121. The sub-rules and regulations envisaged by the JSC Act, giving effect to Registrable Interest in terms of Section 13 (4) were first mooted in 1994, but only promulgated some two decades later. The president thus determined 29 January 2014, as the date on which the period of 60 days referred to in the section commences for the first time, representing a twenty-year-long gap between the enabling legislation and the implementation of the rules.

122. The Code merely records a standard pertaining to generally-accepted rules, ethics, conventions and practices within the profession of judges, and the enactment of such rules, in terms of the Constitution and the Act, thus represent a ‘mere formality’ and in no way absolve such persons from ethical practice.

123. The Code of Judicial Conduct Adopted in Terms of Section 12 of the JSC Act, i.e. The Code, applies also to persons ‘acting as judge’

13.1 Article 2 Application (b) acting judge

124. A person acting as judge is thus faced with the same stringent codes and strictures

as regular judges enjoying tenure. While such persons may also be considered candidate judges, their role, office and function is equivalent in stature to that of a full-time judge.

125. Such a person is therefore also required to **(a) uphold the independence and integrity of the judiciary and authority of the courts, (b) maintain an independence of mind in the performing of judicial duties, (c) take all reasonable steps to ensure that no person or organ of state interferes with the functioning of the courts, and (d) not ask for nor accept any special favour or dispensation from the executive or any interest group.**

126. With regard to Article 9 of The Code, Fair Trial, a judge (or person acting as judge) must resolve disputes by making findings of fact and applying the appropriate law in a fair hearing, which includes the duty to -

(I) observe the letter and spirit of the *audi alterem partem* rule,

(II) remain manifestly impartial; and

(III) give adequate reasons for any decision;

127. With regard to Article 12 of The Code, Association,

1. A judge must not -

(a) belong to any political party or secret organisation

(d) use or lend the prestige of the judicial office to advance the private interests of the judge or others

And

(4) An acting judge who is a practising attorney does not sit in any case in which the acting judge's firm is or was involved as attorney of record or in any other capacity.

128. With regard to Article 13 of The Code, Recusal,

A judge or acting judge must recuse him or herself from a case if there is a

(a) real or reasonably perceived conflict of interest

(b) a reasonable suspicion of bias based upon objective facts

129. With regard to the lodging of this complaint the JSC Act sets out the following:

(1) Any person may lodge a complaint about a judge with the Chairperson of the Committee: Provided that the Chairperson may refer the complaint to the Deputy

Chief Justice to deal with in terms of the provisions of the Act, and the Deputy Chief Justice assumes the role of the chairperson in respect of that complaint.

130. The grounds upon which any complaint against a judge may be lodged, are any one or more of the following:-

(a) Incapacity giving rise to a judge's inability to perform the functions of judicial office in accordance with prevailing standards,or gross incompetence, or gross misconduct,as envisaged in section 177(1)(a) of the Constitution;

(a) Any willful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13(5)

c) Accepting, holding or performing any office of profit or receiving any fees, emolument or remuneration or allowances in contravention of section 11;

(b) Any willful or grossly negligent failure to comply with any remedial step, contemplated in section 17(8), imposed in terms of this Act; anAny other willful or grossly negligent conduct,other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the

independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts.

Prevention and Combating of Corrupt Activities Act

131. According to the Prevention and Combating of Corrupt Activities Act (12 of 2004) ("PRECCA")

Judicial Officer means

(b) a judge of the Labour Court appointed under section 153 (1) (a) or (b), (4) or (5) of the Labour Relations Act,1995 (Act 66 of 1995);

132. and, chapter 8, PRECCA

8 Offences in respect of corrupt activities relating to judicial officers Any -

(a) judicial officer who, directly or indirectly, accepts or agrees or offers to accept any gratification from any other person,whether for the benefit of himself or herself or for the benefit of another person; or

(b) person who, directly or indirectly, gives or agrees or offers to give any gratification to a judicial officer, whether for the benefit of that judicial officer or for the benefit of another person, in order to act, personally or by influencing another person so to act, in a manner -

(i) that amounts to the -

(aa) illegal, dishonest, unauthorised, incomplete, or biased; or

(bb) misuse or selling of information or material acquired in the course of the, exercise, carrying out or performance of any powers, duties or functions arising out of a constitutional, statutory, contractual or any other legal obligation;

(ii) that amounts to

(aa) the abuse of a position of authority;

(bb) a breach of trust; or

(cc) the violation of a legal duty or a set of rules; designed to achieve an unjustified result; or

that amounts to any other unauthorised or improper inducement to do or not to do anything,

is guilty of the offence of corrupt activities relating to judicial officers.

And

(2) Without derogating from the generality of section 2 (4),'TO ACT' in subsection (1) includes

performing or not adequately performing a judicial function;

making decisions affecting life, freedoms, rights, duties, obligations and property of persons;

delaying, hindering or preventing the performance of a judicial function;

aiding, assisting or favouring any particular person in conducting judicial proceedings or judicial functions;

showing any favour or disfavour to any person in the performance of a judicial

function; or

exerting any improper influence over the decision making of any person,including another judicial officer or a member of the prosecuting authority, performing his or her official functions.

Conflict of Interest and the Separation of Powers

133. In principle, the executive should not resolve legal disputes between individuals and the judiciary should not execute laws or their own orders. In many instances the doctrine of separation of powers is the fountain of the independence of the judiciary. Independence requires that the judges should be impartial in the sense that requires absence of interference at an institutional level and at the level of decision-making by each judge.

134. The South African Constitution is exceedingly clear when it comes to the separation between the legislature and judiciary:-

134.1 The Constitutional Court in South African Association of Personal Injury Lawyers v Heath, Chaskalson P stated as follows:- '*In the first certification judgment this Court held that the provisions of our Constitution are structured in a*

way that makes provision for a separation of powers. ... There can be no doubt that our Constitution provides for such a separation (of powers), and that laws inconsistent with what the Constitution requires in that regard are invalid.[11]

134.2 In the 1950's the parliament had created a 'High Court of Parliament' to review court decisions invalidating Acts of Parliament. Its aim was to overturn some decision taken by the ordinary court. This was contrary to the doctrine of separation of powers. It was then invalidated by the Appellate Division in the case of Minister of the Interior v Harris, Centlivres CJ stated that 'High court of parliament was not a court of law but simply parliament functioning under another name'. This was, probably, the most obvious attempt by the legislature to abrogate judicial function to itself and to annul judgments that it did not like.

Judicial Deference

135. A brief discussion on the principle of judicial deference is also appropriate here:-

135.1[Judicial deference] influences and is reflected in the remedy that the court will be prepared to give in constitutional cases. In **National Coalition for Gay and Lesbian Equality v Minister of Home Affairs** Ackerman J stated that:- 113.2 *The other consideration a court must keep in mind, is the principle of the separation of powers and, flowing there from, the deference it owes to the legislature in devising a remedy for a*

breach of the Constitution in any particular case. It is not possible to formulate in general terms what such deference must embrace, for this depends on the facts and circumstances of each case. In essence, however, it involves restraint by the Courts in not trespassing onto that part of the legislative field which has been reserved by the Constitution, and for good reason, to the legislature.

Judicial Impartiality

136. The South African Constitution confers extensive powers on the South African judiciary to uphold the constitution and the rule of law. In so doing, it stipulates that courts must be independent and subject only to the supreme law, which judges must apply impartially and without fear, favour or prejudice.

137. Judicial impartiality is thus a principle at the forefront of the Constitution, but it was also deeply embedded in South African common law. Roman-Dutch law (derived substantially from Roman law) recognised the principle that no one should be a judge in his (or her) own cause (***Nemo judex in causa sua***) and afforded a remedy, the *exceptio recusationis*, to enforce it. In the era of parliamentary sovereignty before the new democratic dispensation, the courts conferred perhaps the strongest protection they could on the common law requirement of judicial impartiality: they held that it could be excluded only by an express provision in an Act of Parliament. The Roman-Dutch law principle is substantially similar to the English common law principle of judicial impartiality and, accordingly, Commonwealth jurisprudence on judicial impartiality has

been influential in South African courts.[9]

138. In **BTR Industries SA (Pty) Limited & Others v. Metal & Allied Workers' Union & Another 1992 (3) SA 673 (A)**, the Appellate Division concluded that the existence of a reasonable suspicion of bias satisfied the test in determining whether a recusal was warranted in relation to a judge. An apprehension of a real likelihood that the decision-maker will be biased is not a prerequisite for disqualifying bias. At 694 Hoexter JA had the following to say:-

138.1 *It is the right of the public to have their cases decided by persons who are free not only from fear but also from favour. In the end the only guarantee of impartiality on the part of the courts is conspicuous impartiality. To insist upon the appearance of a real likelihood of bias would, I think, cut at the very root of the principle, deeply embedded in our law, that justice must be seen to be done. It would impede rather than advance the due administration of justice. It is a hallowed maxim that if a judicial officer has any interest in the outcome of the matter before him (save an interest so clearly trivial in nature as to be disregarded under the de minimis principle) he is disqualified no matter how small the interest may be. ... Provided the suspicion of partiality is one which might reasonably be entertained by a lay litigant a reviewing court cannot,so I consider, be called upon to measure in a nice balance the precise extent of the apparent risk. If suspicion is reasonably apprehended, then that is an end of the matter.*

[9] Judges, bias and recusal in South Africa pp. 346-360 Kate O'Regan and Edwin Cameron, Cambridge Press 2011

Conclusion

139. When the interwoven, cross-shareholding and business relationships of the First Respondent and The Cartel are taken into account, there is no doubt in my mind regarding the undue influence over the proceedings at the Labour Court of South Africa. The manifest corruption which has played itself out, with First Respondent appearing to relinquish his stake in the Resolve Group, whilst being shifted from his post at the University of Cape Town, from a Professorship of Labour Law to Professorship of Public Law, and then, finally into partial retirement (20% retirement), and following my complaint to the Cape Law Society and University administration, is now plain for all to see. This is nothing less than an act of window-dressing.

140 Any reasonable person, granted access to all the information and evidence contained herein, could only arrive at the conclusion that the First Respondent's presiding over a case involving his clients and business partners during 2009 and 2010 was unlawful, improper and the result of gross and/or willful negligence and/or corruption constituting malfeasance in office.

141. The issues raised in the above complaint are clearly not *de minimus* and represent a serious breach of judicial integrity and independence. The complaint as stated above and also reiterated in the Affidavit before the Constitutional Court of South Africa and directed to the office of the judge president, **has not been reviewed in an impartial, secular and independent court,** and despite the constitutional ramifications of the issues at hand and impact upon the livelihood and well-being of the Complainant, no

assistance in terms of the current Labour dispensation and/or the mandate of the courts has been granted. With all due respect, given the religious and cultural objections, manifest fraud, attendant apartheid theology and/or apartheid denial, and/or 1994 denial i.e denial of our democratic dispensation, the Complainant rejects the findings contained in the decision of 04 May 2010 and the outcome of the subsequent disciplinary hearing at Cape Law, as beneath contempt and does not feel in any way bound by their contents.

142. It is clear that neither Cape Law Society, nor the Judicial Service Commission exercised its mandate in the matter.

143. Complainant prays that the 2010 decision is struck down as morally repugnant and unconstitutional to say the least, and that the corrupt perpetrators of apartheid, in particular the abovementioned persons, are brought to book.

144. Complainant is of the opinion a rescission of the decision by the Labour Court and/or Labour Appeal Court, is the only remedy that will provide any tangible relief in lifting the onerous burden placed upon the Complainant. He requests every assistance in making such an application, from the Judicial Service Commission, its disciplinary committee and the commission's members, the Cape Law Society and also the University of Cape Town.

145. He prays that this matter is finally dealt with and his right of access to justice before a fair, independent, impartial and secular court, are reaffirmed and upheld.

DAVID ROBERT LEWIS

COMPLAINANT

I CERTIFY THAT THE DEPONENT ACKNOWLEDGED TO ME THAT HE KNOWS AND UNDERSTANDS THE CONTENT OF THIS DECLARATION, THAT HE HAS NO OBJECTION TO TAKING THIS PRESCRIBED OATH AND CONSIDERS IT TO BE BINDING ON HIS CONSCIENCE. THUS SIGNED AND SWORN TO BEFORE ME AT CAPE TOWN ON THIS DAY OF

COMMISSIONER OF OATHS

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