

**IN THE HIGH COURT OF SOUTH AFRICA**

**GAUTENG DIVISION, JOHANNESBURG**

**CASE NO: 27676/2022**

In the matter between :-

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

**Applicant**

and

**JACOB GEDLEYIHLEKISA ZUMA**

**First Respondent**

**THE DIRECTOR OF PUBLIC PROSECUTIONS,  
KWA-ZULU NATAL**

**Second Respondent**

**NATIONAL PROSECUTION AUTHORITY**

**Third Respondent**

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

**Fourth Respondent**

**FILING NOTICE**

**DOCUMENT: ANSWERING AFFIDAVIT BY SECOND RESPONDENT**

**DATED at PRETORIA this 06<sup>TH</sup> day of JANUARY 2023.**

**FILED BY:**

  
**2<sup>ND</sup> & 3<sup>RD</sup> RESPONDENTS' ATTORNEYS**

**THE STATE ATTORNEY (PRETORIA)**

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**TO: THE REGISTRAR OF THE HIGH COURT  
JOHANNESBURG**

**AND TO: STATE ATTORNEY JOHANNESBURG**  
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**AND TO: WN ATTORNEYS INCORPORATED**  
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PRETORIA  
REF: Mr W Niedinger/ VS/ Z009

**C/O CUMMINGS ATTORNEYS**  
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SOUTH AFRICA GAUTENG LOCAL DIVISION,  
JOHANNESBURG**

Fourth Respondent

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**ANSWERING AFFIDAVIT: SECOND RESPONDENT**

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I, the undersigned,

**ELAINE ZUNGU**

do hereby make oath and state:

*EZ*

*T-N*

1.
  - 1.1. I am an adult advocate and the duly appointed Director of Prosecutions, KwaZulu-Natal.
  - 1.2. The Offices of the Director of Public Prosecutions Kwazulu-Natal is situated at 286 Pietermaritz Street, Pietermaritzburg, KwaZulu-Natal.
  - 1.3. I am duly authorised to depose to this answering affidavit on behalf of the Second Respondent, in terms of my appointment and position as Director of Public Prosecutions, Kwazulu-Natal.
  - 1.4. The facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct.
  - 1.5. Where I make legal submissions, I do so on the advice of my legal representatives, which advice I accept to be in accordance with the prevailing legal position.

**BASIS OF OPPOSITION**

2. I specifically record that I, the Second Respondent, in my official capacity as such, at this time, only oppose the relief sought by the Applicant in paragraph 2.1 of Part A of the Notice of Motion to the extent as set out below.

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3. I shall deal with my comments and concerns insofar as Part B is concerned at the appropriate time.
4. In paragraph 2 of Part A of the Notice of Motion, the Applicant, *inter alia*, seeks the following relief, namely:

*"2. Pending the final determination of Part B of this Application:*

*2.1 The respondents are interdicted from taking any further steps to give effect to the nolle prosequi certificate of 21 November 2022 ("the certificate") and/or the summonses issued by the Registrar on 15 and 21 December 2022 ("the summons") or to pursue the private prosecution under case number: 059772/2022 ("the private prosecution"), against the applicant in any way;..."*

5. However, in paragraph 11 of the Founding Affidavit, the Applicant, *inter alia*, states as follows:

*"11. The purpose of this application is two-fold:*

*11.1 In Part A, I seek to interdict Mr. Zuma from commencing and/or continuing the private prosecution pending the finalisation of Part B..."*

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6. Notwithstanding the Applicant expressly stating his intention in Part A of this application to obtain an interdict against the First Respondent only, the Applicant, in paragraph 2.1, seeks an interdict against all of the Respondents, including the Second Respondent.
  
7. The Applicant states in paragraph 7 of the Founding Affidavit that:  
  

*"7. The third respondent is the National Prosecuting Authority ... No relief is sought against the NPA. It is cited for any interest that it might have in the matter."*
  
8. Notwithstanding the aforesaid statement, the Applicant seeks relief in paragraph 2.1 of Part A also against the Third Respondent, by using the words *"the respondents are interdicted ..."*.
  
9. Should the Applicant, either prior to the hearing of this application or during the hearing of this application amend Prayer 2.1 of Part A to refer to "the First Respondent" only instead of "the Respondents", the Second Respondent will abide the decision of the above Honourable Court regarding the relief sought by the Applicant in Part A of this application.

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**RELIEF SOUGHT IN PART A AGAINST THE SECOND RESPONDENT AND  
THIRD RESPONDENTS IS NOT COMPETENT**

10. The Applicant made it clear in his Founding Affidavit that he intends to attack the validity of the Summons(es) instituting the private prosecution against him by the First Respondent on the basis that the said Summons(es) is/are unlawful, unconstitutional, invalid and of no force or effect and stands to be set aside.
11. Should the Summons(es) not be declared unlawful, unconstitutional, invalid and of no force or effect and set aside, I humbly submit that it is safe to assume that the Applicant will not plead guilty to the charges brought against him by the First Respondent.
12. Section 7(1) and Section 12 of the Criminal Procedure Act, Act 51 of 1977 ("the CPA"), *inter alia*, state as follows:

**"7 Private prosecution on certificate nolle prosequi**

(1) *In any case in which a Director of Public Prosecutions declines to prosecute for an alleged offence-*

(a) *Any private person who proves some substantial and peculiar interest in the issue of the trial arising out of some*

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*injury which he individually suffered in consequence of the commission of the said offence;*

(b) ...

*may, subject to the provisions of Section 9 ..., either in person or by a legal representative, institute and conduct a prosecution in respect of such offence in any court competent to try that offence...*

**12 Mode of conducting private prosecution**

(1) ...

(2) *Where the prosecution is instituted under Sections 7(1) and the accused pleads guilty to the charge, the prosecution shall be continued at the instance of the State."*

13. Section 13 of the CPA states as follows:

**"13 Attorney-general may intervene in private prosecution**

*An attorney-general or a local public prosecutor acting on the instructions of the attorney-general, may in respect of any private*

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*prosecution apply by motion to the court before which the private prosecution is pending to stop all further proceedings in the case in order that a prosecution for the offence in question may be instituted or, as the case may be, continued at the instance of the State, and the court shall make such an order."*

14. I humbly submit that from the above it is clear that neither I, in my official capacity as the Director of Public Prosecutions, Kwazulu-Natal, nor the National Prosecuting Authority, at this stage, is competent to participate in or advance the private prosecution instituted by the First Respondent against the Applicant in any way.

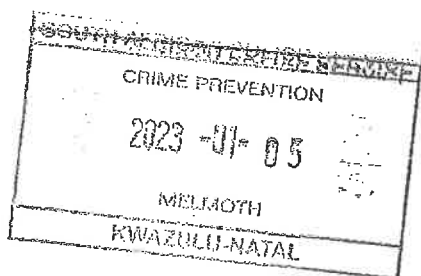
**WHEREFORE** I humbly pray that the relief sought by the Applicant in paragraph 2.1 of Part A in his Notice of Motion herein be dismissed against the Second Respondent and Third Respondent, with costs. Such costs to include the costs of two counsel.



**DEPONENT**

E2 T.W

I HEREBY CERTIFY that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and sworn before me at melmoth on this the 5<sup>th</sup> day of JANUARY 2023 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



T. N. SIBIL 27979008  
TN SIBILYI  
CS

COMMISSIONER OF OATHS  
Thobeleni Nhlakempho Sibilyi

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Street

AREA: melmoth

DESIGNATION: CSE