

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, PRETORIA)**

Case No:

In the urgent application between:

ACTIONS

Applicant

and

**THE CITY OF TSHWANE
METROPOLITAN MUNICIPALITY**

First Respondent

**THE SPEAKER OF COUNCIL OF THE CITY
OF TSHWANE**

Second Respondent

MNCEDI NDZWANANA

Third Respondent

**THE MUNICIPAL MANAGER OF THE
CITY OF THSWANE**

Fourth Respondent

COUNCIL OF THE CITY OF THSWANE

Fifth Respondent

**THE MEMBER OF THE EXECUTIVE COUNCIL OF
COOPERATIVE, GOVERNANCE AND
TRADITIONAL AFFAIRS, GAUTENG PROVINCE**

Sixth Respondent

THE AFRICAN NATIONAL CONGRESS

Seventh Respondent

THE ECONOMIC FREEDOM FIGHTERS

Eighth Respondent

CONGRESS OF THE PEOPLE

Ninth Respondent

AFRICAN DEMOCRATIC MOVEMENT	Tenth Respondent
AFRICAN INDEPENDENT CONGRESS	Eleventh Respondent
AFRICAN TRANSFORMATION MOVEMENT	Twelfth Respondent
DEFENDERS OF THE PEOPLE	Thirteenth Respondent
GOOD	Fourteenth Respondent
PATRIOTIC ALLIANCE	Fifteenth Respondent
PAN-AFRICAN CONGRESS	Sixteenth Respondent
THE REPUBLICAN CONFERENCE	Seventeenth Respondent
DEMOCTRATIC ALLIANCE	Eighteenth Respondent
FREEDOM FRONT PLUS	Nineteenth Respondent
INKATHA FREEDOM PARTY	Twentieth Respondent
AFRICAN CHRISTIAN DEMOCRATIC PARTY	Twenty-first Respondent

FOUNDING AFFIDAVIT

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I, the undersigned,

THABANG SEBOTSANE

do hereby state that:

- 1 I am the caucus spokesperson for ActionSA council in the city of Tshwane Metropolitan Municipality (“**the City of Tshwane**”).
- 2 I institute this application, and depose to this affidavit, in my official capacity as a member of ActionSA (“**ActionSA**”).
- 3 I am duly authorised to institute this application, and to depose to this affidavit, on behalf of ActionSA.
- 4 I attach a copy of the authority granted to me by the National Chairperson of ActionSA, marked **Annexure FA1**.
- 5 The contents of this affidavit are within my personal knowledge unless the contrary appears from the context and are to the best of my knowledge both true and correct.
- 6 Where I make legal submissions, I do so on the advice of the applicant’ legal representatives. I believe that advice is correct.

PARTIES

7 The applicant, ActionSA, is a duly registered political party in accordance with section 15 of the Electoral Act, with 19 representative Councillors (“**Councillors**”) on the Council of the City of Tshwane (“**the Council**”), with its registered address situate at care of Lephatsi Investments, 3rd Floor, Fredman Towers, 13 Fredman Drive, Sandton, Johannesburg, Gauteng.

8 The applicant brings this application:

8.1 in its own interests. The applicant has rights and interests in the lawful and effective functioning of the Council and the consideration by Council of an urgent motion of no confidence in the Speaker;

8.2 in the interests of its members and representative Councillors in the Council;

8.3 in the public interest and the interests of the residents of the City of Tshwane in the lawful and effective functioning of the Council;

8.4 to vindicate:

8.4.1 the objects of local government under section 152(2)(a) of the Constitution to provide democratic and accountable government for local communities;

8.4.2 section 160(8)(b) of the Constitution, which provides that members of the Council, including representative Councillors of the applicant, are entitled to participate in its proceedings

in a manner that allows parties and interests reflected within the Council to be fairly represented, is consistent with democracy and is regulated by national legislation;

8.4.3 the Rules and Orders of the Council made by the City of Tshwane to facilitate effective administration.

8.5 to promote the fundamental importance of local government to democracy, development and nation-building in our country;

8.6 to ensure the proper functioning of the Council and the City of Tshwane;

8.7 to protect the autonomy of the Council and the City to exercise their powers and perform their functions within the constitutional parameters of their powers;

8.8 to protect and advance the rights of the Councillors, including their members, who previously called for a special meeting of the Council of the City of Tshwane to be held on Wednesday, 12 April 2023 to hear an urgent motion of no confidence in the Speaker (**“the Special Council Meeting”**) to have:

8.8.1 the Special Council Meeting lawfully called, chaired and conducted;

8.8.2 the urgent motion of no confidence in the Speaker timeously and lawfully placed before Council, considered by Council, put to a vote by Councillors and decided upon by Council;

- 8.8.3 exercise their rights under section 40 of the Local Government: Municipal Structures Act 117 of 1998 (“**Structures Act**”) to remove the Speaker from office by resolution; and
 - 8.8.4 exercise their rights under section 160(1)(b) of the Constitution to elect the Speaker;
 - 8.9 to enforce the constitutional, statutory and common law duty of the Speaker to recuse himself from presiding over the urgent motion of no confidence in himself as the Speaker; and
 - 8.10 to guard against unlawful conduct that poses a grave threat to the rule of law, as a foundational value of the Constitution.
- 9 The first respondent is the City of Tshwane (“**CoT**”) established in terms of section 12 of the Structures Act, with its address at Isivuno Building, cnr Lilian Ngoyi and Madiba Street, Pretoria. This application will be served in terms of section 115(3) of the Local Government: Municipal Systems Act 32 of 2000 (“**the Systems Act**”) on the Municipal Manager of the City of Tshwane (“**the City Manager**”) on behalf of the Council.
- 10 The second respondent is the Speaker in the CoT in his official capacity. In terms of section 29(1) of the Structures Act, the Speaker decides when and where the Council meets. If, however, a majority of the Councillors request the speaker in writing to convene a council meeting, section 29(1) requires the Speaker to convene a meeting at the time set out in the request.

- 11 In general, the Speaker presides at meetings of the Council and is required to:
- 11.1 maintain order during the Council meetings;
 - 11.2 ensure compliance in the Council with the Code of Conduct;
 - 11.3 ensure that the Council meetings are conducted in accordance with the Rules and Orders of the Council, a copy of which rules and orders is attached marked ***Annexure FA2***;
 - 11.4 ensure that the legislative authority of the municipality functions effectively; and
 - 11.5 take responsibility for the ethics and accountability of the Council.
- 12 The third respondent is Mr Mncedi Ndzwanana (“**Ndzwanana**”) in his personal capacity, being the person who occupies the position of the Speaker. Ndzwanana is cited in his personal capacity in light of the fact that the applicant seeks a personal and punitive costs order against him in the event that he opposes this application.
- 13 The fourth respondent is the City Manager. The City Manager is accountable for the overall performance of the City’s administration and is expected to be an enforcer of the Constitution in his own right.
- 14 The fifth respondent is the Council, whose members are elected in terms of section 157 of the Constitution. The Council has the right to govern, on its own initiative, the local government affairs of the local community and exercise the

City of Tshwane's executive and legislative authority. This application will be served on the Municipal Manager on behalf of the Council.

- 15 The sixth respondent is the Member of the Executive Council of Cooperative, Governance and Traditional Affairs of the Gauteng Province ("**the MEC**"). The MEC is cited in light of any interest they have in this matter. The MEC is bound by section 154(1) of the Constitution to support and strengthen the capacity of the City of Tshwane to manage its own affairs, exercise its powers and perform its functions.
- 16 The seventh respondent is the African National Congress ("**ANC**"), a registered political party with 75 representative Councillors on the Council. The ANC's registered address is at Chief Albert Luthuli House, No. 2 Fore Street, Stats Building, Alberton, Gauteng. The ANC will be served through its representative in the Council. The ANC is cited in light of any interest it has in this matter.
- 17 The eighth respondent is the Economic Freedom Fighters ("**EFF**"), a registered political party with 23 representative Councillors on the Council. As explained below, the EFF has threatened to prevent the Council from conducting proceedings to remove the Speaker from office and to engage in conflict to do so. The EFF's registered address is at Winnie Madikizela Mandela House, 119 Marshall Street, Johannesburg, Gauteng. The EFF will be served through its representative in the Council. The EFF is cited in light of the interest it has in this matter.

- 18 The ninth respondent is the Congress of the People ("**COPE**"), a registered political party with 1 representative Councillor on the Council. COPE will be served through its representative in the Council. COPE is cited in light of any interest it has in this matter.
- 19 The tenth respondent is the African Democratic Movement ("**ADM**"), a registered political party with 1 representative Councillor on the Council. The ADM will be served through its representative in the Council. The ADM is cited in light of any interest it has in this matter.
- 20 The eleventh respondent is the African Independent Congress ("**AIC**"), a registered political party with 1 representative Councillor on the Council. The AIC will be served through its representative in the Council. The AIC is cited in light of any interest it has in this matter.
- 21 The twelfth respondent is the African Transformation Movement ("**ATM**"), a registered political party with 1 representative Councillor on the Council. The ATM will be served through its representative in the Council. The ATM is cited in light of any interest it has in this matter.
- 22 The thirteenth respondent is the Defenders of the People, a registered political party with 1 representative Councillor on the Council. The Defenders of the People will be served through its representative in the Council. The Defenders of the People is cited in light of any interest it has in this matter.

- 23 The fourteenth respondent is Good, a registered political party with 1 representative Councillor on the Council. Good will be served through its representative in the Council. Good is cited in light of any interest it has in this matter.
- 24 The fifteenth respondent is the Patriotic Alliance (“**PA**”), a registered political party with 1 representative Councillor on the Council. The PA will be served through its representative in the Council. The PA is cited in light of any interest it has in this matter.
- 25 The sixteenth respondent is the Pan-African Congress (“**PAC**”), a registered political party with 1 representative Councillor on the Council. The PAC’s registered address is at PAC Headquarters, 10th Floor, Office 1005, Romi-Lee Building Cnr Eloff & Marshall Streets, Marshall Town, Johannesburg, Gauteng. The PAC will be served through its representative in the Council. The PAC is cited in light of any interest it has in this matter.
- 26 The seventeenth respondent is the Republican Conference, a registered political party with 1 representative Councillor on the Council. The Republican Conference will be served through its representative in the Council. The Republican Conference is cited in light of any interest it has in this matter.
- 27 The eighteenth respondent is the Democratic Alliance (“**DA**”), a registered political party with 69 representative Councillors on the Council of the City of Tshwane, with its registered address at Nkululeko House, 21 Ernst Oppenheimer

Avenue, Bruma, Johannesburg, Gauteng. The DA is cited in light of any interest it has in this matter.

- 28 The nineteenth respondent is the Freedom Front Plus (“**FFP**”), a registered political party with 17 representative Councillors on the Council, with its registered address at 8 Highveld Office Park, 11 Charles de Gaulle Crescent, Highveld, Gauteng. The FFP is cited in light of any interest it has in the matter.
- 29 The twentieth respondent is the Inkatha Freedom Party (“**IFP**”), a registered political party with 1 representative Councillor on the Council, with its registered address at 132 Albertina Sisulu Street, Johannesburg, Gauteng. The IFP is cited in light of any interest it has in the matter.
- 30 The twenty-first respondent is the African Christian Democratic Party (“**ACDP**”), a registered political party with 2 representative Councillors on the Council, with its registered address at No. 2 Fore Street, Stats Building, Alberton, Gauteng. The ACDP is cited in light of any interest it has in the matter.
- 31 Out of an abundance of caution, this application will also be served on all of the members of the Council using the email addresses which they use, and which official email addresses have been designated to them, to receive formal notices from the Council. Any member of the Council is invited to seek to intervene as a respondent in this application if they so wish.

PURPOSE OF THE APPLICATION

32 The applicant seeks review, declaratory and substitution relief from this Court in respect of the decisions taken by Ndzwanana, in his capacity as the Speaker, during the Special Council Meeting held on Wednesday, 12 April 2023 to:

32.1 disallow an urgent motion of no confidence in himself as the Speaker;
and

32.2 adjourn the Special Council Meeting

(collectively, “**the impugned decisions**”).

33 The applicant seeks:

33.1 to review and set aside the impugned decisions;

33.2 an order declaring the impugned decisions unconstitutional and invalid in their entirety; and

33.3 a substitution order in respect of the impugned decisions which provides that:

33.3.1 the Special Council Meeting is postponed to 10h00 on the day that is two business days from the date of this Court’s order;

33.3.2 Ndzwanana is prohibited from chairing, adjourning and/or interfering, whether directly or indirectly, with the functioning of the Special Council Meeting;

33.3.3 the City Manager, or, if the City Manager is not available, a person designated by the MEC, must preside over the election of an acting Speaker at the Special Council Meeting; and

33.3.4 the acting Speaker elected at the Special Council Meeting must take all reasonable steps to ensure that the motion of no confidence in the Speaker is considered and decided by Council during the meeting.

34 An electronic video recording of the proceedings of the Special Council Meeting aforesaid, can be viewed at <https://www.youtube.com/watch?v=sCxomP1cbto>. If necessary, a download of the electronic video of the Council proceedings will be made available to this Court.

INTRODUCTION

35 On 31 March 2023, Ndzwanana, in his capacity as the Speaker, was requested by a majority of Councillors under section 29(1) of the Local Government: Municipal Structures Act 117 of 1998 ("**Structures Act**") to call the Special Council Meeting for Wednesday, 12 April 2023 to consider an urgent motion of no confidence in himself as the Speaker.

36 Ndzwanana initially refused to comply with his clear obligation under section 29(1) of the Structures Act to call the Special Council Meeting at the time set out in the section 29(1) request. He had also previously taken numerous unlawful

and dilatory steps to prevent the Council from considering motions of no confidence in himself, and to collapse the functioning of the Council to create a basis for the Gauteng Provincial Executive to intervene and dissolve the City of Tshwane.

37 Some of the respondents, including Ndzwanana, have a vested, selfish interest in the collapse of the democratic functioning of the Council and the City of Tshwane. The Premier of the Gauteng Province, Mr Panyaza Lesufi, and the MEC have publicly stated that they wish to intervene in the City of Tshwane. Previously, the ANC, the EFF and their Councillors unlawfully and unsuccessfully sought to collapse the functioning of the Council to attempt to create a basis for the provincial executive to intervene and dissolve the City of Tshwane. Such conduct has previously been found by the Constitutional Court to be unlawful.

38 The EFF and its representative Councillors also promised to disrupt the effective and safe functioning of the Council if it sought to remove Ndzwanana as the Speaker.

39 The applicant accordingly launched an urgent application (“**the previous urgent application**”), together with several of the other parties in the multi-party coalition, to seek interdictory relief from this Court to guard against the severe risk of:

39.1 Ndzwanana again collapsing the Special Council Meeting; and

39.2 the EFF and its Councillors unlawfully shutting down the functioning of Council.

40 In their pleadings and submissions in the previous urgent application, the applicants in that matter (of which ActionSA was one), clearly explained why the Constitution, the Structures Act and the common law demanded that Ndzwana be recused from chairing the Special Council Meeting. The applicants also explained why this Court's urgent intervention was needed to prevent Ndzwana from attempting to unlawfully chair, adjourn and/or interfere with the functioning of the Special Council Meeting to inhibit it from hearing a motion of no confidence in himself as the Speaker.

41 Ndzwana opposed the previous urgent application and undertook under oath in his answering affidavit, a copy of which is attached as **Annexure FA3** hereto, that he would act lawfully during the Special Council Meeting. He expressly stated:

"I undertake to the above Honourable Court to act lawfully in the upcoming special council . . . meeting."

42 On Tuesday, 11 April 2023, one day before the Special Council Meeting, this Court, per Ally AJ, dismissed the previous urgent application without giving reasons. I attach a copy of this Court's order marked **Annexure FA4**. Despite the applicant filing a notice to request the full reasons for the order, such reasons have not yet been provided. I attach a copy of the notice requesting reasons for this Court's order marked **Annexure FA5** (any delay occasioned in launching the present application has been partly due to the applicant's hope that such reasons would shed some light on the basis for the dismissal of the application).

43 The next day, on Wednesday, 12 April 2023, and contrary to the undertaking made by Ndzwanana to this Court, he proceeded to unlawfully chair the Special Council Meeting and to unlawfully inhibit the Council from considering the urgent motion of no confidence in him as the Speaker. That conduct which the applicant (together with its other multiparty coalition members) sought to prevent, ultimately materialised, and he conducted himself in precisely the manner the applicants had sought to prevent.

44 Ndzwanana refused to recuse himself as the Speaker in circumstances in which he was hopelessly conflicted. It was impossible for him to be impartial and be seen as impartial.

44.1 Ndzwanana plainly had an actual, direct and material interest in the outcome of the motion of no confidence in himself as the Speaker. There was a realistic possibility that the outcome of the motion of no confidence would affect Ndzwanana's interest.

44.2 Ndzwanana had also previously abused his powers as the Speaker to unlawfully inhibit the Council from considering motions of no confidence in him. His prior unlawful conduct was also sufficient to give rise to a reasonable apprehension that Ndzwanana would be unable to bring an impartial mind to bear in presiding over the motion of no confidence.

45 In discharging his duties as the Speaker, Ndzwanana is required by the Constitution, the Structures Act and the common law to be wholly impartial and non-partisan. Ndzwanana was required not to hesitate to recuse himself from

presiding over the motion of no confidence in him, as there were reasonable grounds for apprehending that he would not be impartial in exercising his powers for his sole benefit and interests.

46 Ndzwanana's refusal to recuse himself from presiding over the motion of no confidence undermined the cornerstone principle of our constitutional democracy that public officials, like the Speaker, are bound to discharge their constitutional and statutory powers impartially. Nothing is more likely to impair confidence in the Council, whether on the part of Councillors or the residents of Tshwane, than actual bias or the appearance of bias in the exercise by the Speaker of his powers.

47 Contrary to his duties under the Constitution, the Structures Act, the Local Government: Municipal Systems Act 32 of 2000 ("**the Systems Act**"), and the Rules and Orders of the Council, Ndzwanana then proceeded to disallow the urgent motion of no confidence in himself as the Speaker and to adjourn the Special Council Meeting. These unlawful decisions were based on two fundamentally flawed reasons.

47.1 First, Ndzwanana claimed that in light of the resignation of Councillor Francois Bekker, who had signed the request for him to call the Special Council Meeting, the motion of no confidence no longer met the requirements of section 29(1) of the Structures Act. At all relevant times, however, Councillor Bekker's endorsement of the fifth section 29(1) request was irrelevant to the question whether a majority of Councillors signed the fifth section 29(1) request. In any event,

Ndzwanana was bound by his own decision to call the Special Council Meeting for as long as it had not been reviewed and set aside by a competent court. Ndzwanana's decision to ignore his decision amounts to unconstitutional self-help which invites a vortex of uncertainty, unpredictability and irrationality.

47.2 Second, Ndzwanana claimed that the motion of no confidence stood to be disallowed under Rule 19(1)(b) of the Rules and Orders of the Council as it advanced arguments, expressed opinion, or contained unnecessary factual, incriminating, disparaging or improper suggestions. In effect, Ndzwanana unlawfully invoked the Rules and Orders of the Council to provide himself with veto power over the Council's right under section 40 of the Structures Act to remove him as the Speaker by resolution. In any event, the motion of no confidence merely called for the Council to consider whether Ndzwanana should be removed as the Speaker.

48 The impugned decisions were also irrational, made in bad faith for ends that are prohibited by law, and were motivated by ulterior motives and purposes.

49 Not only did Ndzwanana again act unlawfully during the Special Council Meeting, but he did so in direct violation of the undertaking he had made under oath to this Court. Ndzwanana accordingly misled this Court. In doing so, Ndzwanana violated his constitutional duty as a public official to be accountable and observe heightened standards in litigation. Ndzwanana was required as a public official

to be candid with this Court and to adduce a full and fair account of the facts so that the Court could properly consider the previous urgent application.

50 Ndzwanana's unlawful conduct poses a grave threat to the rule of law and the democratic functioning and constitutional autonomy of the Council and the City of Tshwane. Furthermore, the disruptions caused by Ndzwanana's unlawful conduct have impeded the Council from conducting its critical business and have severely harmed the interests of the residents of the City of Tshwane.

51 In short, without the intervention of this Court, the Council will be prevented from exercising its right under section 40 of the Structures Act to remove Ndzwanana from office due to unconstitutional and unlawful conduct by Ndzwanana that poses a grave risk to the rule of law. A precedent must be set that prevents those in political positions from abusing the posts that they hold, and thereby creating a dictatorial power that they utilise to flout the rule of law. Such autonomous exercise of power and the abuse of office cannot be countenanced.

BACKGROUND

The previous unlawful disruption of the Council

52 The EFF has threatened to forcefully prevent the Council from conducting proceedings to remove Ndzwanana from his office as the Speaker, advising that they are prepared to engage in conflict and unlawful conduct to do so.

53 The EFF's Regional Chairperson, Councillor Obaken Ramabodu, publicly stated on 29 March 2023 that Ndzwanana was not 'going to be removed by anyone'

from his office as the Speaker and that if the applicant sought to remove him, the EFF would ensure there will be an “*upheaval of chaos*”.

54 Councillor Ramabodu further threatened the applicant:

54.1 “[*if*] you touch our speaker, *we touch you!*”; and

54.2 “*If you are going to start politics of removing the speaker, you must know that you are never going to find peace.*”

55 I attach a copy of the media statement issued by Councillor Ramabodu as ***Annexure FA6***.

56 These threats are alarming in light of the EFF’s prior conduct in the Council and the City of Tshwane. On 16 February 2023, the EFF and its officials and employees took it “*upon themselves*” to unlawfully use force to storm into the Council’s buildings to violently remove the members of the Mayoral Committee from their offices. Employees of the City of Tshwane had to be escorted away from their offices for their safety by members of the Tshwane Metro Police Department. The EFF’s unlawful and violent conduct caused chaos in the functioning of the City of Tshwane and disrupted its operations. I attach a copy of a Tweet published by the EFF Tshwane Region confirming that they had taken it upon themselves to remove the members of the Mayoral Committee and showing pictures of these unlawful efforts as ***Annexure FA7***. I also attach a press report about the EFF’s violent and unlawful actions as ***Annexure FA8***.

57 A further example of the EFF's unlawful and violent conduct in the Council occurred during a Council meeting held on 19 May 2022. The City of Tshwane's 2022/2023 budget presentation was indefinitely postponed after unlawful and violent disruptions by the EFF's representative Councillors who engaged in assault and intimidation, destroyed Council property, ripped out electronics and sound system devices being used in the Council meeting and threw tables and chairs to disrupt the meeting. The EFF's members also unlawfully blocked all entry points to Tshwane House to prevent Councillors from attending the Council meeting. The Tshwane Metro Police used stun grenades and rubber bullets to try and clear the entrance to Tshwane House and allow the Council meeting to proceed. I attach a press report about the EFF's violent and unlawful actions as **Annexure FA9**.

58 A video of some of the EFF's unlawful, violent and threatening conduct during the meeting can be viewed at https://twitter.com/pretorianews/status/1527249880858730497?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1527249880858730497%7Ctwgr%5E7014ca1aec966748f54b85401c9244c91157c2d4%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.iol.co.za%2Fpretoria-news%2Fnews%2Fbudget-postponed-after-violence-insults-threats-by-eff-councillors-inside-tshwane-house-3e6a935e-f9f7-4abd-a12e-7a28f0f7d6a4. Should it be necessary, a download of this video will be made available to the court.

The Special Council Meeting held on 17 March 2023

59 On Friday, 17 March 2023, a Special Council Meeting was held to elect an Executive Mayor of the City of Tshwane following the resignation of the erstwhile Executive Mayor, Councillor Murunwa Makwarela, who was a representative member of COPE.

60 Ndzwanana, however, unlawfully abused his powers as the Speaker to allow certain former Councillors to participate in the Special Council Meeting. Despite being notified by ActionSA that it had terminated the membership of two of its representative Councillors, namely Mr Mandla Mhlana and Mr Mpho Baloyi, and being pointed to section 27 of the Structures Act (which plainly provides that a Councillor vacates office if their party membership has been terminated), the Speaker allowed Mr Mhlana and Mr Baloyi to participate in the Special Council Meeting.

61 The Speaker also failed to take any action in relation to questions that were raised at the Special Council Meeting about a Mr Justice Sefanyetso, whom COPE had appointed to the Council to replace its erstwhile Councillor, Mr Murunwa Makwarela. Concerns were raised as Mr Sefanyetso appeared to have two identity numbers.

62 The Special Council Meeting was adjourned by the Speaker several times.

63 Without any regard for the plain implications of section 27 of the Structures Act, the Speaker indicated to party whips that he would ensure that Council

proceeded with the election of an Executive Mayor for the City of Tshwane and that he intended to allow the terminated members of ActionSA to vote during this election. The Speaker stated that if anyone had a problem with his patently unlawful approach, they could take him to Court.

- 64 The representative Councillors of the applicant refused to consent to the blatantly unlawful approach adopted by the Speaker and left the Council chamber.

The Special Council Meeting held on 22 March 2023

- 65 Five days later, on 22 March 2023, a further Special Council Meeting was held to consider various critical issues, including the election of an Executive Mayor of the City of Tshwane.

- 66 After the commencement of the Council meeting, however, the Speaker suddenly and without explanation changed his position about Mr Sefanyetso's participation as a COPE representative in the Special Council Meeting. The Speaker now claimed that there was doubt about the lawfulness of the replacement of Mr Makwarela by Mr Sefanyetso and adjourned the Special Council Meeting without giving any indication as to when it would resume.

- 67 This sudden change from one plan of action to the opposite undermined the Speaker's credibility and trustworthiness. The Speaker is expected to have a consistent and well-thought-out position on issues. Changing his position without providing any explanation led to confusion, mistrust, and scepticism among the Councillors and the public about Ndzwana's capacity to act as the Speaker.

The Speaker's sudden change of position also shows that the Speaker is under the influence of external factors or is acting upon ulterior motives rather than the best interests of the Council and the residents of the City of Tshwane.

- 68 The Speaker proceeded to adjourn the Special Council Meeting yet again unlawfully. This was an entirely disproportionate response. In adjourning the Special Council Meeting, the Speaker also unlawfully ignored a proposal, duly submitted in terms of Rule 23(1)(g) of the Rules and Orders of the Council, for the meeting to proceed to its next business, namely the election of an Executive Mayor.

The first section 29(1) request submitted to the Speaker

- 69 On the same day, Wednesday, 22 March 2023, a majority of 108 Councillors who are representative members of the multi-party coalition, petitioned the Speaker in terms of section 29(1) of the Structures Act to hold a Special Council Meeting on Friday, 24 March 2023 at 12h00 to consider an urgent motion of no confidence (“**MONC**”) in Ndzwanana as the Speaker (“**the first section 29(1) request**”). The first section 29(1) request was delivered to Ndzwanana at 14h00. I attach a copy of the first section 29(1) request as ***Annexure FA10***.
- 70 In terms of section 29(1) of the Structures Act, the Speaker of the Council is empowered to decide when and where the Council meets. If, however, the majority of Councillors request the Speaker in writing to convene a Council meeting, then the Speaker is required by section 29(1) to do so at a time set out in the request.

- 71 The 108 Councillors who submitted the first section 29(1) request to the Speaker constituted a majority of the 213 members of the Council at the relevant time. There are a total number of 214 seats in the Council. On Wednesday, 22 March 2023, however, there was a vacancy in ward 105 of the City of Tshwane – and there were 213 Councillors.
- 72 Despite his clear obligation under section 29(1) of the Structures Act to convene the meeting at the time set out in the request, Ndzwanana neither responded nor adhered to the first section 29(1) request.
- 73 On the same day, Wednesday, 22 March 2023, the applicant (together with the other multi-party coalition partners) again wrote to Ndzwanana demanding that the Special Council Meeting to elect an Executive Mayor of the City of Tshwane, which Ndzwanana had unlawfully adjourned, be reconvened the next day at 10h00. Once again, no response was received from Ndzwanana.

The second and third section 29(1) requests submitted to the Speaker

- 74 The next day, on Thursday, 23 March 2023, a majority of 108 Councillors again petitioned Ndzwanana in terms of section 29(1) of the Structures Act to call a Special Council Meeting to debate a MONC in Ndzwanana as the Speaker, this time to be held at 14h00 on 24 March 2023 (“**the second section 29(1) request**”). I attach a copy of the second section 29(1) request as ***Annexure FA11*** hereto.

- 75 As with the first section 29(1) request, the Speaker never responded to the second section 29(1) request. Once again, the Speaker failed to comply with his duty under section 29(1) of the Structures Act to convene the meeting at the time set out in the request.
- 76 On the same day, 23 March 2023, the same group of 108 Councillors also petitioned the Speaker in terms of section 29(1) of the Structures Act to hold a Special Council Meeting to elect an Executive Mayor of the City of Tshwane for 12h00 on Friday, 24 March 2023 (“**the third section 29(1) request**”). I attach a copy of the third section 29(1) request as **Annexure FA12**.
- 77 As with the first and second section 29(1) requests, the Speaker never responded to the third section 29(1) request and failed to abide by his responsibility to convene the Special Council Meeting at the time set out in the third section 29(1) request.
- 78 The applicant accordingly requested the City Manager under section 29(1A) to convene a Special Council Meeting to debate an urgent MONC in Ndzwanana as the Speaker, pursuant to the second 29(1) request.
- 79 Section 29(1)(1A) of the Structures Act provides that:

“If the speaker or acting speaker refuses to call a meeting of the council as requested in terms of subsection (1), the municipal manager, or in the absence or refusal by the municipal manager, a person designated

by the MEC for local government in the province, may call and chair the meeting”.

80 The City Manager, however, refused to call the Special Council Meeting pursuant to the second 29(1) request. He claimed there was insufficient time for him to provide the ostensibly prescribed 24 hours’ notice to all Councillors before the Special Council Meeting. I am, however, advised and submit that there is no requirement for a Special Council Meeting to be called on 24 hours’ notice.

81 Without responding to the first, second or third section 29(1) requests, the Speaker proceeded on the same day, 23 March 2023, to call a Special Council Meeting at 10h00 on Tuesday 28 March 2023, to elect an Executive Mayor of the City of Tshwane. I attach a copy of the notice given by the Speaker as **Annexure FA13**.

The fourth section 29(1) request submitted to the Speaker

82 Later that day, 23 March 2023, the same group of 108 Councillors again petitioned the Speaker in terms of section 29(1) of the Structures Act for a Special Council Meeting in order to debate a MONC in Ndzwanana as the Speaker, this time to be held at 10h00 on 27 March 2023 (“**the fourth section 29(1) request**”). I attach a copy of the fourth section 29(1) request as **Annexure FA14**.

83 As with the first, second and third section 29(1) requests, the Speaker failed to respond to the fourth section 29(1) request. Once again, the Speaker failed to

comply with his duty under section 29(1) of the Structures Act to convene the Special Council Meeting at the time set out in the request.

84 Each of the Speaker's failures to call the Special Council Meetings, as requested in the first, second, third and fourth section 29(1) notices, was blatantly unlawful. I point out that the Speaker's repeated failures to comply with his duty under section 29(1) of the Structures Act are exacerbated by the fact that he did not respond at all to these requests or explain any of his concerns about them.

85 The applicant accordingly again requested the City Manager under section 29(1A) of the Structures Act to convene a Special Council Meeting to debate a MONC in Ndzwanana as the Speaker, this time pursuant to the fourth 29(1) request.

86 On Saturday, 25 March 2023, the City Manager proceeded to call a Special Council Meeting for 14h00 on Monday, 27 March 2023, to consider an urgent motion of confidence in Ndzwanana as the Speaker. This decision was made as a result of the Speaker's failure to comply with his obligations under section 29(1) of the Structures Act to call the Special Council Meeting at the time set out in the fourth section 29(1) request. I attach a copy of the notice the City Manager gave about the meeting as **Annexure FA15**.

The Special Council Meeting held on 27 March 2023

87 At the commencement of the Special Council Meeting held on 27 March 2023, which was called by the City Manager pursuant to section 29(1A) of the

Structures Act, the Speaker proceeded to unlawfully preside as the chair of the meeting. In terms of section 29(1A) of the Structures Act, if the Speaker refuses to call a meeting of the Council as requested in terms of section 29(1), the City Manager may call and chair the meeting.

88 In his answering affidavit before this Court in the previous urgent application, Ndzwana claimed that the City Manager's decision to call the meeting was unlawful and that Ndzwana was accordingly entitled to chair and adjourn the meeting.

89 I emphasise that section 29(1A) was added by the Structures Act to empower the City Manager to call and chair a meeting of Council in instances where the Speaker refuses to do so. This amendment sought to avoid disruptions in the functioning of Municipal Councils and Municipalities arising from the disruptive conduct of Speakers. I attach a copy of the summary of the meeting held by the Parliamentary Portfolio Committee on Cooperative Governance and Traditional Affairs about the amendment on 10 February 2021 as **Annexure FA16**.

90 It follows that the Speaker unlawfully usurped the City Manager's power to chair the section 29(1A) meeting. In engaging in such unlawful self-help, Ndzwana ignored our courts' pre-eminent and exclusive constitutional role in determining legality. Such conduct threatens to invite a vortex of uncertainty, unpredictability and irrationality – and imperil the clarity and certainty of governmental conduct, on which we all rely in organising our lives.

- 91 During the Special Council Meeting, the Speaker claimed that the City Manager had acted unlawfully in calling the meeting due to an unspecified and baseless issue surrounding the signatures of the majority of 108 Councillors who had submitted the fourth section 29(1) request to the Speaker for the meeting to be called.
- 92 The Speaker failed to explain with any specificity which signatures he alleged to be incorrect or false, despite being given ample opportunity to do so both before and during the Special Council Meeting. The Speaker also did not in any way attempt to contact the relevant Councillors to determine whether his ostensible concerns about their signatures had any merit.
- 93 I also emphasise that all the Councillors who signed the fourth section 29(1) request were present in the Council chamber during the Special Council Meeting, and the Speaker could have easily and swiftly taken reasonable measures to verify the signatures on the fourth section 29(1) request.
- 94 The Speaker, however, proceeded to unlawfully adjourn the Special Council Meeting.
- 95 The applicant's attorneys accordingly wrote to the Speaker on 28 March 2023 to demand that he take all steps necessary to keep decorum in Council and deal with unruly Councillors in the correct manner. The Speaker was warned that if he continued to fail to comply with his obligations under the Structures Act, the applicant would take the required legal steps to vindicate its constitutional and

statutory rights. I attach a copy of the letter sent by the applicant's attorneys to the Speaker as **Annexure FA17**.

The fifth and sixth section 29(1) requests submitted to the Speaker

96 On Friday, 31 March 2023, a majority of 108 Councillors, out of a total of 213 Councillors at the relevant time, submitted requests under section 29(1) of the Structures Act to Ndzwana to convene:

96.1 the Special Council Meeting at 10h00 on Wednesday, 12 April 2023, to hear an urgent MONC in Ndzwana as the Speaker ("**the fifth section 29(1) request**"). I attach a copy of the fifth section 29(1) request as **Annexure FA18**; and

96.2 a Special Council Meeting at 10h00 on Thursday, 13 April 2023 ("**the 13 April 2023 Special Council Meeting**") to deal with matters relating to the budget of the City of Tshwane, including the tabling of the adjustments budget for the financial year 2022/2023 and the draft Medium Term Revenue and Expenditure Framework for 2023/2024 to invite public consultation ("**the sixth section 29(1) request**"). I attach a copy of the sixth section 29(1) request as **Annexure FA19**.

97 A majority of the Councillors signed the fifth and sixth section 29(1) requests. To the extent necessary, the applicant will make available video evidence of each of the 108 Councillors signing the section 29(1) request to the Court at the hearing of this application, to verify that they did indeed sign the same personally and that no signatures were appended fraudulently.

98 In terms of the fifth section 29(1) request, the majority of Councillors:

“In terms of section 29 (1) of the Local Government Structures Act (Act 117 of 1998), demand that a Special Council Meeting be held on Wednesday 12 April 2023 at 10:00 to hear an urgent motion of no confidence in the Speaker of the City of Tshwane (appended hereto) and for this meeting to be called by [Ndzwanana], as the Speaker of Council, with a notice issued by no later than Friday 31 March 2023. We further call for this motion of no confidence in the Speaker of the City of Tshwane to be conducted by an open show of hands.”

99 The Speaker was further advised by way of a cover letter, a copy of which is attached as **Annexure FA20**, that he was required to respond to the fifth section 29(1) request by close of business on Friday 31 March 2023.

100 The fifth and sixth section 29(1) requests were physically and electronically delivered to the Speaker.

101 The Speaker, however, initially refused to comply with his duty under section 29(1) of the Structures Act to convene the Special Council Meeting and the 13 April 2023 Special Council Meeting at the times set out in the fifth and sixth section 29(1) requests.

102 On Saturday, 31 March 2023, the Speaker sent an email acknowledging receipt of the fifth and sixth section 29(1) requests. I attach a copy of the Speaker’s email as **Annexure FA21**.

- 103 After the Speaker refused to convene the Special Council Meeting and the 13 April Special Council Meetings, the applicant sent an email to the City Manager on Saturday, 31 March 2023 requesting him to call the Special Council Meetings by 17h00 on Sunday, 2 April 2023. I attach a copy of the applicant' email as ***Annexure FA22.***
- 104 The City Manager responded to the applicant at 07h56 on Sunday, 2 April 2023 requesting an extension until 12h00 on Monday, 3 April 2023, to comply with the applicant's request. The City Manager explained that he wished to formally consult with the Speaker before responding. I attach a copy of the City Manager's email as ***Annexure FA23.***
- 105 The applicant agreed to grant the City Manager an extension to comply with their request. I attach a copy of the applicant's response as ***Annexure FA24.***
- 106 At 11h02 on Monday, 3 April 2023, the City Manager wrote to the applicant stating that he had met with the Speaker and that the Speaker had undertaken to address formal correspondence to all concerned about his approach to the calling of the meetings. The City Manager claimed that the Speaker would respond by 14h00 that day. The City Manager requested an extension to respond to the applicant' request by 15h00 that day. I attach a copy of the City Manager's email as ***Annexure FA25.***
- 107 At 15h55 on Monday, 3 April 2023, the Speaker responded to the applicant, confirming that he "*agreed to the date of a Special Council Meeting to consider*

2022/23 adjustment budget, draft MTREF 23/24 and other legislated report, for 13th April 2023.”

108 In relation to the Special Council Meeting that must be called to hear the urgent motion of no confidence in the Speaker, the Speaker undertook to:

“issue a notice in line with the Rules and Orders after satisfying himself that the petition satisfies all the minimum requirements and the latest 24 hours before the meeting as this shall be a Special Council Meeting.”

109 It follows that the Speaker initially refused to comply with his duty under section 29(1) of the Structures Act to convene the Special Council Meeting at the time set out in the fifth section 29(1) request. I attach a copy of the Speaker’s response as **Annexure FA26**.

110 The applicant’s attorneys (being the multi-party coalition members collectively) accordingly wrote to the Speaker on Tuesday, 4 April 2023, demanding that he confirm by 12h00, 4 April 2023 that he would comply with his duty under section 29(1) of the Structures Act to convene the Special Council Meeting at the time set out in the fifth section 29(1) request.

111 In their letter, a copy of which is attached marked **Annexure FA27**, the applicants’ attorneys also pointed out that if the Speaker proceeded to call the Special Council Meeting, he was required to recuse himself from chairing the meeting.

112 On Tuesday, 4 April 2023, after the Speaker failed to respond to the applicant's request that he comply with his duty under section 29(1) of the Structures Act to convene the Special Council Meeting, the applicant launched the previous urgent application.

113 On Wednesday, 5 April 2023, and after the institution of the previous urgent application, the Speaker called the Special Council Meeting and the 13 April Special Council Meeting in terms of section 29(1) of the Structures Act.

114 In the notice which called the Special Council Meeting, the Speaker stated:

"Notice is hereby given of a Special Council Meeting of the CITY OF TSHWANE METROPOLITAN MUNICIPALITY convened in terms of Section 29(1) of the Municipal Structures Act (Act 117 of 1997) to be held in the Council Chamber, Second Floor, Tshwane House, Madiba Street, Pretoria, on WEDNESDAY, 12 APRIL 2023 at 10:00 for purposes of consideration of a Motion of no Confidence against the Speaker of Council".

115 I attach copies of the notices issued by the speaker calling the Special Council Meeting and the 13 April special council as **Annexure FA28** and **FA29** respectively.

The previous urgent application heard on Tuesday, 11 April 2023

116 In the previous urgent application, the applicant sought to compel the Speaker to call the Special Council Meeting and the 13 April Special Council Meeting in terms of section 29(1) of the Structures Act.

117 The applicants' accordingly wrote to Ally AJ, who had been allocated the previous urgent application, to respectfully inform this Court that the relief sought by the applicant to compel the Speaker to call the meetings had become moot.

118 In the urgent application, the applicant also sought interdictory relief to ensure that Ndzwanana did not unlawfully prohibit, chair, adjourn or interfere with the Special Council Meeting and to guard against the unlawful disruption of the meeting.

119 This Court, per Ally AJ, dismissed the previous urgent application without giving reasons. The reasons have to date, not been forthcoming.

The Special Council Meeting held on Wednesday, 12 April 2023

120 Despite the extensive submissions made by the applicant during the previous urgent application about why Ndzwanana was required to be recused from acting as the Speaker during the Special Council Meeting, Ndzwanana proceeded to unlawfully chair the meeting in his capacity as the Speaker.

121 Ndzwanana confirmed at the outset of the Special Council Meeting that it had been convened under section 29(1) of the Structures Act.

122 The Chief Whip of Council then confirmed that an approved leave of absence had been granted for Councillor Naeem Patel, a representative member of the ANC, and Councillor Grandi Theunissen, who is a representative member of the Freedom Front Plus.

123 Ndzwana then proceeded to state that Councillor Bekker had resigned with effect from 3 April 2023 and that a vacancy had occurred in ward 83 of the City.

124 Councillor Aaron Maluleka, a representative member of the ANC, then falsely claimed that Councillor Bekker had purported to be a Councillor when he signed the fifth section 29(1) request for the Special Council Meeting. I point out that the fifth section 29(1) request was submitted to the Speaker on Friday, 31 March 2023 and Councillor Bekker only resigned from the Council on 3 April 2023.

125 Even if Councillor Bekker could not endorse the fifth section 29(1) request, which he plainly could, it would still have enjoyed the support of a majority of Councillors.

125.1 When the fifth section 29(1) request was submitted, there was a vacancy in ward 105 of the City of Tshwane and there were accordingly 213 Councillors. Without Councillor Bekker's signature, the 107 Councillors who signed the fifth section 29(1) request still constituted a majority of the 213 Councillors, as envisaged by section 29(1) of the Structures Act.

125.2 When Councillor Bekker resigned on 3 April 2023, and left a vacancy in ward 83 of the City of Tshwane, the 107 additional Councillors who

signed the fifth section 29(1) request still constituted a majority of the 212 Councillors, as envisaged by section 29(1) of the Structures Act.

125.3 On 5 April 2023, a by-election was held regarding the vacancy in ward 105 of the City of Tshwane. On 6 April 2023, the Electoral Commission of South Africa announced that Mr Kgaugelo Phiri was elected to fill the vacancy. I attach a copy of the Electoral Commission's announcement as **Annexure FA30**. Without Councillor Bekker's signature, the 107 Councillors who signed the fifth section 29(1) request still constituted a majority of the 213 Councillors, as envisaged in section 29(1) of the Structures Act.

125.4 When the Special Council Meeting was held, there was a vacancy in ward 83 of the City of Tshwane. The 107 Councillors who signed the fifth section 29(1) request (excluding Councillor Bekker) accordingly still constituted a majority of the 213 Councillors, as envisaged in section 29(1) of the Structures Act.

126 It follows that at all relevant times, Councillor Bekker's endorsement of the fifth section 29(1) request was immaterial to whether a majority of Councillors signed the fifth section 29(1) request.

127 Councillor Maluleka proceeded to ask the Speaker to confirm whether the Special Council Meeting was legal. In response, Ndzwanana stated that he had received the section 29(1) request with 108 signatures.

- 128 Councillor Ramabodu, the EFF's Regional Chairperson, then claimed that there was no basis for the Speaker to be recused from presiding over the motion of no confidence in him and stated to Ndzwanana, "*let me tell you, the only person who is going to remove you is yourself. No-one is going to remove you.*"
- 129 Councillor Ramabodu then stated that "*from today, [section 29(1) of the Structures Act] must be taken and thrown in the bin. It won't work.*" He then asked the Speaker to confirm whether the Special Council Meeting was legal because this Court had not approved the meeting.
- 130 The Speaker then granted a 30-minute caucus adjournment. After the caucus adjournment, the Speaker was requested to move on with the business of the day.
- 131 Councillor Ramabodu then alleged that the applicant were "*abusing section 29*". Finally, he claimed, without any basis in fact, that the petitions submitted by the applicant were "*fake*".
- 132 Ndzwanana then dealt with the urgent MONC in himself as the Speaker.
- 133 Councillor Lourens Erasmus requested Ndzwanana to recuse himself from presiding over the motion of no confidence on the basis that it was clear that he was plainly conflicted. Councillor Erasmus explained that Council could then elect an acting Speaker to preside over the MONC.

134 Section 41 of the Structures Act provides that if the Speaker is not available to perform the functions of Speaker, or during a vacancy, the Council must elect another Councillor to act as Speaker.

135 In terms of section 36(3) of the Structures Act, the City Manager or a person designated by the MEC presides over the election of a Speaker. It provides that:

“The municipal manager of the municipality or, if the municipal manager is not available, a person designated by the MEC for local government in the province, presides over the election of a speaker.”

136 Ndzwanana rejected the request to recuse himself and falsely claimed that this Court had found that he may preside over the Special Council Meeting.

137 It was, however, impossible for Ndzwanana to bring his mind to bear on discharging his duties as the Speaker regarding the motion of no confidence in him as the Speaker.

138 Councillor Jacqui Uys, a representative member of the DA, then pointed out that the Speaker was still required to chair the Special Council Meeting lawfully.

139 Councillor Makgaleng Katlego, a representative member of the DA then pointed out that the Speaker was required by section 37 of the Structures Act to ensure the effective functioning of the Council and was responsible for the ethics and accountability of the Council. Councillor Katlego further contended that the Speaker could not comply with these duties if he presided over the motion of no

confidence in himself and that another person should be elected to chair the Special Council Meeting.

140 Ndzwanana responded by repeating his false claim that his Court had found that he was empowered to preside over the motion of no confidence in him as the Speaker. Ndzwanana claimed that this *“Court made a judgment. Just wait for the reasons why the Court made its judgment. The Court allowed me to chair this meeting. . . So I am presiding over this meeting.”*

141 Councillor Uys then again emphasised that Ndzwanana had an apparent conflict of interest in the matter and requested him to follow the law in discharging his duties as the Speaker. The Speaker responded by undertaking to *“follow the rules of this Country”*.

142 After allowing Councillor Ramabodu to rise on a further point of order, Ndzwanana stated that the Council needed to conclude the Special Council Meeting to prepare to deal with the budget-related issues at the 13 April 2023 Special Council Meeting. The Speaker said that he believed that *“tomorrow I will still be chairing the meeting.”*

143 Ndzwanana then proceeded to deal with the item concerning the urgent motion of no confidence in himself as the Speaker. He confirmed receiving the fifth section 29(1) request on 31 March 2023.

144 Ndzwanana then claimed that:

“it is important to note that since the petition and the motion were received, there has been some development in that there has been a resignation of Councillor Bekker and a vacancy has been declared. There is a question about the validity and standing of his signature on the petition and, by extension, the minimum threshold required for the petition as contemplated by section 29(1) of the Structures Act.”

145 As, however, explained above, the fifth section 29(1) request enjoyed the support of a majority of Councillors for the purposes of section 29(1) of the Structures Act at all relevant times regardless of whether Councillor Bekker’s signature was valid. In any event, Ndzwanana conceded that he had called the meeting pursuant to the fifth section 29(1) request. I am advised and submit that for as long as Ndzwanana’s decision to call the Special Council Meeting has not been reviewed and set aside, it is binding and enforceable – including against the Speaker himself.

146 Ndzwanana then falsely contended, without explanation, that the urgent motion of no confidence in him advanced arguments and expressed opinion in terms of Rule 19(1)(b) of the Rules and Orders of the Council. Rule 19(1)(b) provides that the Speaker may disallow a motion if, in his opinion, it *“advances arguments, expresses opinion, or contains unnecessary factual, incriminating, disparaging or improper suggestions.”*

147 I am, however, advised and submit that the right of the Council to remove the Speaker by resolution under section 40 of the Structures Act does not subject the passing of that resolution to a decision taken by a Speaker in terms of the

Rules and Orders of the Council. In effect, Ndzwanana unlawfully invoked the Rules and Orders of the Council to attempt to provide himself with veto power over the MONC in himself as the Speaker.

148 In any event, the MONC in Ndzwanana did not advance argument, express opinion or contain unnecessary factual, incriminating, disparaging or improper suggestions. It merely called for Council to consider whether Ndzwanana should be removed as the Speaker.

149 Ndzwanana proceeded to unlawfully disallow the motion in terms of paragraph 19(1)(b) of the Rules and Orders of the Council on the basis that it:

149.1 no longer met the minimum requirements for a petition under section 29(1) of the Structures Act; and

149.2 advances arguments, expresses opinion, or contains unnecessary factual, incriminating, disparaging or improper suggestions.

150 Ndzwanana then adjourned the Special Council Meeting.

151 In making the impugned decisions, Ndzwanana abused his purported power as the Speaker to advance his private interests by unlawfully shielding himself from the urgent motion of no confidence and unlawfully preserving his position as the Speaker. Ndzwanana's conduct, and selfish abuse of his powers as the Speaker, are antithetical to the rule of law, a foundational value of the Constitution, which requires that the binding authority of the Structures Act and all relevant laws is respected by public officials.

152 Ndzwanana also acted in bad faith by dishonestly abusing his ostensible powers for ends that are prohibited by law. Ndzwanana's decisions to chair the Special Council Meeting, disallow the MONC in him as the Speaker, and adjourn the meeting were also motivated by the ulterior motive or purpose of promoting his own private interests by unlawfully maintaining his position as the Speaker and seeking to collapse the democratic and effective functioning of the Council as a pretext to seek to justify Provincial intervention.

153 The Speaker's unlawful conduct violated the fundamental rights of Councillors under section 160(8) of the Constitution to participate in the proceedings of Council in a manner that:

153.1 allows parties and interests reflected within the Council to be fairly represented;

153.2 is consistent with democracy; and

153.3 is regulated by national legislation.

154 By unlawfully blocking the Council from adjudicating the motion of no confidence in him as the Speaker, Ndzwanana also violated the rights of the majority of Councillors who had submitted the fifth section 29(1) request for the Special Council Meeting to be called to adjudicate the motion of no confidence.

155 As set out above, Ndzwanana has conducted himself in a manner which shows that he cannot perform his duties as the Speaker in a neutral, unbiased and lawful manner.

156 Since being appointed as the Speaker, Ndzwanana has repeatedly acted in contravention of the law and demonstrated that he is not able to discharge his obligations as the Speaker in accordance with his constitutional and statutory obligations. Ndzwanana has abused his powers as the Speaker to shut down, rather than to facilitate, the effective and lawful operations of the Council. He has failed to act with the impartiality and integrity demanded by his office.

157 Ndzwanana has neither retracted nor apologised for his previous unlawful conduct and, without this Court's intervention, is likely to again attempt to continue to block any attempts to remove him as the Speaker unlawfully. He has again recently done so, on the 29th of June 2023, as will be dealt with below.

158 In light of Ndzwanana's pattern of unlawful conduct, there is also a real risk that he will continue to abuse his powers and disrupt the Council from dispensing with its crucial business.

158.1 During the 13 April 2023 Special Council Meeting, which was called to deal with matters relating to the budget of the City of Tshwane, Ndzwanana once again unlawfully disrupted the Council from effectively conducting its business.

158.2 In his answering affidavit in the previous urgent application, Ndzwanana stated under oath that if the budget is not adopted by 13 April 2023, the City of Tshwane was at real risk of being placed under administration.

- 158.3 Despite the urgent need for the Council to conduct its business and deal with the urgent items on the agenda for the 13 April 2023 Special Council Meeting, Ndzwanana delayed the Council proceedings by granting the EFF a 30-minute “caucus”, then another “caucus break” of an hour to Councillors and a three-hour “caucus” break to the EFF after the lunch adjournment.
- 158.4 Ndzwanana then indicated Council would only sit until 17h00. The whole day was therefore spent on “caucus” breaks whilst the same initial “caucus” break could have been utilised by all simultaneously.
- 158.5 The repeated granting of caucus meetings by Ndzwanana to delay Council proceedings was a harmful dilatory tactic that disrupted the Council’s legislative process and prevented important and urgent work from being done. It also wasted valuable time and resources that could have been used for more productive purposes in the interests of the residents of the City of Tshwane.
- 159 The risk of Ndzwanana continuing to act unlawfully is exacerbated in the context of the ongoing attempts to unlawfully collapse the functioning of the Council to attempt to create a basis for the Gauteng Provincial Executive to intervene and dissolve the City of Tshwane.
- 159.1 The Premier of the Gauteng Province, Mr Panyaza Lesufi, publicly stated on 20 February 2023 that he wishes to intervene in the City of Tshwane as a matter of urgency. I attach a copy of Mr Lesufi’s speech as **Annexure FA31**.

159.2 Mr Lesufi is a member of the ANC. Previously, the ANC, the EFF and their Councillors unlawfully and unsuccessfully sought to collapse the functioning of the Council in order to attempt to create a basis for the Gauteng Provincial Executive to intervene and dissolve the City of Tshwane. Those attempts were found by the Constitutional Court to be unlawful.

159.3 On 14 April 2023, the MEC also issued a media statement confirming that he plans to intervene in the City of Tshwane in light of his ostensible disappointment with the failure of Council to pass an Adjustment Budget for the Financial Year 2022/2023 (“**the Adjustment Budget**”). There is, however, no statutory obligation for the Council to pass the Adjustment Budget and no lawful basis for intervention by the Provincial Executive under section 139 of the Constitution, which regulates the provincial government’s intervention in local government. I attach a copy of the MEC’s media statement as **Annexure FA32**.

160 The founding value of the supremacy of the Constitution and the rule of law in section 1(c) also support the quick imposition of legal certainty upon the affairs of the Council and the City.

161 Ndzwanana took the impugned decisions on 12 April 2023. Since then, the applicant and their representative Councillors in the City of Tshwane have been required to deal with essential business in the interests of the residents of the City of Tshwane.

161.1 On 13 April 2023, for example, the Draft Medium-Term Revenue and Expenditure for 2023/2024 was tabled before Council to initiate public consultation.

161.2 During the ordinary Council meeting held on 26 April 2023, for example, the adjustment budget for the 2022/23 financial year was passed by Council.

GROUNDINGS OF REVIEW

Standard of review

162 Ndzwanana made the impugned decisions in his capacity as the Speaker, which is an organ of state, performing public functions in terms of legislation. As set out above, Ndzwanana's exercises of his powers as the Speaker in making the impugned decisions were tightly regulated by the Constitution, the Structures Act and the Council Standing Rules and Orders. The impugned decisions also adversely affect the rights of persons, including the Councillors who signed the fifth section 29(1) request and the residents of the City of Tshwane, and have a direct, external legal effect.

163 The impugned decisions accordingly constitute administrative action in terms of section 1(a)(ii) of the Promotion of Administrative Justice Act 3 of 2000 ("**PAJA**") and are reviewable by this Court under the PAJA. They also constitute the exercise of public power and are reviewable by this Court under the principle of legality.

164 The applicant accordingly bring this review in terms of the PAJA *alternatively* the principle of legality. It matters little, however, as to whether this Court finds that PAJA or the legality principle is applicable, as the grounds of review are covered by both.

First ground of review: unlawfulness

165 The exercise of power by Ndzwanana as the Speaker must be consistent with the law.

166 The Constitution, the Structures Act and the common law demanded Ndzwanana to recuse himself from presiding over the motion of no confidence in himself as the Speaker. As explained above, he unlawfully failed to comply with his duty.

166.1 I am advised and submit that the key question as to whether Ndzwanana should have recused himself from presiding over the MONC is whether he could discharge his functions as the Speaker with impartiality.

166.2 Ndzwanana plainly had an actual, direct and material interest in the outcome of the urgent motion of no confidence. Accordingly, as there was a realistic possibility that the outcome of the motion of no confidence would affect Ndzwanana's interest, a reasonably informed person would reasonably apprehend that Ndzwanana did not impartially discharge his functions as the Speaker when he presided over the motion.

166.3 As set out above, Ndzwanana had also previously abused his powers as the Speaker to inhibit the Council from effectively hearing and deciding motions of no confidence in himself as the Speaker. Ndzwanana's prior unlawful conduct is also sufficient to give rise to a reasonable apprehension that Ndzwanana was unable to bring an impartial mind to bear in performing his functions as the Speaker when he presided over the motion of no confidence during the Special Council Meeting.

167 Ndzwanana was further enjoined by section 160(8)(b) of the Constitution to ensure that Councillors were entitled to participate in Special Council Meeting in a manner consistent with democracy. In refusing to recuse himself from presiding over the motion of no confidence, Ndzwanana unconstitutionally failed to comply with this constitutional duty.

167.1 The Speaker's democratic role in the Council is to be impartial and neutral, ensuring that parties and interests reflected within the Council are fairly represented and that Council meetings are conducted in accordance with the Council Standing Rules and Orders.

167.2 By acting as the Speaker in relation to a motion of no confidence against himself, Ndzwanana compromised his impartiality and neutrality. He was unable fulfil his democratic role as an impartial arbiter of the Council's processes.

167.3 Ndzwanana's refusal to recuse also constituted an attempt to manipulate the outcome of the proceedings. This undermined the

integrity of the Council's democratic processes and eroded public trust in the institution of the Council.

168 Confidence in the impartiality of the Speaker is also an indispensable condition of the successful working of the Council's procedure. To comply with his duty under section 37(g) of the Structures Act to ensure that the legislative authority of the City of Tshwane functions effectively, Ndzwanana was accordingly required to be impartial and to be seen to be impartial. He unlawfully breached this duty in presiding over the motion of no confidence.

169 As further explained above, in making the impugned decisions, Ndzwanana unlawfully violated Council's right under section 40 of the Structures Act to remove him from office as the Speaker. He also unlawfully ignored his decision to call the Special Council Meeting in circumstances where it had not been reviewed and set aside by a competent court and engaged in acts of unconstitutional self-help.

170 As further explained above, in making the impugned decisions Ndzwanana unlawfully invoked Rule 19(1)(b) of the Rules and Orders of the Council in circumstances where the motion of no confidence merely called for Council to consider whether Ndzwanana should be removed as the Speaker.

171 In making the impugned decisions, Ndzwanana failed to comply with the Constitution, the Structures Act, the Council Standing Rules and Orders and the common law. It follows that:

- 171.1 Ndzwanana was not authorised to make the impugned decisions, which are accordingly subject to review under section 6(2)(a)(i) of the PAJA and/or the principle of legality;
- 171.2 Ndzwanana failed to comply with a mandatory and material procedure or condition prescribed by an empowering provision when he made the impugned decisions, which are accordingly subject to review under section 6(2)(b) of the PAJA and/or the principle of legality;
- 171.3 the impugned decisions were taken for a reason not authorised by the empowering provisions and are accordingly subject to review under section 6(2)(e)(i) of the PAJA and/or the principle of legality; and
- 171.4 Ndzwanana made the impugned decisions in contravention of the law and without authorisation. The decisions are accordingly subject to review under section 6(2)(f)(i) of the PAJA and/or the principle of legality.

Second ground of review: bias

172 As explained above, in making the unlawful decisions, Ndzwanana was biased and is reasonably suspected of bias. He had an actual, direct and material interest in the outcome of the urgent motion of no confidence. His prior unlawful conduct, which inhibited the Council from considering motions of no confidence in him, also gave rise to a reasonable suspicion of bias.

173 It follows that the impugned decisions are subject to review under section 6(2)(a)(iii) of the PAJA and/or the principle of legality.

Third ground of review: irrelevant considerations

174 As explained above, in making the impugned decisions, Ndzwanana took into account irrelevant considerations. Ndzwanana justified the impugned decisions based on the resignation of Councillor Bekker, who had signed the fifth section 29(1) request. At all relevant times, however, Councillor Bekker's endorsement of the fifth section 29(1) request was irrelevant to the question of whether the fifth section 29(1) request was signed by a majority of Councillors and met the requirements of section 29(1) of the Structures Act.

175 It follows that the impugned decisions are subject to review under section 6(2)(e)(iii) of the PAJA and/or the principle of legality.

Fourth ground of review: decisional irrationality

176 I am advised and submit that an exercise of public power must be rationally connected to its purpose to be valid.

177 I am advised and submit that the Speaker's power to disallow a motion under Rule 19(1)(b) of the Rules and Orders of the Council aims to prevent the Council from considering motions which advance arguments, express opinion, or contain unnecessary factual, incriminating, disparaging or improper suggestions. The motion of no confidence in the Speaker, however, did not express any such material.

178 The impugned decisions accordingly do not have a rational link to their purposes or ends and are subject to review under:

178.1 under section 6(2)(e)(vi) of the PAJA and/or the principle of legality;
and

178.2 section 6(2)(f)(ii) of the PAJA and/or the principle of legality.

Fifth ground of review: material errors of fact and law

179 I am further advised that the Speaker's exercise of public power is reviewable under the principle of legality and the PAJA if an error of fact or law materially influences it.

180 As explained above, Ndzwanana was materially influenced by errors of fact and law when he made the impugned decisions. In making the impugned decisions, Ndzwanana erroneously claimed that:

180.1 in light of the resignation of Councillor Francois Bekker, the motion of no confidence no longer met the requirements of section 29(1) of the Structures Act; and

180.2 the motion of no confidence advanced arguments, expressed opinion, or contained unnecessary factual, incriminating, disparaging or improper suggestions.

181 These errors of fact and law materially influenced Ndzwanana to make the impugned decisions.

182 It follows that the impugned decisions are subject to review under sections 6(2)(d), 6(2)(e)(iii) and 6(2)(i) of the PAJA and/or the principle of legality.

Sixth ground of review: reasonableness

183 For the reasons set out above, the impugned decisions are so unreasonable that no reasonable person could have so exercised the Speaker's power or performed the Speaker's function to make them. The decisions are accordingly subject to review under section 6(2)(h) of the PAJA.

Seventh ground of review: bad faith and ulterior purpose or motive

184 As explained above, Ndzwanana acted in bad faith in making the impugned decisions by dishonestly abusing his powers as the Speaker for ends that are prohibited by law.

185 In making the impugned decisions, he was also motivated by the ulterior motive or purpose of maintaining his position as the Speaker.

186 I am advised that impugned decisions are accordingly reviewable under the sections 6(2)(e)(i), 6(2)(e)(ii) and 6(2)(e)(v) of PAJA and/or the principle of legality.

REMEDY

187 I am advised that when the exercise of public power breaches the constitutional principle of legality and the constitution, section 172(1)(a) of the Constitution requires that it be declared unlawful. Accordingly, it follows that if this Court upholds any one of the grounds of review advanced by the applicant, it must declare the impugned decisions to be unlawful.

188 For the reasons given above, the impugned decisions violate the constitutional principle of legality and the constitution. They must accordingly be declared to be unlawful by this Court.

189 I am further advised that if this Court upholds any of the applicant's grounds of review, the question of the just and equitable remedy arises.

190 The general remedy is that the impugned decisions be set aside and referred back to the decision-maker to retake the decisions with the benefit of the court's judgment. This Court, however, is endowed with the discretion to grant a just and equitable remedy under section 172(1)(b) of the Constitution and section 8(1) of the PAJA.

191 The applicant seeks a just and equitable remedy in this exceptional case in the form of an order by this Court, *inter alia*, that:

191.1 The Speakers conduct during the course of the Special Council Meeting of the 12th of April 2023, whereby the Speaker, disallowed the motion of no confidence in himself was unlawful, invalid and unconstitutional;

191.2 The Speaker's conduct during the course of the Special Council Meeting of the 29th of June 2023, whereby the Speaker disallowed the motion of no confidence in himself was unlawful, invalid and unconstitutional.

192 The relief sought by the applicant should be granted for five main reasons.

193 First, the relief is necessary to vindicate the Constitution and deter future infringements by the Speaker with his legal duties. The relief sought by the applicant would correct and reverse the consequences of the invalidity of the impugned decisions. It would also prevent Ndzwanana from benefitting from continuing to benefit from the impugned decisions he made.

194 Second, the outcome is a foregone conclusion. I am advised that a foregone conclusion means there is only one way for the decision-maker to exercise his decision-making powers, and remittal would serve no purpose. If this Court upholds the applicant's argument that Ndzwanana should have recused himself as the Speaker and/or was biased in making the impugned decisions, then the result is inevitable. Ndzwanana must be prohibited from chairing, adjourning and/or interfering, whether directly or indirectly, with the functioning of the Special Council Meeting. The Council must also elect an acting Speaker under sections 36(3) and 41 of the Structures Act and the acting Speaker is required to ensure that the Council considers the motion of no confidence in Ndzwanana as the Speaker.

195 Third, the urgency with which the matter must be resolved supports the relief sought by the applicant. A referral to Ndzwanana would inevitably delay matters further and cause unjustifiable prejudice to the applicant and the Councillors who signed the fifth section 29(1) request. I have also explained above why it is essential that the Council considers the MONC in Ndzwanana as the Speaker. It would not be in the interests of any parties, other than others who seek to unlawfully inhibit Council from considering the motion of no confidence in Ndzwanana, to further delay the process. The just and equitable remedy sought

by the applicant, which does nothing more than safeguard the ability of Council to lawfully consider and adjudicate the motion of no confidence in Ndzwanana, is in the interests of bringing certainty to the functioning of the Council as soon as possible, and brings certainty to our law. As stated above, the Speaker should not be clothed with autonomous power that permits the continued flouting of the rule of law.

196 Fourth, I am advised that our courts have explained that fairness to all implicated parties should be considered. Once it is so that the result is a foregone conclusion and a referral back to the Speaker would be nothing more than a mechanical exercise or provide a further opportunity to Ndzwanana to again unlawfully inhibit the Council from considering the motion of no confidence in himself as the Speaker, then there is no unfairness to the respondents from the order sought by the applicant. Indeed, the need for finalising the matter is for the benefit of all parties and the residents of the City of Tshwane.

197 Fifth, as explained above, Ndzwanana has exhibited bias to such a degree that it would be unfair to ask the applicant and the Councillors who signed the fifth section 29(1) to request to submit to his jurisdiction as the Speaker again.

198 Again and on the 29th of June 2023, Ndzwanana again refused to entertain a new MONC in him, which was brought by the applicant. A copy of the motion is annexed as **Annexure 34** hereto. Ndzwanana's explanation for his refusal to entertain this motion was that he has purportedly already dealt with the motion in three previous council meetings, in terms of Rule 19(4) of the Rules (attached above). Rule 19(4) provides that the Speaker must disallow a motion or proposal

if the motion or proposal is one which the Council has “already dealt with” within the three previous Council Meetings. Such reliance is fallacious however, especially in circumstances where the Speaker has done anything but consider the MONC’s brought against him. “Dealt with” is defined as “effectively engaged with”. No such effective engagement has ever occurred. To the contrary the Speaker has simply disregarded and ignored the MONCS and paid lip service to the fact that the MONCS were on the agenda. He continuously abuses the Rules and misconstrues the purpose and aim of same. Again, he has manipulated Rule 19(4) to excuse his unlawful conduct.

199 For all of these reasons, the applicant submits that this case is exceptional and the remedy it seeks would be a just and equitable remedy in the prevailing circumstances.

COSTS AND CONCLUSION

200 In the premises, the applicant prays for an order as set out in the notice of motion.

201 The applicant also seeks costs, including the costs of two counsel on an attorney and client scale, to be paid by Ndzwanana in his personal capacity if he opposes this application, and jointly and severally by any respondents opposing it.

202 The personal, punitive costs order sought by the applicant against Ndzwanana if he opposes this application is well-justified.

- 202.1 The Constitution requires Ndzwanana, in discharging his duties as the Speaker, to maintain the highest standard of professional ethics and to be accountable.
- 202.2 As a principal agent of the Constitution, Ndzwanana is required as the Speaker to respect the law and to fulfil all procedural requirements. The Constitution regulates all public power and Ndzwanana is required to act in accordance with the law and the Constitution. For the reasons set out above, he failed to do so.
- 202.3 I emphasize that in making the impugned decisions, Ndzwanana took the law into his own hands.
- 202.4 When Ndzwanana made the impugned decisions, he was fully aware that it was unlawful for him to preside over the motion of no confidence in him as the Speaker and attempt to abolish the Council's right under section 40 of the Constitution to remove him from office.
- 202.5 Ndzwanana was also fully aware that his repeated failures to comply with the section 29(1) requests were unlawful and contrary to his duties as the Speaker under section 29(1) of the Structures Act. Ndzwanana's repeated breaches of his duties are exacerbated by the fact that he has often failed to respond to the section 29(1) requests.
- 202.6 The facts set out lead to the inescapable conclusion that in making his unlawful decisions, Ndzwanana acted in bad faith and/or grossly negligently failed to act in accordance with his constitutional and statutory duties.

202.7 The Constitution demands that Ndzwanana be held accountable for his repeated failures and unlawful conduct.

202.8 It is submitted that the punitive costs mechanism exists to counteract reprehensible and contemptuous behaviour on the part of a litigant such as Ndzwanana.

DEPONENT

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at _____ on this the ____ day of _____ 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.

COMMISSIONER OF OATHS