

IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No: 90/2026

In the application for intervention of:

GWEDE SAMSON MANTASHE

Applicant for intervention

JUSTICE RAYMOND MNYAMEZELI ZONDO N.O.

First Respondent

THE JUDICIAL COMMISSION OF INQUIRY

Second Respondent

In re:

The matter between:

JACOB GEDLEYIHLEKISA ZUMA

First Applicant

and

THABO MVUYELWA MBEKI

Second Applicant

and

THE CHAIRPERSON OF THE COMMISSION:

First Respondent

COMMISSIONER SISI KHAMPEPE, N.O.

SECRETARY OF THE COMMISSION

Second Respondent

ADVOCATE ISHMAEL SEMENYA SC, N.O.

Third Respondent

COMMISSIONER FRANS KGOMO, N.O.

Fourth Respondent

COMMISSIONER ANDREA GABRIEL SC, N.O.

Fifth Respondent

CALATA GROUP

Sixth Respondent

NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

NOTICE OF MOTION

TAKE NOTICE that the intervening applicant, **GWEDE SAMSON MANTASHE** ("Mr Mantashe"), intends bringing an application to this Court for the following relief:

1. That Mr Mantashe be granted leave to intervene as a party in the above matter, under case number CCT 90/2026, in terms of Rule 8 of the Constitutional Court Rules.
2. That Mr Mantashe be granted leave to file written submissions, and to present oral argument at the hearing of the application.
3. That, in the alternative:
 - 3.1. Mr Mantashe be admitted as an *amicus curiae* in terms of Rule 10 of the Constitutional Court Rules;
 - 3.2. Mr Mantashe be granted leave to file written submissions, and to present oral argument at the hearing of the application; and
 - 3.3. to the extent necessary, Mr Mantashe's non-compliance with Rule 10 of the Constitutional Court Rules be condoned.
4. Directing that the costs of this application be costs in the main application, save in the event of opposition, in which case any party opposing the relief sought shall pay Mr Mantashe's costs (jointly and severally, the one paying the others to be absolved), such costs to include the costs of two counsel where so employed, on Scale C.
5. Further and/or alternative relief.

TAKE NOTICE FURTHER that the affidavit of **GWEDE SAMSON MANTASHE**, together with the annexures thereto, will be used in support of this application.

TAKE NOTICE FURTHER that Mr Mantashe does not seek leave to deliver a further substantive affidavit on the merits of the main application. The relief sought in the main application turns on a pure question of law, namely the proper interpretation and application of section 47(1) of the Superior Courts Act, which Mr Mantashe is presently pursuing on appeal before the Supreme Court of Appeal under SCA Case No. 044/2026, and on which he intends to file written submissions and to present oral argument in this Court.

TAKE NOTICE FURTHER that the intervening applicant has appointed the offices of **NORTONS INC** at The Reserve, First Floor, 54 Melville Road, Illovo, Johannesburg as the address at which he will accept notice and service of all process in these proceedings. Service may be effected by email to anthony@nortonsinc.com; anton@nortonsinc.com and nina@nortonsinc.com.

TAKE NOTICE FURTHER that, in light of the urgency upon which the main application has been enrolled in terms of Rule 12 of the Constitutional Court Rules, if you intend to oppose this application, you are required to (a) notify the intervening applicant's attorneys in writing within five (5) court days of service of this application; and (b) deliver your answering affidavit, if any, in accordance with directions to be issued by the Chief Justice; and further that you are required to appoint in such notification an address at which you will accept notice and service of all documents in these proceedings.

DATED AT JOHANNESBURG ON THIS THE 25th DAY OF MAY 2026.



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AND TO: MAJAVU INC

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IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

CCT Case No: 90/2026

In the application for intervention of:

GWEDE SAMSON MANTASHE

Applicant for intervention

and

JUSTICE RAYMOND MNYAMEZELI ZONDO N.O.

First Respondent

THE JUDICIAL COMMISSION OF INQUIRY

Second Respondent

In re:

The matter between:

JACOB GEDLEYIHLEKISA ZUMA

First Applicant

THABO MVUYELWA MBEKI

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THE CHAIRPERSON OF THE COMMISSION:

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Fourth Respondent

COMMISSIONER ANDREA GABRIEL SC N.O.

Fifth Respondent

CALATA GROUP

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NATIONAL PROSECUTING AUTHORITY

Seventh Respondent

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MINISTER OF JUSTICE AND
CONSTITUTIONAL DEVELOPMENT

Eighth Respondent

PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA

Ninth Respondent

FOUNDING AFFIDAVIT

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I, the undersigned,

GWEDE SAMSON MANTASHE

do hereby make oath and state that:

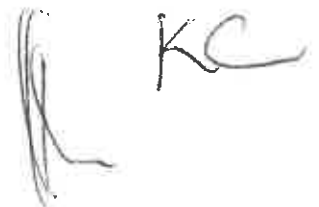
INTRODUCTION

1. I am an adult male citizen of the Republic of South Africa. I am the Minister of Mineral and Petroleum Resources and the National Chairperson of the African National Congress.
2. I am the appellant in the appeal pending before the Supreme Court of Appeal under case number 044/2026 ("**my SCA appeal**"). I deposed to the founding, supplementary founding and replying affidavits in the review proceedings out of which my SCA appeal arises. I am familiar with the record in that matter.
3. The facts in this affidavit are within my personal knowledge unless the context otherwise indicates. The legal submissions are made on the advice of my legal representatives, which I accept.
4. I depose to this affidavit in support of my application under Rule 8 of this Court's Rules for leave to intervene in the urgent application by Mr Jacob Gedleyihlekisa Zuma and Mr Thabo Mvuyelwa Mbeki for direct leave to appeal ("**the main application**"). In the *alternative*, I seek admission as *amicus curiae* under Rule 10, with such condonation as may be required.
5. The main application turns on several questions, including:
 - 5.1. whether section 47(1) of the Superior Courts Act 10 of 2013 is engaged at all in a review where the challenged conduct is the exercise of public

power by a commission of inquiry chaired by a judge, cited in their representative capacity; and

5.2. if so, whether non-compliance with the consent requirement operates as a jurisdictional bar rendering the proceedings a nullity.

6. Those are the same questions on which my SCA appeal turns. The main application raises the further related question of whether the review proceedings instituted by Mr Zuma and Mr Mbeki concerning the dismissal of their recusal applications against Justice Khampepe are properly to be characterised as civil proceedings "*against*" a judge of a Superior Court within the meaning of the section.
7. The principal judgment whose correctness is in issue in the main application was given against me. It is the judgment of the Gauteng Division of the High Court, Johannesburg, per Dippenaar J, in *Mantashe v Justice Raymond Mnyamezeli Zondo N.O. and the Judicial Commission of Inquiry*, Gauteng Division, Johannesburg, case number 7263/2022 ("**the Dippenaar judgment**"). It is attached as "**FA1**". The Court held that section 47(1) applied to my review and that the absence of prior consent rendered the proceedings a nullity. My review was dismissed without consideration of the merits.
8. The majority of the Full Court in the main application followed the Dippenaar judgment. It declined to follow the contrary judgment of the Gauteng Division of the High Court, Pretoria, per Moshwana J, in *Memela v Chairperson of the State Capture Commission of Inquiry* (34177/22) [2025] ZAGPPHC 816 (14 August 2025) ("**Memela**"). The conflict this Court is asked to resolve is, in substance,

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the conflict between the judgment in *Memela* and the Dippenaar judgment given against me.

9. If this Court determines the section 47(1) question, that decision will bind the Supreme Court of Appeal as a matter of *stare decisis*. The legal foundation of my appeal will be settled in proceedings to which I am not a party. That is why I ask to be joined as a party to these proceedings, so that this Court can consider the submissions I wish to advance in determining the main application.
10. I do not seek to expand the issues. I do not seek to traverse the merits of my review. I do not seek to delay the disposal of the main application. I ask only to be heard on a single question of law on which my own appeal turns.

THE RELIEF SOUGHT

11. The relief sought appears from the notice of motion. In summary:

- 11.1. I seek leave under Rule 8 to intervene as a party in the main application.

My participation will be confined to written and oral submissions on the proper construction of section 47(1) and the consequences in law of non-compliance.

- 11.2. In the *alternative*, I seek admission as *amicus curiae* under Rule 10, with condonation of any non-compliance.

- 11.3. I do not seek leave to file any further affidavit on factual matters. The point on which I propose to be heard is a pure question of law.

12. I undertake to ensure that my participation does not delay the disposal of the main application, and to abide by such directions as the Chief Justice may issue.

13. I am advised, and respectfully submit, that I meet the test for intervention under Rule 8. In the further alternative, the requirements for admission as *amicus curiae* under Rule 10 are plainly satisfied. I develop those submissions in turn below.

THE PENDING APPEAL BEFORE THE SUPREME COURT OF APPEAL

14. My interest in the main application is best understood against the procedural history of my review. The full record of my SCA appeal is available if required.

15. On 1 March 2022 the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State ("**the Commission**") delivered Part III, Volume 4 of its report. The Commission found that there was "*a reasonable prospect that further investigation will uncover a prima facie case against Mr Mantashe in respect of the offence of corruption in terms of section 3 of [PRECCA]*". It referred the matter for further investigation.

16. On 19 July 2022, I instituted review proceedings in the Gauteng Division of the High Court, Johannesburg, to set aside that finding. I cited the then Chief Justice, Justice Zondo, in his official capacity as Chairperson of the Commission, together with the Commission itself. I sought no relief against Justice Zondo personally. I made no allegation of personal misconduct against him.

17. The respondents in the review, who are also the respondents in this intervention application, opposed the review. They took a preliminary point: that the review was a nullity because I had not obtained the prior consent of the Judge President of the Supreme Court of Appeal under section 47(1).

18. I disputed the preliminary point on two bases:

18.1. First, that section 47(1), properly construed, does not apply to a judicial review of public power exercised by a commission of inquiry chaired by a judge.

18.2. Second, in the alternative, that even if section 47(1) is engaged, non-compliance does not nullify the proceedings. The proper remedy is a stay to permit consent to be obtained.

19. On 12 October 2025 Dippenaar J upheld the preliminary point and dismissed my review. The Court held that section 47(1) applied, that the absence of prior consent rendered the proceedings a nullity and that the merits of the review accordingly did not need to be adjudicated.

20. On 31 October 2025, I applied for leave to appeal. On 28 November 2025 Dippenaar J granted me leave to appeal to the Supreme Court of Appeal. She did so on the grounds that her judgment was in conflict with *Memela*, and that the matter raised questions of public importance. The leave to appeal judgment is attached as "FA2".

21. Last week, on 20 May 2026, I delivered my heads of argument in my SCA appeal. The respondents' heads are not yet due. I am advised that the appeal will, in the ordinary course, be enrolled later in 2026 or early in 2027.

22. Two features of my SCA appeal matter for present purposes.

22.1. First, the appeal turns on the proper construction of section 47(1). The question is whether judicial review of public power exercised by a commission of inquiry chaired by a judge is "*civil proceedings . . . against*" a judge within the meaning of the section.

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22.2. Second, the appeal raises the consequential question. Even if section 47(1) is engaged, does non-compliance render the proceedings a nullity, or does it require only a stay pending the obtaining of consent?

23. Those are precisely the questions placed before this Court in the main application, albeit in the context of a commission of inquiry chaired by a retired judge that has issued procedural rulings (including the dismissal of recusal applications), rather than a commission chaired by a judge which has delivered findings and recommendations.

THE MAIN APPLICATION

24. I do not traverse the contents of the founding papers in the main application. I record only the salient features.

25. Mr Zuma and Mr Mbeki applied to the Gauteng Division of the High Court, Johannesburg, to review and set aside certain rulings of the Khampepe Commission, including the dismissal of their recusal applications. The Commission and the relevant commissioners took the very same point *in limine* that had been taken against me: that the reviews were nullities by operation of section 47(1).

26. On 30 March 2026 the Full Court of the Gauteng Division, per Mudau ADJP and Baqwa J, with Modiba J dissenting, upheld the point *in limine* and dismissed the review. The majority expressly followed the Dippenaar judgment given against me. It declined to follow *Memela*. *Memela* had held that section 47(1) does not apply to a review of public power exercised by a sitting judge cited in their official capacity as the chairperson of a commission of inquiry.

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27. This Court is therefore asked to resolve a live conflict between *Memela* on the one hand, and the Dippenaar judgment and the Full Court majority in the main application on the other. Each of those judgments turns on the proper construction of section 47(1).

28. If this Court holds the Dippenaar judgment to be correct, the question in my SCA appeal will likely be answered against me. If it prefers *Memela*, it will likely be answered in my favour. Either way, the Supreme Court of Appeal will be bound by this Court's decision.

29. The issues in the main application and the issues in my SCA appeal align. Mr Zuma and Mr Mbeki advance challenges, in particular, concerning the characterisation of a review of a decision made by a judge in their capacity as the chairperson of a public body as proceedings "*against*" a judge, and the conclusion that non-compliance with section 47(1) is jurisdictional in effect. My submissions in the SCA appeal also concern those very issues.

30. The consequence is significant. If this Court determines those questions, its decision will bind the Supreme Court of Appeal. The legal foundation of my appeal will likely be settled, one way or the other, before my appeal is heard.

THE INTEREST WHICH JUSTIFIES INTERVENTION UNDER RULE 8

31. I am advised and submit that the test for leave to intervene is settled. An applicant must show that they have a direct and substantial legal interest in the subject-matter of the proceedings. That is an interest in the right which is the subject-matter of the litigation. The interest must be capable of being prejudicially affected by the order of the Court.

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32. The applicant must show a right adversely affected or likely to be affected by the order sought, supported by allegations which, if proved, would entitle them to relief. Where the test is met, this Court has no discretion to refuse intervention. It must allow the applicant to be heard.

33. The question is whether the order sought in the main proceedings can be sustained or carried into effect without prejudicing the proposed intervenor. If it cannot, the intervenor has a direct and substantial legal interest and is entitled to intervene.

34. My interest meets that test. It does so for four reasons.

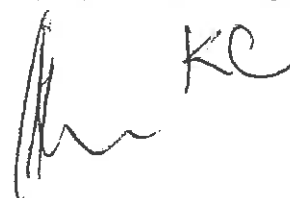
34.1. First, the Dippenaar judgment is the judgment in my review. It dismissed my review. It is the judgment whose correctness is the principal subject of the main application.

34.2. Second, the majority of the Full Court chose to follow the Dippenaar judgment in preference to *Memela*. The conflict this Court is asked to resolve is, in a literal sense, one in which my matter is the subject-matter.

34.3. Third, the question this Court is asked to determine, the proper construction of section 47(1) and the consequences of non-compliance, is precisely the question pending before the Supreme Court of Appeal in my SCA appeal.

34.4. Fourth, this Court's determination will bind the Supreme Court of Appeal. My pending appeal stands to be effectively decided in proceedings to which I am, formally, a stranger.

35. The order sought in the main application cannot be carried into effect without prejudicing me. If the appeal succeeds, the Dippenaar judgment given against

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me will likely stand overturned. If it fails, the legal foundation of my own appeal will likely be nullified. Either way, my position is determined.

36. My position is, with respect, more proximate than that of the ordinary intervenor.

In many of the cases in which this Court has granted intervention, the intervenor's interest extended no further than the precedential consequences of the outcome for a class of persons similarly situated. My interest is of a different order. It is to prevent the question on which my own pending appeal turns from being authoritatively determined in proceedings to which I am not a party.

37. Two foundational principles reinforce my entitlement to be heard.

37.1. The *audi alteram partem* rule. It is a basic principle of our law that no order should be made against a party without affording such party a pre-decision hearing. A party whose pending appeal stands to be determined in substance by the outcome of other proceedings is entitled to be heard in those proceedings.

37.2. The right of access to court protected by section 34 of the Constitution.

To have one's appeal effectively decided without being afforded an opportunity to be heard is to be denied access to a fair hearing by a court.

38. Mr Zuma and Mr Mbeki cannot advance my appeal in my stead. Their litigation is their own. Their grounds of appeal include points peculiar to the Khampepe Commission and to their recusal applications, with which I have no concern. They will properly make tactical and strategic choices in the framing of their submissions, in their selection of authorities, and in their treatment of the

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alternative-remedy question. They may make choices I would not and there are likely to be differences in their arguments about the scope of section 47(1)'s application. This is because the decision they seek to review is the dismissal of their recusal applications, rather than findings and recommendations made by a judge-chaired commission. That is not a criticism. It is only to say that my interest cannot be left to others to represent.

39. Granting leave to intervene is, moreover, in the interests of justice. This Court has consistently emphasised that intervention should be granted where doing so will allow the intervenor's interest to be vindicated in the proceedings rather than through further litigation. The alternative here for me is unfair, contrary to the interests of justice and inimical to the orderly administration of justice.

NO FURTHER AFFIDAVIT IS NECESSARY

40. I do not seek leave to file any further affidavit on factual matters. There are two reasons.

40.1. First, the question on which I seek to be heard is a pure point of law. It turns on the proper construction of section 47(1) and the consequences in law of non-compliance. No further evidence is required.

40.2. Second, the factual record in the main application is comprehensive. It sets out the facts of the Khampepe Commission, the recusal applications, the procedural history before the High Court, and the relevant statutory and constitutional context. The procedural history of my own matter, set out above, is a matter of public record. Nothing for present purposes turns on the merits of my underlying review.

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41. If leave to intervene is granted, I will participate by filing written submissions on the section 47(1) question, and through such oral argument as this Court may permit. I will not introduce new evidence.

ALTERNATIVE RELIEF: ADMISSION AS *AMICUS CURIAE*

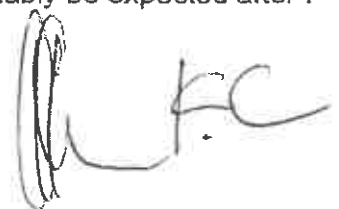
42. If, contrary to my submissions, this Court were to hold that my interest does not qualify as "*direct and substantial*" for the purposes of Rule 8, I seek admission as *amicus curiae* under Rule 10.

43. The criteria for admission are settled. A prospective *amicus* must have an interest in the proceedings and must be likely to advance submissions that differ from those of the existing parties and that will be of assistance to the Court. I meet that test.

44. My interest in the proceedings is set out above. At the lowest, it is sufficient to ground admission as *amicus*, even if this Court were to hold that it falls short of that required for full intervention.

45. My submissions will be drawn from the heads of argument prepared for my SCA appeal. They are the product of careful preparation by counsel briefed to argue the same question in the Supreme Court of Appeal. They engage the textual, contextual, purposive and constitutional aspects of section 47(1) with a degree of detail and emphasis that differs from the submissions advanced thus far in the main application. They are directed squarely at the central interpretive question. My participation therefore offers material assistance to this Court, additional to and not duplicative of what the existing parties have urged.

46. To the extent that any non-compliance with Rule 10 arises, I seek condonation. This application is brought as promptly as could reasonably be expected after I

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became aware, on Thursday 21 May 2026, of the set-down of the main application. No prejudice can accrue to any party from condonation in these circumstances. The prejudice runs the other way: it is to me, if I am denied the opportunity to be heard.

ABSENCE OF PREJUDICE TO THE EXISTING PARTIES

47. No party will be prejudiced by my participation in the main application.

47.1. My participation will be confined to the section 47(1) question, which is already squarely before this Court.

47.2. No factual material is introduced. My intervention will not require any party to respond to new evidence.

47.3. I undertake to abide by any timetable or directions issued by the Chief Justice. The expeditious disposal of the main application will not be jeopardised.

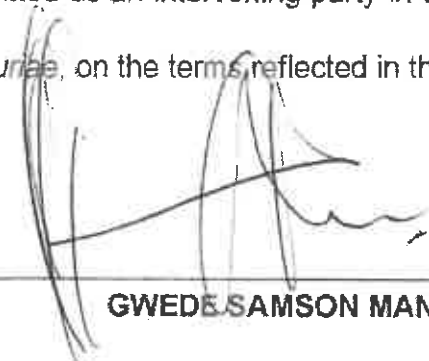
47.4. I do not seek to step into the shoes of the applicants in the main application. I seek only to be heard on the discrete legal question that threatens to bear on my own pending appeal.

COSTS

48. I propose that the costs of this application be costs in the main application. I do not seek a costs order against any party that does not oppose the application. I reserve the right, if my application is opposed, to seek a costs order against any party whose opposition this Court considers to have been ill-founded.

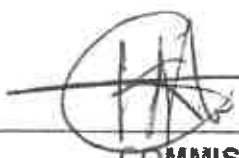
CONCLUSION

49. For the reasons set out above, I respectfully ask this Court to grant the relief in the notice of motion. I ask to be admitted as an intervening party in the main application, alternatively as *amicus curiae*, on the terms reflected in the notice of motion.



GWEDÉ SAMSON MANTASHE

I CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me at PRETORIA on this the 25th day of MAY 2026, the regulations contained in Government Notice R1258 of 21 July 1972, as amended, having been complied with.



COMMISSIONER OF OATHS

Full names:

Designation / Capacity:

Address:

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3rd Floor Steven House
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REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG

CASE NUMBER: 007263/2022

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
1. REPORTABLE: YES	
2. OF INTEREST TO OTHER JUDGES: YES	
3. REVISED: NO	
12 OCTOBER 2025	 Judge Dippenaar

In the matter between:

GWEDE SAMSON MANTASHE

APPLICANT

and

JUSTICE RAYMOND ZONDO N.O

FIRST RESPONDENT

JUDICIAL COMMISSION OF INQUIRY

SECOND RESPONDENT



JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading to the electronic case file. The date and time for hand-down is deemed to be the 12th of OCTOBER 2025.

DIPPENAAR J:

[1] This application seeks to review and set aside certain findings made by the Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State, colloquially known as the Zondo Commission ('the Commission'), against the applicant. The report was released to the public on 1 March 2022.

[2] The applicant is Mr Mantashe, currently the Minister for Minerals and Energy. He is the former Secretary General of the ANC and its current National Chairperson. The first respondent is the former Chief Justice of the Republic of South Africa, Justice Zondo. The second respondent, the Commission, is cited as 'the Judicial Commission of Enquiry'.

[3] On 23 January 2018 former President Zuma appointed the Commission in terms of s 84(2)(f) of the Constitution 108 of 1996 and appointed then Deputy Chief Justice Zondo as its chairperson through Proclamation 3 of 2018. Former President Zuma declared that the provisions of the Commissions Act 1947 would be applicable to the Commission and made regulations with reference to the Commission on 8 February

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2018.¹ The regulations of the Commission are signed by Justice Zondo as '*Deputy Chief Justice of the Republic of South Africa and Chairperson of the Commission*'.

[4] In the founding affidavit Justice Zondo was cited in his capacity as the chairperson of the Commission, *nomine officio*. No part of the founding affidavit was dedicated to the interrelationship between the respondents. In the answering affidavit Justice Zondo explained that he was a Judge of the Constitutional Court and Chief Justice of the Republic of South Africa and was the chair and only member of the Commission. Justice Zondo pointed out that neither respondent has any separate corporate existence and that he was the personification of both.

[5] Having considered the evidence before it related to Bosasa, the Commission concluded that:

'...there is a reasonable prospect that further investigation will uncover a prima facie case against Mr Mantashe in respect of the offence of corruption in terms of section 3 of PRECCA, and the matter is referred for investigation accordingly'.

[6] The present review is aimed at this conclusion. The applicant contended that the finding affects his reputation and good name in that it suggests that he may have been involved in acts of corruption in circumstances where the Commission itself found that there was no evidence of corruption or fraud against him. The applicant's case is that the Commission's finding falls to be reviewed and set aside because: (i) the Commission exceeded the bounds of its terms of reference; (ii) there was no evidence that he received certain security upgrades to his properties with the intention to induce anyone to act corruptly or to induce him to act corruptly; and (iii) the Commission misunderstood or

¹ Schedule to Government Notice 41426 of 9 February 2018, in terms of s 1 of the Commission's Act. The Rules governing the proceedings of the Commission were published in notice 396 of 2018 in GG no 41772 of 13 July 2018.

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misapplied s 24 of the Prevention and Combatting of Corrupt Activities Act 12 of 2004 ('PRECCA').

[7] The application was opposed on three grounds by the respondents:

[7.1] First; that the applicant did not comply with the peremptory requirements of s 47 of the Superior Courts Act 10 of 2013 ('the Act'), which required of him to first obtain the consent of the President of the Supreme Court of Appeal ('SCA') before instituting proceedings against the former Chief Justice in his capacity as Chairperson of the Commission and as the person who constituted the Commission. It was submitted that the application was not competent and fell to be dismissed on that basis.

[7.2] Second; that the Commission's conclusion was not reviewable as it was not determinative or final and did no more than conclude that there was reason for further investigation.

[7.3] Third; that the review challenge must fail on its merits given its narrow scope and the wide discretion of the Commission to investigate matters within the scope of its terms of reference and to make findings and recommendations that it deems to meet its purpose. The respondent submitted that those findings should not be lightly interfered with unless the court was satisfied that the finding was not in accordance with the Commission's mandate or the finding was irrational or unreasonable having regard to the facts before the Commission.

[8] The first issue requiring determination is whether the applicant was required to obtain leave from the President of the SCA to institute the application in terms of s 47 of the Superior Courts Act 10 of 2013.

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[9] There was no dispute between the parties that any required consent should be from the President of the SCA. At the time the proceedings were instituted, Justice Zondo was the Chief Justice of the Republic of South Africa. The dispute between them concerned whether such consent was required. Although the applicant in his replying affidavit stated: *'However purely as a matter of caution, my legal representatives will direct a letter to the President of the SCA for the consent'*, it was common cause that no such letter was sent and that no consent was sought or obtained.

[10] The applicant's case was that consent was not required, given that Justice Zondo was acting in his capacity as Chairperson of the Commission and not as a judge and was not performing judicial functions but was simply chairing the Commission. He contended that even if consent was not obtained, it did not render the review incompetent and did not mean that the findings of the commission were unassailable, simply because the commissioner was a judge.

[11] The respondents contended the opposite and submitted that the application was fatally flawed absent the required consent, which extended to any civil proceedings intended to be instituted against a judge regardless of whether the matter related to a judge's personal or judicial capacities. It was further submitted that in acting as Chairperson of the Commission, Justice Zondo was performing judicial service.

[12] Section 47 of the Act provides:

'Issuing of summons or subpoena in civil proceedings against judge

(1) Except for an application made in terms of the Domestic Violence Act, 1998 (Act 116 of 1998),² no civil proceedings by way of summons or notice of motion may be instituted against any judge of a Superior Court, and no subpoena in respect of civil proceedings may be served

² Section 47(1) was substituted by s 20 of the Domestic Violence Act 116 of 1998 with effect from 14 April 2023 to introduce the exception.

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on any judge of a Superior Court, except with the consent of the head of that court or, in the case of a head of court or the Chief Justice, with the consent of the Chief Justice or the President of the Supreme Court of Appeal, as the case may be.

(2) Where the issuing of a summons or subpoena against a judge to appear in a civil action has been consented to, the date upon which such judge must attend court must be determined in consultation with the relevant head of court'.

[13] The main purpose of the provision is to protect the independence of the judiciary in a modern constitutional democracy based on a separation of powers and the Rule of Law.³

[14] The ambit of s 47(1) has been addressed on various occasions in our Courts, specifically in this Division. In *Soller v President of the Republic of South Africa and Others*,⁴ Ngoepe JP firmly rejected the contention that s 25 of the now repealed Supreme Court Act 59 of 59, (the precursor to s 47(1)) vitiated a complainant's right to access to court under s 34 of the Constitution. *Soller* concerned a judge performing judicial court functions. He further held:

[17] It is true that the section also applies in instances where the Judge is to be sued in respect of personal matters, such as for a debt owing. Even in such a case, the section would not be an obstacle: the preliminary investigation would be done and if there is a prima facie case, leave to sue the judge would be granted; if wrongly refused, the decision would be appealed against. The consideration set out above justified the retention of the general mechanism as contained in the section, namely that in all instances leave be sought first.'

[15] In *Engelbrecht v Khumalo*⁵ Mlambo JP held:

³ Sections 34 and 165(1)-(4) of the Constitution 1996.

⁴ *Soller v President of the Republic of South Africa and Others* 2005 (3) SA 567 (T) paras 14 to 16.

⁵ *Engelbrecht v Khumalo* 2016 (4) SA 564 (GP) para 2; *Freedom Under Law v Judge Motata (FUL)* 2021 JDR 0077 (GP) para 33

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"[2] The language of the section [s47(1)] is clear that no civil legal process can be issued against a judge unless this has been permitted by the head of the court in which the judge serves. Section 47(1) applies to civil proceedings by way of summons or notice of motion intended to be instituted against a judge in the judge's personal and/or judicial capacities' ...

*[5] I should further point out that s 47(1) is not only concerned with legal proceedings targeting what judges do in their judicial capacities. The provision has been interpreted expansively to also cover actions arising from their personal interactions. Also covered is litigation arising from incidents that occurred before their elevation to judicial office. See *N v Lokoto*⁶ in this regard, where Ngoepe JP discussed the procedure to be followed when a request for consent was lodged.*

[7] I stated earlier that s 47(1) plays a gatekeeping function and as such does not provide a complete bar against the institution of legal proceedings against judges, hence the requirement of consent. The approach of the courts is to determine whether good cause has been shown in the application or request to institute the intended legal proceedings against the judge concerned. The cases I have considered dealing with good cause are clear that the good-cause test is not all-embracing but is case-specific. This entails a balanced and common-sense appraisal of the individual facts and circumstances of the matter'.

[16] The applicant's contention that the Commission would be immunised from a review if consent is required, thus lacks merit. Consent should not be conflated with good cause. This application does not concern the latter issue. The applicant's reliance on *Masuku v Special Investigating Unit*⁷ also does not in this context assist his cause. The issue is not whether a review is competent, it is whether the applicant should have obtained prior leave under s 47 of the Act.

⁶ *N v Lokoto* 2007 (3) SA 569 (T)

⁷ *Masuku v Special Investigating Unit* 2021 JDR 0720

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[17] In *Freedom Under Law v Judge Motata (FUL)*⁸, Mlambo JP held:

[11] Section 25(1) of the Old Act and now section 47(1) are provisions in which is embedded the doctrine of leave to sue in so far as Judges are concerned. This doctrine constitutes a procedural mechanism ordaining, as Ngoepe JP found in Lukoto, that anyone desiring to cite a Judge in Court proceedings must obtain the consent of the Judge President of the Court in which the Judge sought to be cited was appointed. It is a mechanism designed for the protection of Judges against non-meritorious lawsuits. It is thus a mechanism for sparing Judges from the nuisance of having to deal with frivolous litigation instituted against them...

[15] in terms of section 47(1), leave to sue must be obtained regardless of whether the matter relates to a Judge's judicial functions, activities or private affairs. The claimant however loses his or her right to sue if the lawsuit is meritless in that consent will not be granted. Support for maintaining the insulation and thus protection of Judges from meritless lawsuits is advanced, amongst others, by McCreath and Koen...

[16] ...section 47(1) does not draw a distinction between active and retired Judges.'

[23] We know that there are Judges who retire but who continue to feature in judicial functions and activities. This is to finalise part heard matters they are seized with but more importantly, retired Judges are appointed to undertake new work allocations either in their divisions or in others. Clearly therefore these Judges continue to feature in judicial activities despite being retired. Section s 2(c) of the Act states that the object of the Act is 'to make provision for the administration of the judicial functions of all the courts'.... Retired Judges who are called to act from time to time or to finalise part heard matters fall within the ambit of the above-mentioned administration...this illustrates that despite being retired these Judges continue to play a role in the judiciary i.e., in rendering judicial functions.

⁸ *Freedom Under Law v Judge Motata* 2021 JDR 0077 (GP) paras 31-32.

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[24] It is instructive further to note that Section 1 of the Act [Judges Remuneration and Conditions of Employment Act "Remuneration Act"] further states that: 'service means (a) service as a judge of the Supreme court of Appeal or a High Court as contemplated in the Supreme Court Act 1959 (Act no 59 of 1959) in the same or a higher office held by the judge concerned on discharge from active service, or, with the approval of the judge concerned, service in a lower office; (b) service as a chairperson or a member of a commission as contemplated in the Commissions Act (Act no 8 of 1947); (c)- service as a chairperson or a member of a body or institution established by or under any law; or (d) any other service which he Minister may request him or her to perform.'⁹ [emphasis added]

[25] The import of this provision is to buttress the underlying rationale that retirement cannot be construed, as contended by FUL, to lead to loss by retired judges of the protective mechanisms of section 47(1). I hold the view that properly considered, the word 'service' in this section must include Judges who are retired but who continue to either perform Judicial functions when called upon to do so by the Minister in line with (d) or have been appointed to perform other functions as provided in the section in other capacities. In other words, section 47 ought not to limit the scope of application of the leave to sue doctrine to only Judges who remain in active service. Clearly the immunity implicit in the section also extends to those retired Judges who remain in service...'

[18] The notion that civil proceedings in the context of s 47(1) does not include review proceedings, was firmly rejected in FUL. It was held: 'Review proceedings are civil proceedings and that is the only interpretation that applies'. The same rationale pertaining to retired judges would also apply to judges in active service performing judicial functions as envisaged in s 1(b) of the Remuneration Act.

[19] The applicant sought to distinguish *Soller*, *Engelbrecht* and *FUL* on a factual basis. He contended that in *Soller*, the judge was clearly exercising judicial functions and s 47 applied to protect the independence of the judiciary and the abuse of process of targeting

⁹ Referring to The Judges Remuneration and Conditions of Employment Act, 2001.

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the judge personally. Here, it was submitted, the applicant was not suing the person of Justice Zondo, who was not sitting as a judicial officer but as the chairman of the commission. In similar vein, it was submitted that *Engelbrecht* was distinguishable, as good cause was shown that there was a justiciable claim and the application was not vexatious. It was argued that these are not civil proceedings against a judge but against the commission of inquiry which he chaired. The argument misconceives the wide interpretation of civil proceedings.

[20] I am not persuaded that any of these cases are distinguishable. Although the facts differ, the principles remain of application. Each case is of necessity fact specific. Importantly, these authorities are binding on this Court.

[21] The applicant further placed reliance on the dictum in *Erasmus and Others NNO v SA Associated Newspapers Limited and Others*¹⁰ in seeking to draw a distinction between Justice Zondo in the capacity of performing a judicial function as a Judge of the Constitutional Court and in the capacity of performing the function of the chairperson of the Commission. He submitted that the latter was wholly unconnected with the position Justice Zondo otherwise occupied as a judge.

[22] In *Erasmus* it was held that there is no warrant in South African law for calling a commission headed by a judge or magistrate as a judicial commission of inquiry. It was further held that the mere fact that in certain cases where the State President appoints a commission the powers contained in the Commissions Act are conferred on him does not turn such a person into anything else but an ordinary citizen who is charged with the commission. The commissioner acts as such in his function and is wholly unconnected with the position which he otherwise occupies.

¹⁰ *Erasmus and Others NNO v SA Associated Newspapers Limited and Others* 1979 (3) SA 447 (W) at p456

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[23] In *Erasmus*, the present issue under s 47(1) did not arise. The case concerned an application for an interdict brought by commissioners (a judge and two advocates) appointed by the State President in a commission to prevent the disclosure of certain information by the media. An objection was *inter alia* raised to their *locus standi* and the issue arose whether the commissioners had established that the prohibition in a regulation they relied on was enacted for their personal interest or in the public interest. In this context, the court held that the commission could not be equated with a court of law and any reference to matters being *sub iudice* was inappropriate. The Court further held that the commissioners had no personal interest in the legal sense in the outcome of their commission.

[24] I am not persuaded that *Erasmus* avails the applicant and it does not answer the question regarding the ambit of s 47(1) of the Act. It is distinguishable, given its context. The Commissions Act contains no definition of 'commission' and does not grant a commission any status as a legal body. A commission of enquiry is not a legal person – it is neither a company, a partnership or an unincorporated association. Persons appointed to a commission of enquiry do not constitute a legal body. They are simply a number of individuals who are expected to co-operate and to operate within the confines of their commission, i.e. their authoritative charge to act in a prescribed manner, which is usually set forth specifically in what is commonly referred to as the terms of reference.¹¹ Even accepting that the function of a commissioner is different to the function of a judge and a commission of inquiry cannot be equated to a court, that does assist the applicant.

[25] The definition of service in s 1 of the Judges Remuneration and Conditions of Employment Act 47 of 2001 (the Remuneration Act) puts paid to the applicant's contention that Justice Zondo was not performing a judicial function in chairing the Commission.

¹¹ *S v Sparks NO and Others* 1980 (3) SA 952 (T) 956F-G; *Erasmus supra* at 449H.

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[26] In *Amalgamated Lawyers Association v Judicial Service Commission and Others*¹² DJP Sutherland held that a review application was unlawfully issued based on the effect of the provisions of s 47(1) of the Act. It was submitted that if the review application was fatally irregular, that application and all that was ancillary thereto must be dismissed. The defence was upheld and the review application dismissed.

[27] DJP Sutherland pointed out that there are several decisions of the courts which have come to the conclusion that such proceedings were irregular.¹³ Reference was made to *FUL* in concluding that compliance was necessary where a judge was an ancillary respondent in a review application against the Judicial Service Commission. Reliance was placed on the purpose of s 47, being to protect the judiciary from frivolous or inappropriate litigation and thereby distracting judges from their public functions. It was held that the proceedings are *void ab initio* and that there was no room for condonation.¹⁴

[28] The issue has also arisen in other Divisions, where a similar approach has been adopted. In *Mthenjwa v Steyn and Another*¹⁵, Tlaetsi JP pointed out that an objection pertaining to non-compliance with s 47(1) is significant and is not a matter of form over substance or simply a procedural issue as it has procedural and substantive elements. There the argument was raised that it was not necessary to seek permission or consent to institute proceedings against the judge because it would offend against s 34 of the Constitution. It was pointed out that the issue was raised and rejected in *Soller* and the argument was similarly rejected.¹⁶

¹² *Amalgamated Lawyers Association v Judicial Service Commission and Others* unreported judgment High Court, Gauteng Division, Johannesburg case no 2022-036684 Sutherland DJP (orally delivered on 30 August 2023 and edited on 11 September 2025). Leave to appeal was dismissed. *Amalgamated Lawyers Association v Judicial Service Commission and Others- (2022-036684) [2023] ZAGPJHC 131 (15 November 2023)*

¹³ *Ibid* paras 25-26.

¹⁴ *Ibid* paras 26-27.

¹⁵ *Mthenjwa v Steyn and Another* [2019] JOL 43597 (WCC) paras 5, 10-11.

¹⁶ Para 14.

[29] In *Maluleke v National Director of Public Prosecutions and Others*,¹⁷ Hendriks AJ pointed out that consent is not a mere formality and is not there for the mere asking. It was held that lack of prior consent rendered the application fatally flawed. Reliance was placed on an article by MCreath and Koen¹⁸ where the learned authors point out that the jurisprudential crux of s 47(1) is embedded in the nature of the judicial office and its core value of judicial impartiality as follows: '*In South Africa the survival of the old order doctrine of leave to sue into the era of constitutional supremacy comprises a new order homage to the judge as the corporealization of the law and to the pivotal position occupied by the judicial office in our collective "effort at self-domestication" '.*

[30] After judgment was reserved, the applicant sought leave to present supplementary heads of argument concerning the applicability of s 47(1).¹⁹ Leave was granted and both parties provided supplementary submissions.²⁰ Those submissions centered around the recent judgment of Moshoana J in the Gauteng Division, Pretoria, in *Memela v Chairperson of the State Capture Commission of Inquiry and Others*.²¹ The applicant strongly relied on *Memela*, which it submitted supports its submissions. He submitted that this Court was bound to follow it.

[31] The respondents on the other hand contended that *Memela* ignored the binding precedent of this Division and was wrongly decided. It was submitted that the Court in *Memela* was bound by these prior decisions of this Court to hold that s 47(1) applies to

¹⁷ *Maluleke v National Director of Public Prosecutions and Others* (2866/2016) [2018] ZANWHC 32 (30 January 2018)

¹⁸ Para 15 and the quotation provided therein. H McCreath and R Koen *Defending the Absurd: The iconoclast's guide to section 47(1) of the Superior Courts Act 10 of 2013* PER/PELJ 2014 (17) 5 at pp 1799-1800. This article also deals with *Mireles v Waco* and explains the absolute judicial immunity for judicial acts in the USA.

¹⁹ On 21 August 2025.

²⁰ On 21 August 2025, the applicant's legal representatives sought leave to deliver supplementary heads of argument in light of the recent judgment in *Memela*, delivered on 15 August 2025. Supplementary heads of argument were received from the respective parties on 28 August 2025 and 4 September 2025 respectively. That unavoidably caused a delay in the delivery of the judgment.

²¹ *Memela v Chairperson of the State Capture Commission of Inquiry and Others* (34177/22) [2025] ZAGPPHC 816 (14 August 2025).

former Chief Justice Zondo, notwithstanding that he was performing the functions of chairperson of a commission of enquiry and not those of a judge in the ordinary courts of the land.

[32] *Memela* also concerned a review of findings of the Commission and the issue whether s 47(1) of the Act is applicable. The facts in *Memela* are similar to the present in that no consent was sought or obtained under s 47(1) of the Act. The defence based on s 47(1) of the Act was raised in the context of an objection to the jurisdiction of the High Court and it was contended that the required consent was a jurisdictional requirement. The review application was ultimately dismissed on its merits.

[33] On the consent issue, the Court held:

[29] In summary, this Court concludes that the chairperson of the SCC is not contemplated in section 47(1), as such consent is not and was not required to institute the present application. The jurisdiction of this Court is not in any manner or shape ousted by the lack of consent from the head of the Constitutional Court.

[34] Insofar as *Memela* concluded that the jurisdiction of the High Court is not ousted, I am in respectful agreement. However, in the light of binding precedent in this Court, I respectfully cannot agree with the conclusion that consent in terms of s 47(1) was not required as the section is not applicable to Justice Zondo when he was cited in his capacity as chairperson of the Commission of Inquiry rather than in his capacity as a judge.

[35] The nub of the judgment in *Memela* concerns the finding that the immunity protection afforded by s 47(1) is limited to judges performing the functions of a judge and that the chairing of a commission of enquiry is not a judicial function but a public or statutory function. That does not accord with the authorities referred to in this judgment, which give s 47(1) an expansive definition which includes affording protection to Judges

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in both their judicial and private capacities.²² With respect, the judgment fails to take these considerations and precedent into account.

[36] I agree with the respondents' submission that the Learned Judge was bound by the previous decisions in this Division, unless he found them to be clearly wrong.²³ He did not. I am further not persuaded that the interpretation afforded to s 47(1) accords with the grammatical text, context and purpose thereof. Moreover, the *FUL* judgment, although considered in *Memela*, was not considered as a whole or in context. By way of example, the contents of paragraphs 26, 34 and 35 do not provide support for the conclusion reached. These paragraphs explain the motives for the consent requirements and have nothing to do with the functions being performed by the judge in respect of which his or her conduct is being impugned. In *FUL* it was clarified that the reach of the s 47(1) covers judges' conduct in office and in private. With reference to *Soller*,²⁴ it was pointed out that the court held that for the purposes of s 25(1) of the Superior Courts Act, 1959, the predecessor to s 47(1), there was no substantive difference between a claim based on a decision made by a judge in court and one based upon the extra-curial transactions of a judge. The judge needs protection from both if they are without merit.

[37] *Memela* also disregards that by statutory definition in terms of s 1(b) of the Remuneration Act, the functions of a judge include service as a chairperson or member of a commission, thus the very function which Justice Zondo was performing as chairperson of the Commission.

[38] In *Memela*, the Learned Judge relied on authority in the United States of America, being the judgment of the Court of Appeals and the minority judgment of Justice Stevens

²² *Soller* para 17, *Engelbrecht* paras 2 and 5, *FUL* para 25.

²³ Ellison Khan *The Rules of Precedent Applied in South African Courts* 1967 SALJ vol 84, p315-316.

²⁴ *Soller* para 15.

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in the Supreme Court in *Mireles v Waco*.²⁵ I am not persuaded that it is appropriate to apply those principles to the South African context, given that South Africa follows a different legal regime than that of the USA. The latter provides for absolute immunity for judicial acts, whereas in South Africa there is no absolute immunity. As held in the authorities referred to in this judgment, the immunity is primarily procedural. The United States authority is thus of limited, if any value, given that circumspection must be applied in relying on foreign precedents.²⁶

[39] For these reasons, I am respectfully unable to agree with the reasoning and conclusion in *Memela*. After anxious consideration, I must conclude that *Memela* is clearly wrong and I respectfully decline to follow it.²⁷ I consider myself bound by the judgments in *Soller*, *Engelbrecht* and *FUL* in accordance with the doctrine of precedent or, put differently, the principle of *stare decisis*.²⁸ Given that *Memela* did not hold that any of these judgments are clearly wrong, I am not persuaded that it has any binding effect on this Court.

[40] In summary: The provisions of s 47 are peremptory.²⁹ The wording of s 47(1) draws no distinction between judicial and non-judicial functions. The exclusion pertaining to an application in terms of the Domestic Violence Act³⁰ in s 47(1) was inserted by way of amendment under s 20 of the Domestic Violence Act. That exclusion was confined by Parliament to a very limited and precise set of circumstances, pertaining to domestic violence. That militates against the applicant's contention that s 47 pertains only to judicial

²⁵ 502 US9 (1991), discussed in an article by H McCreath and R Koen *Defending the Absurd: The iconoclast's guide to section 47(1) of the Superior Courts Act 10 of 2013* PER/PELJ 2014 (17) 5 at pp 1799-1800. This article also deals with *Mireles v Waco* and explains the absolute judicial immunity for judicial acts in the USA.

²⁶ *Sanderson v AG*, EC 1998 (2) SA 38 (CC) para 2600

²⁷ *Camps Bay Ratepayers' and Residents' Association v Harrison* 2011 (4) SA 42 (CC) para 28; *Patmar Explorations (Pty) Ltd and others v Limpopo Development Tribunal and others* 2018 (4) SA 107 (SCA) in paras 7-8.

²⁸ *Camps Bay Ratepayers' and Residents' Association supra* para 28.

²⁹ *Mthenjwa v Steyn and Another* [2019] JOL 43597 (WCC) para 12

³⁰ 116 of 1998

functions and not to judges' conduct of their private affairs or the chairing of an enquiry. If it did, there would have been no need for the exclusion. This further supports the inference that a broad interpretation of s 47(1) is required.

[41] There are also no other limiting words in s 47(1). Section 47(1) does not carry the distinction contented for by the applicant. An interpretation that the section is limited to a judge acting in his or her judicial capacity as the applicant seeks to do, involves an impermissible reading in of words limiting the protection of the section to judges acting in their judicial capacity. There is no rational or reasonable basis to do so.

[42] The authorities referred to support a wide interpretation. The protection afforded is further not limited to a judge performing judicial functions. It extends to his private affairs. The expansive interpretation favoured by the authorities referred to must also take into account the definition of service in s 1 of the Judges Remuneration and Conditions of Employment Act 47 of 2001, as was done in *FUL*.³¹ In terms of s 1(b) judicial functions in any event also covers acting as chairman or member of a commission of enquiry as contemplated in the Commissions Act, 1947.

[43] The applicant's arguments conflate the requirements of s 47(1) with the showing of good cause and a justiciable case. The latter remains requirements and the procedural protection is not a bar to the right of access to courts to ensure the adjudication of justiciable disputes as pointed out by Mlambo JP both in *Engelbrecht* and *FUL*.

[44] One of the orders granted in *President of the Republic of South Africa v Public Protector and Others*,³² which resulted in the appointment of the Commission was the following :*The President is directed to appoint a commission of inquiry within 30 days, headed by a judge solely selected by the Chief Justice who shall provide one name to*

³¹ Paras 24-25.

³² *President of the Republic of South Africa v Public Protector and Others* 2018 (2) SA 100 (GP) order 3

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the President'. This fortifies a conclusion that Justice Zondo was appointed in his capacity as a judge.

[45] The applicant further sought to rely on *Chairperson of the Judicial Commission v President of the Republic of South Africa* 2020³³ where the Commission itself approached the Court to seek condonation and extension of the time period within which it was expected to finish its work. From the judgment it is apparent that no distinction was drawn between the Commission and Justice Zondo. The applicant was the 'Chairperson of the Judicial Commission of Inquiry'. The judgment makes reference to the Deputy Chief Justice as applicant.³⁴ The judgment does not support the contention that the Commission approached the court as a legal institution, as contended by the applicant.

[46] I conclude that Justice Zondo, acting as the Chairperson of the Commission, was thus performing a judicial function. Even if a distinction were to be drawn in s 47(1) between judicial and non-judicial functions, which the provision does not do and which the authorities do not support, the chairing of a commission of enquiry falls squarely within what are ordinarily and legally considered to be judicial functions. Consent under s 47(1) of the Act was thus required.

[47] Proceedings cannot be saved absent consent prior to commencement of the proceedings. Several decisions of the courts have come to the conclusion that such proceedings are irregular, for example in *Amalgamated Lawyers Association*. There is no room for condonation and therefore no room for latitude. The proceedings are void *ab initio*.³⁵

³³ *Chairperson of the Judicial Commission v President of the Republic of South Africa* 2020 JDR 0561 (GP).

³⁴ *Ibid* para 1.

³⁵ *Amalgamated Lawyers Association supra* para 25-27.

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[48] The applicant's contention that if consent to institute the review proceedings was required, such failure does not vitiate the proceedings and a court should exercise its discretion to stay the proceedings to allow for consent to be granted, thus lacks merit. Its reliance on the order in *FUL* is misplaced, given that there, consent was expressly sought. Consent must be granted before the proceedings are instituted. It is clear that if consent is not sought and granted before the institution of the proceedings, they are fatally defective and stand to be dismissed on that ground alone.

[49] The applicant is not barred from a review, as he contended. The applicant must simply follow the correct procedure. This review application is thus a legal nullity. It follows that it must be dismissed. Given this conclusion, it is not necessary or appropriate to consider the other issues raised as it is dispositive of this application.

[50] Costs follow the result. Given the complexities involved, the costs including the costs of two counsel on Scale C is warranted.

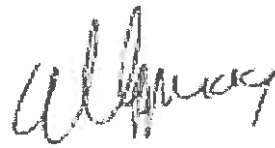
[51] In the result, the following order is granted:

[1] The defence raised by the respondents to the review application, based on section 47 of the Superior Courts Act 10 of 2013, is upheld.

[2] The review application is dismissed;

[3] The applicant is directed to pay the costs of the application, including the costs of two counsel where so employed on scale C.

Handwritten signature and initials. The signature is a stylized, cursive 'K' followed by 'C'. To the right of the signature are the letters 'KC' in a bold, blocky font.



**EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG**

APPEARANCES

DATE OF HEARING : 09 JUNE 2025
DATE OF JUDGMENT : 12 OCTOBER 2025

APPLICANT'S COUNSEL : Adv. FJ Nalane SC
Adv. Y Peer
APPLICANT'S ATTORNEYS : Buthelezi Vilakazi Inc.
RESPONDENTS' COUNSEL : Adv. A Dodson SC

Adv. P Maharaj-Pillay
Adv. K Hardy

Heads of argument by Adv W Trengove SC,
Adv P Maharaj-Pillay and Adv K Hardy

RESPONDENTS' ATTORNEYS : Majavu Attorneys Inc.



**IN THE HIGH COURT OF SOUTH AFRICA
Gauteng Local Division, Johannesburg**

CASE NO: 2022-007263

In the matter between:

Gwede Mantashe

Plaintiff / Applicant / Appellant

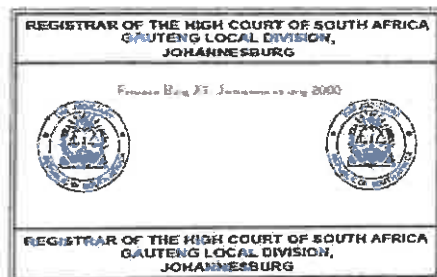
and

**Justice Raymond MNyamezeli Zondo
Judicial Commission of Inquiry**

Defendant / Respondent

**LEAVE TO APPEAL JUDGMENT DATED 28 NOVEMBER 2025 - CORAM
DIPPENAAR J**

NOTE: This document was filed electronically by the Registrar on 30/11/2025 at 12:44:07 PM South African Standard Time (SAST). The time and date the document was filed by the party is presented on the header of each page of this document.



ELECTRONICALLY SIGNED BY:

**Registrar of High Court , Gauteng
Local Division,Johannesburg**

[Handwritten signature] KC

REPUBLIC OF SOUTH AFRICA



IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG DIVISION, JOHANNESBURG



CASE NUMBER: 007263/2022

<u>DELETE WHICHEVER IS NOT APPLICABLE</u>	
1. REPORTABLE: NO	
2. OF INTEREST TO OTHER JUDGES: NO	
3. REVISED: NO	
28 NOVEMBER 2025	 Judge Dippenaar

In the matter between:

GWEDE SAMSON MANTASHE

APPLICANT

and

JUSTICE RAYMOND ZONDO N.O

FIRST RESPONDENT

JUDICIAL COMMISSION OF INQUIRY

SECOND RESPONDENT

A handwritten signature in black ink, appearing to be 'KC' with a large, stylized flourish.

LEAVE TO APPEAL JUDGMENT

Delivered: This judgment was handed down electronically by circulation to the parties' legal representatives by e-mail and by uploading to the electronic case file. The date for hand-down is deemed to be the 28th of NOVEMBER 2025.



DIPPENAAR J:

[1] The applicant seeks leave to appeal to the Supreme Court of Appeal alternatively the Full Court of this Division against the order and judgment granted by this court on 12 October 2025. In terms of the order, the applicant's application was dismissed with costs on the basis that the applicant had not sought consent to institute proceedings against the first respondent which was required under s 47 of the Superior Courts Act 10 of 2013 ('the Act'). The respondents oppose the application.

[2] The applicant raises various grounds in support of his application, including that this court erred in holding that: (i) s 47 of the Act is applicable, (ii) s 47 requires the applicant to seek consent where the proceedings concern a review of proceedings of a commission of enquiry, established by the President and chaired by a judge, (iii) condonation could not be granted. He further avers that this court erred in not following the decision in *Memela v Chairperson of the State Capture Commission of Inquiry and Others*¹, where it was held that consent under s 47 is not required. The respondent opposes the application on each of the grounds advanced.

¹ *Memela v Chairperson of the State Capture Commission of Inquiry and Others* (34177/22) [2025] ZAGPPHC 816 (14 August 2025).

[3] The applicant primarily contends that there are compelling reasons to grant leave to appeal as envisaged in s 17(1)(a)(ii) of the Act in light of the opposite finding granted in the Gauteng Division, Pretoria in *Memela*, where it was held that consent under s 47 was not required. That matter similarly concerned a review against findings of the Commission.

[4] In response to this submission, the respondents relied on *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre & Others*,² in submitting that leave to appeal should not be granted. The applicable principle is that leave will normally be granted where a case raises a discrete issue of public importance that would have an effect on future matters. However, the Supreme Court of Appeal cautioned that the merits of the appeal remain important and are often the decisive factor. The respondents submitted that *Memela* was wrongly decided and does not meet the threshold of constituting a conflicting judgment.

[5] The applicant further contends that there are reasonable prospects of success on appeal as envisaged by s 17(1)(a)(i) of the Superior Courts Act³ ("the Act"), because another court may reasonably find that no consent under s 47 is required where the chairperson of a judicial commission of enquiry is a judge. He further placed reliance on the other grounds of appeal advanced.

[6] Leave to appeal may only be granted where a court is of the opinion that the appeal would have a reasonable prospect of success, which prospects are not too remote.⁴ A sound rational basis for the conclusion that there are prospects of success must be shown

² *Minister of Justice and Constitutional Development and Others v Southern African Litigation Centre & Others* 2016 (3) SA 317 (SCA) paras 23-24.

³ 10 of 2013

⁴ *Ramakatsa and Others v African National Congress and Another* [2021] JOL 49993 (SCA) para [10]

to exist.⁵ An applicant for leave to appeal faces a higher threshold⁶ than under the repealed Supreme Court Act.⁷

[7] I have considered the papers filed of record and the grounds set out in the application for leave to appeal as well as the parties' extensive arguments for and against the granting of leave to appeal. I have further considered the submissions made in the heads of argument of the respective parties and the authorities referred to.⁸



[8] In applying the relevant principles to the grounds for leave to appeal against the facts, I am persuaded that the applicant has illustrated the existence of compelling reasons to grant leave to appeal as contemplated in s17(1)(a)(i) of the Act. The existence of the conflicting judgment in *Memela* cannot be disregarded, specifically as both judgments emanate from the Gauteng Division of the high court. It is further not contentious that the matter raises issues of some public importance that will have an effect on future matters. Regarding the prospects of success on appeal, a detailed consideration of the merits is best left to a court of appeal. Suffice it to state that I am persuaded that there are some reasonable prospects of success and that leave to appeal would not be granted purely based on the existence of conflicting judgments on the issue.

[9] At the hearing the parties agreed that if leave was granted it should be to the Supreme Court of Appeal. I agree with the parties that this is the appropriate forum in

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⁵ *Smith v S* [2011] ZASCA 15; *MEC for Health, Eastern Cape v Mkhitha* [2016] ZASCA 176, para [17]; *Four-Wheel Drive Accessory Distributors CC v Rattan NO* [2016] ZASCA 176 (25 November 2016) para [34]

⁶ *S v Notshokovu* Unreported SCA case no 157/15 dated 7 September 2016, para [2]; *Acting National Director of Public Prosecutions v Democratic Alliance (Society for the Protection of Our Constitution Amicus Curiae* 2016 JDR 1211 (GP)

⁷ 59 of 1959

⁸ The respondent delivered supplementary heads of argument in response to the applicant's heads of argument on 20 November 2025.

order to obtain clarity on the issue. It follows that the application must succeed. The normal order is that the costs of the application are costs in the appeal.

[10] I grant the following order:

[1] Leave to appeal is granted to the Supreme Court of Appeal.

[2] The costs of the application for leave to appeal are to be costs in the appeal.



EF DIPPENAAR
JUDGE OF THE HIGH COURT
JOHANNESBURG

APPEARANCES

DATE OF HEARING : 14 NOVEMBER 2025

DATE OF JUDGMENT : 28 NOVEMBER 2025

APPLICANT'S COUNSEL

: Adv. N Ferreira

Adv. D Sive

APPLICANT'S ATTORNEYS

: Nortons Inc.

RESPONDENTS' COUNSEL

: Adv. A Dodson SC

Adv. P Maharaj-Pillay

Adv. K Hardy

RESPONDENTS' ATTORNEYS

: Majavu Attorneys Inc.