

COURT ONLINE COVER PAGE

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

CASE NO: **2024-063688**

In the matter between:

**Media Monitoring Africa Trust,SOS
Support Public Broadcasting
Coalition,Campaign For Free
Expression,Mondli Makhanya**

Plaintiff / Applicant / Appellant

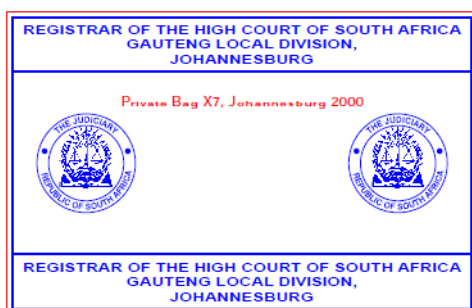
and

**Takalani Madima ,South African
Broadcasting Corporation SOC Ltd,Ian
Plaatjes ,Merlin Naicker**

Defendant / Respondent

Founding Affidavit

NOTE: This document was filed electronically by the Registrar on 10/6/2024 at 3:09:45 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**

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

CASE NO

In the matter between:

MEDIA MONITORING AFRICA TRUST

1ST APPLICANT

SOS SUPPORT PUBLIC BROADCASTING COALITION

2ND APPLICANT

CAMPAIGN FOR FREE EXPRESSION

3RD APPLICANT

MONDLI MAKHANYA

4TH APPLICANT

and



TAKALANI MADIMA SC N.O.

1ST RESPONDENT

**SOUTH AFRICAN BROADCASTING
CORPORATION SOC LTD**

2ND RESPONDENT

IAN PLAATJES

3RD RESPONDENT

MERLIN NAICKER

4TH RESPONDENT

FOUNDING AFFIDAVIT

I, the undersigned,

WILLIAM ROBERT BIRD

state under oath as follows:

1. I am an adult male and Director of Media Monitoring Africa Trust ("**MMA**"), and I am duly authorised to depose to this affidavit and to institute this application on behalf of all the applicants.
2. The contents of this affidavit fall within my personal knowledge, unless indicated otherwise, and are to the best of my belief true and correct.
3. Any legal submissions are made on the advice of the applicants' legal advisors and representatives, which I believe to be correct.



INTRODUCTION AND OVERVIEW

4. As the chair of a disciplinary inquiry ("**inquiry**") held by the second respondent ("**SABC**") against the third and fourth respondents ("**accused employees**"), the first respondent ("**Chair**") gave a ruling disallowing media access to the inquiry, despite the accused employees requesting such access. A copy of the ruling is attached marked "**MMA1**".
5. The inquiry thus proceeded to finality in total secrecy.
6. This ruling was legally wrong and unconstitutional, in that it violated the principle of open justice.
7. The default position is that disciplinary proceedings in a public body, such as the SABC, should be open to the public and the media – except to the extent that a party or witness provides a compelling motivation for excluding a certain portion of the proceedings from public view.
8. Openness is the rule, and secrecy the exception.

9. The applicants thus seek an order reviewing and setting aside the Chair's ruling, and directing the SABC to provide them with access to all documents exchanged and all recordings made in the course of the inquiry.
10. This review application is brought under both the constitutional doctrine of legality and the Promotion of Administrative Justice Act, 2000 ("**PAJA**").
11. The remainder of this affidavit will address:
 - 11.1. the parties and standing;
 - 11.2. the relevant background;
 - 11.3. the ground of review; and
 - 11.4. appropriate relief.



PARTIES AND STANDING

The applicants

12. The first applicant is **MEDIA MONITORING AFRICA TRUST ("MMA")**, an inter vivos trust bearing registration number T1411/93, and with its registered address at Suites No. 2, 6th Street, Parkhurst, Johannesburg.
13. MMA is a non-profit organisation which promotes ethical and fair journalism that supports democracy and human rights. MMA advocates for a responsible media that enables an engaged and informed citizenry in Africa and across the world. It supports the free flow of information to the public on matters of public interest

and actively promotes open justice as well as free, fair, ethical and critical media culture.

14. The second applicant is the **SOS SUPPORT PUBLIC BROADCASTING COALITION** (“**SOS**”), a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is its primary focus (as the key site of, and the institution established to drive, public interest content) SOS also engages in the advancement of community broadcast media in South Africa.



15. SOS is made up of a broad range of civil society organisations, a federation and individuals (including academics, freedom of expression activists, policy and legal consultants, actors, scriptwriters, film makers, producers, and directors). SOS campaigns for independent and effective public service media. SOS engages with policymakers, regulators, and lawmakers to secure changes that will promote citizen-friendly policy, legislative and regulatory changes to public service media and its associated sectors.
16. The third applicant is the **CAMPAIGN FOR FREE EXPRESSION NPC** (“**CFE**”), a non-profit company incorporated in South Africa bearing registration number 2021/582081/08, and with its registered address at 41 Kildare Avenue, Parkview, Johannesburg.
17. CFE is dedicated to defending and expanding the right to free expression across Southern Africa. It is independent and firmly non-partisan. CFE’s aims and activities include: monitoring the free flow of ideas and information and reporting on relevant events and developments; injecting an informed, principled, consistent, and fact-based freedom of expression position into the national

discourse; encouraging awareness of and support for freedom of expression across all elements of society, ensuring it is not just a concern for members of the media, but one for all citizens and members of civil society; and promoting transparency and access to information in all sectors of society.

18. The fourth applicant is **MONDLI MAKHANYA**, an adult male journalist, and the editor-in-chief of the *City Press* national weekly print and online newspaper. *City Press* was founded in 1982 and is a key feature of the national media landscape. *City Press* is a member in good standing of the Press Council of South Africa and is bound by its Code of Ethics and Conduct.



The applicants' standing

19. Section 38 of the Constitution states:

Anyone listed in this section has the right to approach a competent court, alleging that a right in the Bill of Rights has been infringed or threatened, and the court may grant appropriate relief, including a declaration of rights. The persons who may approach a court are –

- (a) anyone acting in their own interest;
- (b) anyone acting on behalf of another person who cannot act in their own name;
- (c) anyone acting as a member of, or in the interest of, a group or class of persons;
- (d) anyone acting in the public interest; and
- (e) an association acting in the interest of its members.

20. The applicants are approaching this Court in the interests of the media (section 38(c)) and the public (section 38(d)), as the “cluster of rights” which comprise the principle of open justice have been infringed by the Chair’s ruling, which resulted in the inquiry being conducted in total secrecy.

TH

The respondents

21. The first respondent is Professor **TAKALANI MADIMA SC**, a senior advocate of the High Court of South Africa, cited in his official capacity as the Chair of the inquiry.
22. The second respondent is the **SOUTH AFRICAN BROADCASTING COMMISSION SOC LTD ("SABC")**, a state-owned company established in terms of section 8A of the Broadcasting Act, 1999 ("**the Act**"). The SABC's main place of business is the Broadcasting Centre, Corner of Artillery and Henry Roads, Auckland Park, Johannesburg.
23. The third respondent is **IAN PLAATJES**, the Chief Operating Officer of the SABC – suspended from duty during the inquiry. The applicants do not know the current status of his employment with the SABC.
24. The fourth respondent is **MERLIN NAICKER**, the Group Executive: Television of the SABC – suspended from duty during the inquiry. The applicants do not know the current status of his employment with the SABC.



BACKGROUND

25. On 10 February 2024, *City Press* broke the story that Mr Plaatjes and Mr Naicker had been suspended by the SABC pending a disciplinary inquiry into their role in the negotiation of an agreement with Discover Digital to manage the SABC's new online streaming service, SABC Plus. It is alleged that they concealed from the SABC Executive Committee a clause in the contract which would entitle Discover

Digital to 7.5% of all advertising revenue generated by SABC Plus. The SABC projects that this revenue would be between R150 million to R200 million a year.

26. A copy of the *City Press* article is attached marked “**MMA2**”.
27. In the days that followed, various other news reports were published about the disciplinary proceedings against Mr Plaatjes and Mr Naicker. These included:
 - 27.1. “SABC execs suspended for hiding multi-million rand profit share with contractor – report”, *The Citizen*, 11 February 2024 (copy attached marked “**MMA3**”);
 - 27.2. “SABC COO Ian Plaatjes and TV boss Merlin Naicker suspended, ad boss Reginald Nxumalo resigns over undisclosed 7.5% profit-share deal with Discover Digital running SABC+”, *TV with Thinus*, 11 February 2024 (copy attached marked “**MMA4**”);
 - 27.3. “Chaos at the SABC — Royalty cuts planned while bosses face the music”, *MyBroadband*, 11 February 2024 (copy attached marked “**MMA5**”);
 - 27.4. “Three top SABC execs suspended over hidden profit share agreement”, *Full View*, 11 February 2024 (copy attached marked “**MMA6**”);
 - 27.5. “SABC executives suspended over undisclosed profit-share deal with Discover Digital”, *Bizcommunity*, 12 February 2024 (copy attached marked “**MMA7**”);
 - 27.6. “Public trust in the SABC takes another knock”, *TechCentral*, 13 February 2024 (copy attached marked “**MMA8**”);



- 27.7. “Union wants SABC financial chief suspended over irregular profit-sharing deal”, *City Press*, 15 February 2024 (copy attached marked “**MMA9**”);
- 27.8. “SABC hit by internal scandal”, *Advanced Television*, 15 February 2024 (copy attached marked “**MMA10**”).
28. At a pre-hearing meeting held on 10 April 2024, the accused employees applied to the Chair for the inquiry to be conducted in the open. The SABC opposed the application, and the Chair requested written submissions from the parties.
29. On 23 April 2024, the applicants’ attorneys, Webber Wentzel, sent a letter to the Chairperson of the SABC Board, Mr K Ramkumba, requesting that the inquiry be open to the media. A copy of that letter is attached marked “**MMA11**”. The letter explained the principle of open justice, as it applies to disciplinary proceedings of public bodies, and further explained why there is substantial public interest in the inquiry being open to the media. The letter was copied to Mr Plaatjes, and it is our understanding that Mr Plaatjes provided a copy to the Chair in support of an application by him and Mr Naicker for the inquiry to be open to the media.
30. On 29 April 2024, the Chair made the impugned ruling, a copy of which is already attached marked “**MMA1**”.
31. On 2 May 2024, Webber Wentzel sent a letter to the Chair, a copy of which is attached marked “**MMA12**”, noting that his ruling had not taken our submissions into account, and requesting that he either reconsider his ruling in light of them, or postpone the inquiry to allow us to approach the courts.
32. On Friday 3 May 2024, the Chair sent an email to Webber Wentzel, refusing our requests, in the following terms:



“You are correct in asserting that I did not consider the content of the letter you addressed to the Chairperson of the SABC Board.

My reasons are two-fold:

- a. The letter is not addressed to me.
- b. Your client is not before me in the disciplinary hearing.

Your client is still not before me.

I have dismissed the Employees’ application.

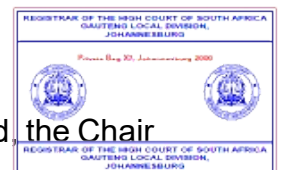
The hearing is scheduled to commence on 8 May 2024.”

33. The Chair later corrected this to say 6 May 2024. A copy of the chain of emails is attached marked “**MMA13**”.



34. On the same day, 3 May 2024, Webber Wentzel sent a letter to Werksmans, the SABC’s attorneys, requesting that the inquiry be postponed to allow us to bring an application to court, and also requesting confirmation that the inquiry would be electronically recorded. A copy of this letter is attached marked “**MMA14**”.
35. On Saturday 4 May 2024, Werksmans responded by email, saying only that: “We confirm [the] hearing will be digitally recorded.” A copy of this email is attached marked “**MMA15**”.
36. On Monday 6 May 2024, Webber Wentzel sent a letter to Werksmans, the Chair, Mr Plaatjes and Mr Naicker, advising them that we would be instituting an urgent application to be heard on 21 May 2024. A copy of this letter is attached marked “**MMA16**”.
37. On the same day, 6 May 2024, the Chair sent an email to Webber Wentzel, a copy of which is attached marked “**MMA17**”, advising that he would “abide the decision of the Court”, but the inquiry would continue on Tuesday 7 May 2024.

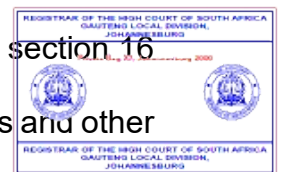
38. The applicants thus instituted their urgent application for access to the inquiry on 7 May 2024, to be heard on 21 May 2024, with the expectation that the inquiry would not have concluded by then. A copy of the notice of motion is attached marked **"MMA18"**.
39. On Friday 17 May 2024, Webber Wentzel received a letter from Werksmans, a copy of which is attached marked **"MMA19"**, stating that the inquiry had been finalised earlier that day, and that the urgent application had thus in their view become moot.
40. In light of the new circumstances – that the inquiry had been concluded, the Chair had become functus officio and could no longer be ordered to reverse his ruling and allow access, the right to an open inquiry had been irreparably violated, and the urgency had consequently dissipated – the applicants decided to withdraw the urgent application, and instead approach the Court for different relief in the ordinary course, in the form of the present review application. A copy of Webber Wentzel's letter to Werksmans in this regard is attached marked **"MMA20"**.
41. The matter has not, however, become moot, as the SABC still has recordings of the inquiry, as well as documents exchanged in the course of the inquiry, so there is a practical possibility to achieve a degree of open justice, even if Mr Plaatjes and Mr Naicker cannot now enjoy the benefits of an open inquiry. The public still have a right to know what happened in the inquiry.
42. It is not viable to lodge a request for these records under the Promotion of Access to Information Act, 2000, as the Chair's ruling on media access, which remains binding until set aside by a Court, will inevitably be invoked as a ground of refusal.



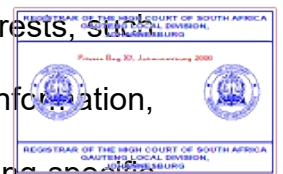
43. Accordingly, it is necessary for the applicants to apply for an order reviewing the Chair's ruling, setting it aside, and directing the SABC to provide the documents and recordings from the inquiry.

GROUND OF REVIEW

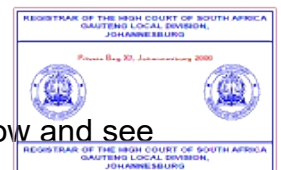
44. The Chair's ruling against media access should be reviewed on the ground that it violated the constitutional principle of open justice.
45. The principle of open justice is well entrenched. It is anchored in the section 16 right to freedom of expression (which includes the freedom of the press and other media, and the freedom to receive and impart information and ideas), the section 32 right of access to information, and the section 34 right to have legal disputes resolved in a fair public hearing.
46. The principle of open justice is further underpinned by the founding democratic values of accountability, responsiveness and openness (section 1(d)), and by the basic values of public administration, which include that "[t]ransparency must be fostered by providing the public with timely, accessible and accurate information" (section 195(1)(g)).
47. The practical import of the principle of open justice is that, when legal disputes are adjudicated by public bodies (courts or any organs of state), openness is the rule and secrecy the exception. All proceedings must be conducted in the open unless some strong countervailing interest (such as the fairness of the hearing) demands that a portion of the proceedings (or, in only the most extreme cases, the whole proceedings) should be protected from public view.



48. In the case of internal disciplinary proceedings within a public body, such as the SABC, the only lawful rationale for conducting them in total secrecy is to protect the privacy (and reputations) of the accused employees, at least until such time as their guilt has been established. In our law, the employer, when it is an organ of state, has no right to privacy. It belongs to the public and cannot hide from the public.
49. Where the accused employees have waived their right to privacy, that is the end of the matter as far as *blanket* secrecy is concerned. Any other interests, such as the need to protect vulnerable witnesses or sensitive commercial information, cannot lawfully be served by blanket secrecy, but rather by withholding specific portions or features of evidence from public exposure (such as the identity of a whistleblower or a complainant of sexual assault or harassment).
50. Applying this principle of open justice, as articulated above, to the inquiry, there was simply no lawful basis for holding it in total secrecy, as Mr Plaatjes and Mr Naicker waived their right to privacy and requested a public hearing as section 34 of the Constitution promises them.
51. Making the impugned ruling, the Chair proceeded from the wrong legal premise, that secrecy is the rule and openness the exception. He placed the onus on the accused employees to show why the inquiry should be open, rather than placing the onus on the SABC to produce compelling reasons why it should be closed.
52. The ruling was thus unconstitutional, as well as materially influenced by an error of law.



53. Having proceeded from the wrong legal point of departure, the Chair then found that there was no legitimate public interest in the inquiry. This too was a material error of law. There is inherent and profound public interest in an adjudication of the use or abuse of public power.
54. The public had (and still have) a right to know whether and how public officials, in the public service broadcaster, entrusted with public power and public funds, misconducted themselves, especially when it concerns a contract that may cost the public broadcaster millions of rand a year.
55. On the other hand, the public also had (and still have) the right to know and see that justice was being done – that the disciplinary power of the SABC was being exercised fairly and appropriately.
56. Moreover, the SABC has a troubling history of mismanagement, especially under the former CEO Hlaudi Motsoeneng, from whose reign the public broadcaster is still trying to recover. It is in the public interest to know and see that the pillars of good corporate governance and financial hygiene are being restored.
57. A further factor militating in favour of public interest in the inquiry is that the prior disciplinary hearings of senior SABC officials had been held in the open – Hlaudi Motsoeneng (CEO) in 2017, and Phathiswa Magopeni (Group Executive: News & Current Affairs) in 2021. The stance of the SABC, and the ruling by the Chair, to close the inquiry into Mr Plaatjes and Mr Naicker thus fosters public mistrust in the process and the SABC as a whole.
58. The public interest in the inquiry was (and still is) so strong that it even outweighs Mr Plaatjes' and Mr Naicker's rights to privacy, if they had not waived them.



59. For these reasons, the Chair's ruling against media access to the inquiry was:

59.1. materially influenced by an error of law; and

59.2. unlawful and unconstitutional, as it violated the principle of open justice.

60. It is thus reviewable under section 6(2)(d) and (i) of PAJA, and the constitutional principle of legality.

APPROPRIATE RELIEF

61. Under both section 8(1) of PAJA and section 172(1)(b) of the Constitution, this Court may grant any order that is just and equitable to remedy the unlawfulness or unconstitutionality. In addition, section 38 of the Constitution empowers this Court to grant any appropriate relief when rights in the Bill of Rights are infringed or threatened.

62. We submit that the appropriate, just and equitable relief in this case would be to: declare the Chair's ruling unconstitutional, unlawful and invalid; set it aside; and direct the SABC to give the applicants access to the documents and recordings from the inquiry.

CONCLUSION

63. For the reasons set out in this affidavit, the applicants respectfully pray for an order in terms of the notice of motion.





DEPONENT

The deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and solemnly affirmed before me at Emmarentia on this the 5th day of June 2024, the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.



COMMISSIONER OF OATHS


IN THE DISCIPLINARY PROCEEDINGS
(HELD IN SANDTON)
(BEFORE PROF T.S MADIMA (S.C))

Date: 29 April 2024

In the matter between:

SOUTH AFRICAN BROADCASTING CORPORATION

Employer

and

IAN PLAATJES

First Employee

MERLIN NAICKER

Second Employee



RULING ON MEDIA ACCESS TO DISCIPLINARY HEARING

Introduction

[1] Mr Ian Plaatje ("the First Employee / Mr Plaatje") and Mr Merlin Naicker ("the Second Employee / Mr Naicker") are in the employ of the South African Broadcasting Corporation ("SABC") in the positions of Chief Operations Officer and Group Executive: Television, respectively. I refer to both employees as, the Employees, for convenience.

[2] The SABC is the Employer. I refer to the Employees and the SABC collectively as, the Parties, again, for convenience.

[3] The First Employee is charged with two counts of gross dishonesty, alternatively, gross dereliction of duty, and one further count of failure to act in the best interest of the SABC.

[4] The Second Employee is charged with one count of gross dishonesty,

one count of gross dereliction of duties, alternatively, gross negligence, and one further count of undue interference with the SABC recruitment processes.

[5] On 10 April 2024 I invited the Parties to attend a pre-hearing meeting on 16 April 2024. The purpose of the meeting was to deal with housekeeping and other issues. At the meeting, the Employees indicated to me that they request that the disciplinary hearing be open to the media.

[6] I made a ruling that the Employees make application / submissions to me for such media access. I also indicated to the Employees that the SABC would be afforded an opportunity to respond to the application.



[7] On 22 April 2024 I received the Employees' submissions, with those of the Employer following soon thereafter.

Employees' submissions.

[8] The Employees seek unfettered media access to the disciplinary hearing forum. They submit that a transparent disciplinary process will enable the public to have free access to both the SABC leading its evidence and the accused (sic) testing that evidence.

[9] The Employees lament the fact that the SABC is using Werksmans Attorneys to publicly disclose information about their suspension and details of the investigation and possible charges. They further complain that the witnesses are all affiliated to the public broadcaster.

[10] Importantly, submitted the Employees, the matter was of public interest.

[11] The Employees' further reason for media access to the disciplinary hearing has also to do with newspaper articles, especially City Press, the charges levelled against them, the Employer Policies and Mandate as well as Legal Support for "our" application.

[12] I deal briefly with the grounds of the application below

[13] The Employees submitted that the SABC engaged the media through its legal representatives regarding their suspension and alleged misconduct. This resulted in a one-sided account of the allegations against them.

[14] The Employees also accuse the SABC of embarking on fruitless and wasteful expenditure. This the SABC has done by making use of external legal representation on an internal matter.

[15] The Employees agree that the charges they face are serious. They submit that they are senior employees of the SABC. That is what makes their case one of public interest. This is because the SABC alleges that the Employees' actions are detrimental to the interests of the SABC.



[16] The Employees assert that it is in the public interest that the disciplinary hearing is conducted fairly. A hearing where the media is allowed access will assure the public that the necessary steps have been taken to hold accountable and discipline those responsible for such illegal acts.

[17] The Employee further submit that any attempt to block the media from the process must be seen as self-serving and contrary to the public interest.

[18] Of further concern to the Employees is that they are barred from responding to what has been placed in the public domain by the SABC via Werksmans Attorneys.

[19] In support of the above assertions the Employee quotes what is contained in clause 5.3 in the SABC's notice of their suspension. This reads thus:

"You are not entitled to contact any employee, client, stakeholder, customer, contractor, supplier, financial institution, business associations and/or service provider of the SABC without first obtaining written authorization from the SABC. You are further prohibited from access to the IT/Accounting and/or banking network of the SABC."

[20] The Employees submit that the SABC deliberately disclosed to the

public, adverse information about them via Werksmans, while preventing them from having a right to reply. The Employees equates this to absolutism typical of apartheid practices.

[21] The Employees further refer to the SABC Editorial Policy Guidelines in clause 5.3.15. This clause relates to the right of reply and the presentation of stories in a balanced and fair manner.

[22] The Employees also refer to “Legal support for our Application” in their submissions regarding access to the media. They state section 195(1)(g) of the Constitution, 1996. The section sets out the basic values and principles which govern public institutions, including transparency, which must be fostered by providing the public with timely, accessible and accurate information.’



[23] The Employees also refer to Media24 and Others v Department of Public Works and Others 2016 (3) All SA 850 where the court held thus:

“..disciplinary proceedings generally, should be open, that whether or not .. a particular proceeding should be open to the public requires a weighing up of competing rights. ...where a matter is already in the public domain – the public deserves access to further proceedings”.

[24] The Employees concludes by stating that access to the media in a disciplinary process is not novel. The SABC has, in the past allowed the media full access in the disciplinary hearing of a former Group Executive for news.

[25] The SABC should not argue that a disciplinary hearing is a private internal and confidential matter pertaining to an employer-employee relationship. The Employees refer to a law emanating from our courts that has found no constitutional foundation for the argument. They do not refer to the court case.

[26] The Employees submit that I should weigh up all the competing rights of the Employees and others in arriving at my decision regarding the granting or not of media access to the disciplinary process.

Employer submissions

[27] The Employer submissions pivots largely on whether or not the instant proceedings are a matter of public interest.

[28] Mr July submitted that the authority to grant or not to grant media access to the disciplinary hearing is implied in the power of the SABC. This power is vested in the Chairperson of the hearing. This is by reason of the SABC having appointed the Chairperson.

[29] Mr July submitted that I should exercise my discretion based on the evaluation and careful weighing up of the competing rights of the Parties. I should also do so without taking into account the fact that the Employees have consented to the media access to their hearing.



[30] The Employer legal representative referred to *Van Breda v Media 24 Ltd & Others* [2017] 3 All SA 622 at para 10 regarding the role of the media in a democracy. The court held that:

“The right of the media to gather and broadcast information, footage and audio recordings flow from s16 of the Constitution. The right to freedom of expression is one of a web of mutually supporting rights that holds up the fabric of the constitutional order. The right is not limited to the right to speak, but also to receive information and ideas. The media hold a key position in society. They are not only protected by the right to freedom of expression, but are also the key facilitator and guarantor of the right. The media’s right to freedom of expression is thus not just (or even primarily) for the benefit of the media: it is for the benefit of the public”

[31] Mr July emphasized in his submission that the role of the media and press that what is in the public interest is central to the media’s right to freedom of expression. He further explained with reference to *Rail Commuter Action Group v Transnet Ltd t/a Metrorail* (No1) 2003 (5) SA 518 (C), at para 558A-B that the meaning of “public interest” is not capable of a precise definition.

TH

[32] The SCA in *Transnet Ltd t/a Metrorail and Others v Rail Commuters Action Group and Others* 2003 12 BCLR 1363 (SCA), at para 13, however provided some guideline regarding the meaning of “public interest”. The Court stated thus:

“The public contemplated was, in our view, the public at large. The “interest” contemplated was the benefit which would be conferred on the public by the provision of public transport services...”

[33] Mr July also referred to *Ex Parte North Central Metropolitan Substructure Council of the Durban Metropolitan Area and Others* [1997] JOL 1378 (W) where it was also stated that the concept of public interest was an illusive concept. However the Court went on to hold that



“What is clear, however, is that in arriving at what is in the public interest, the courts compare the deprivation of some private convenience with the benefit that is likely to result therefrom for the general public or part thereof.”

[34] Mr July submitted that the common thread in the above judgments was the consensus that the concept of “public interest” is not easily defined. What is however envisaged is that the public should derive a benefit for something (act, decision, etc) to be in the public interest.

[35] Mr July submitted that as a general rule, disciplinary disputes relating to state employees / public servants do not attract public interest. He stated that media may be granted access depending on the competing rights and unique facts of the matter. Mr July submitted further that the facts of the instant proceedings are distinguishable from those referred to by the Employees of *Media 24 (Pty) Ltd and Others v Department of Public Works and Others* where the Court held that disciplinary proceedings were in the public interest, and as such media access should be granted. The Court held as follows;

“The Media 24 case, broadly, concerned the media’s request for access to the disciplinary proceedings of a number of employees implicated in

the unauthorized expenditure in relation to the upgrades on the Nkandla presidential homestead which popularly became known as the Nkandlagate scandal. This was an inherently political matter that had already been the subject of extensive media coverage and public interest. Those employees were facing charges relating to the contravention of the Constitution and the Public Finance Management Act. The court ultimately found that where employees are alleged to have acted contrary to the constitution or procurement legislation, their disciplinary proceedings should be open to the public for scrutiny". In contrast, the employees "

[36] Mr July submitted that in the instant proceedings the Employees are charged, in the main, of dishonesty in failing to disclose a 7.5% revenue share with a service provider. Other charges pertain to recruitment irregularities.



[37] Mr July submitted further that the Employee have not been charged for contravening the procurement procedures of the SABC or procurement legislation, or the Constitution. [VIP]

[38] The Employer submitted that the court was influenced by the Nkandlagate scandal as it had already enjoyed widespread media coverage.

[39] The City Press article regarding the suspension of the Employees and the allegations against them can hardly be elevated to widespread or extensive media coverage of the kind envisaged by the Court in the *Media 24* case, submitted Mr July. He emphasized that the suspension of the Employees is a purely labour matter and does not transform the current proceedings into matters of public interest.

[40] Mr July submitted further that the Employees have not demonstrated in what way the public stood to derive the benefit of a public hearing of their disciplinary process. The matter, submitted Mr July, may be interesting to the public, it is however not in the public interest.

[41] Importantly, Mr July submitted is that the Employees do not have a right

to have their defence to the charges, covered by the media, and that access of the media to disciplinary proceedings is not for the taking. The Employees must demonstrate the public interest, and by extension, the benefit that the public stands to derive from the proceedings. The Employees have failed to do so, concluded Mr July.

[42] Regarding prejudice regarding media access, Mr July submitted that there were instances where media and press access can justifiably be denied on the basis that such access would prejudice the conduct of a fair process.

[43] Referring to *Midi Television (Pty) Ltd v Director of Public Prosecutions (Western Cape) (2007) (9) BCLR (SCA)* Mr July submitted that the Employees appear to be under the impression that they would get a fair hearing only if the media is present in the hearing. The fairness of the proceedings is not dependent on the presence of the media.



[44] The court in the *Midi* case held that:

“The exercise of press freedom has the potential to cause prejudice to the administration of justice in various ways – it is prejudicial to prejudice issues that are under judicial consideration, it is prejudicial if trials are conducted through the media, it is prejudicial to bring improper pressure to bear on witnesses or judicial officers – and it is not possible to describe exhaustively how prejudice might occur”.

[45] Mr July submitted in conclusion that the dispute between the Employees and the SABC is a typical employment dispute that is labour related. This is not sufficient to invoke the element of public interest.

Analysis of the submissions

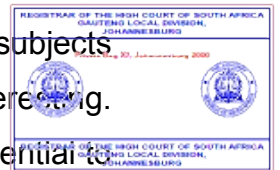
[46] I start first with an explanation of the difference between that which is of public interest or in the public interest, and that which is of interest to the public or interesting to the public. The difference is not feeble.

[47] For this explanation I borrow somewhat from Brian Cathcart; *Is there a*

difference between the public interest and the interest to the public?
<https://inform.org/2011/10/08>, accessed on 28 April 2024 at 21:10. This is the text of a talk given at the Leveson Inquiry Seminar on 6 October 2011 on “The Rights and Responsibilities of the Press”.

[48] According to Cathcart, the short answer is in the affirmative. The author states that in the former – one gives one’s attention to something because it has the potential to do good or harm. In the latter instance – it is one of mere curiosity.

[49] The author goes on to explain that for journalists there are subjects which are in the public interest but which the public does not find interesting. Equally there are some stories which interest the public but have no potential to make the reader better or worse off in any meaningful way. Journalists try to satisfy public curiosity, concluded Cathcart.



[50] In this instance, the Employees seek unfettered media access to the disciplinary proceedings. This is a first, in my experience. The parties that, in the normal course, normally seek such access is the media and the press themselves. Not an employee who is being disciplined by their employer.

[51] The Employees’ rationale for the request is that the presence of the media in the hearing will ensure fairness and transparency to the proceedings. The Employees also want the public to be able to witness and assess for itself the evidence that will be presented by the SABC and the challenge that will be mounted by the Employees to that evidence.

[52] The Employees have not submitted what benefit to the public the media access will offer. All they state is that the media must be present to report on the proceedings for the sake of fairness and transparency.

[53] There has been no submission that the proceedings will be unfair to the Employees, and that they will be prejudiced if the media is not allowed to be present in the proceedings.

[54] The Employees also lament the fact that the SABC, via its attorneys has placed certain adverse information about them in the public domain. The SABC has done so whilst it prevented the Employees from responding to the information in the media.

[55] First, there is no information or evidence before me that the SABC or the attorneys are responsible for the release of the investigation report to the media. There is also no evidence before me that the Employees were contacted by the media for comment on the allegations. There is further no information that the Employees advised the media and press that they could not comment because the SABC has prevented them from responding.



[56] The Employees submitted that the letters of their suspension prevented them from responding to the adverse information that the SABC, via its attorneys released to the media. The gag referred to by the Employees is a paragraph in the suspension letters.

[57] I have perused the letters of suspension. Nowhere do the letters state that the Employees may not place their side of the story in retort, in any fora. The gag, as I gather, relates to the SABC preventing the Employees from contacting SABC staff members and interaction with its customers without leave of the SABC.

[58] There is no evidence or submission made by the Employees that they sought such leave from the SABC, and such permission was denied.

[59] The fact that the Employees are senior employees in the employ of the SABC is not sufficient a reason for their hearing to be open to the media and press. As Mr July submitted, theirs is not one of those labour disputes with a political bent.

[60] It is also not one that is the result of contraventions of a provision of the Constitution. In short, theirs is not high-level enough to warrant the attention of the media and the press, and of public interest.

[61] The Employees' reference to clause 15.3.15 of the SABC Editorial Policy Guidelines is again also unhelpful to their cause. The clause relates to a different situation dealing with the right of reply of the subjects of stories that the SABC journalists print and/or broadcast from time to time.

[62] The clause is far remote from the Employees' situation and can then not be successfully used as such.

[63] I am alive to the principle that disciplinary hearings should, generally be open. I must add however that the principle could not have been intended to mean that every passerby could demand to be admitted to a disciplinary hearing.



[64] A disciplinary hearing is not a court of law where members of the public can come in and go as they wish. Importantly, the media and press do seek the leave of the court to be in attendance to do their job. The court would grant such permission after assessing whether or not a proper case for access has been made.

[65] Mr July has submitted that the Employees' case is one that is being dealt with in terms of internal Employer processes. These are private labour disputes that should be handled in private, away from the glare of the public. This is because there is no public interest in a matter where an employee is charged with gross dishonesty and dereliction of duty, among other charges.

[66] I have looked at all of the angles of the submissions made by Mr July and the Employees. I have looked at the rights of each of the parties involved in this matter. I have also looked at the potential prejudice that each party may suffer by my decision, one way or the other.

[67] Is it in the interest of the public for the media to be allowed in proceedings where the Employees are charged with negligence? What interest does the public derive by watching or hearing the SABC lead evidence to prove the charges against the Employees? What interest is it to the public for them to watch Mr Plaatje cross examine a witness?

[68] The media and press should only be admitted to disciplinary hearings that are in the public interest, and not those that may be entertaining to the public.

[69] As stated above, Nkandlagate had a public interest bent. It was largely political corruption issues at stake. This was because state resources were (mis)used. This was also because procurement prescripts were flouted. This is not the case with the disciplinary hearing of the Employees.

[70] As stated above, yet again the issues to be ventilated in the disciplinary hearing cannot be described as those relating to corruption, mismanagement and political interference, or Constitutional issues.



[71] I am alive to the fact that each case has to be looked at on its own merits. There are no two cases that are exactly similar. The SABC may well have in the past granted media access to a disciplinary hearing. The facts that were canvassed in that matter are not known to me. I have looked at this case and the submissions made as a stand-alone case.

[72] I am not persuaded that a case for media access to the disciplinary hearing of the Employees has been made. The issues involved are of a domestic nature regarding alleged negligence and dishonesty.

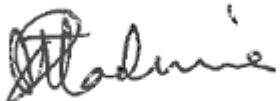
[73] I do not regard such issues as being of interest to the public. I have stated above that what may be interesting to the public is not necessarily in that public's interest. This is more so because there is no benefit that would be derived for the public.

[74] It is for the above reasons that the application must fail.

[75] In the circumstances, I make the following Ruling:

- (i) The application for media access to the disciplinary hearing is dismissed.

- (ii) The disciplinary hearing to proceed on 6 May 2024.



PROFESSOR T MADIMA SC

House of Lords Chambers
Sandton
29 April 2024.



10 Feb

SABC suspends three execs for hiding multimillion rand profit share agreement

City Press

Abram Mashego

Comments

Gift article



More drama at the SABC, as three execs are in hot water for concealing a profit-sharing deal worth millions.

Photo: Philip Maeta/Gallo Images

[NEWS](#)

Three top SABC executives are in hot water after they were found to have concealed a multimillion-rand advertising share agreement with an external service provider.

The trio – group chief operating officer Ian Plaatjies, group executive for video entertainment Merlin Naicker, and group executive for sales Reginald Nxumalo – allegedly concealed a profit share clause to the SABC executive committee members during their presentation at which the deal was approved last year.

The R35 million contract, renewable yearly for five years, was awarded to Discover Digital. But the executives did not disclose to their bosses that the company would be paid an additional 7.5%.

READ: [TelkomONE is not worth the expense](#)

This week, the SABC suspended Plaatjies and Naicker, while Nxumalo resigned when he allegedly caught the wind of the impending suspension. The public broadcaster acted on Monday after receiving legal advice from law firm Werkmans. This was kept under wraps, with the SABC only informing staff on Wednesday that the two had taken “leave of absence”.

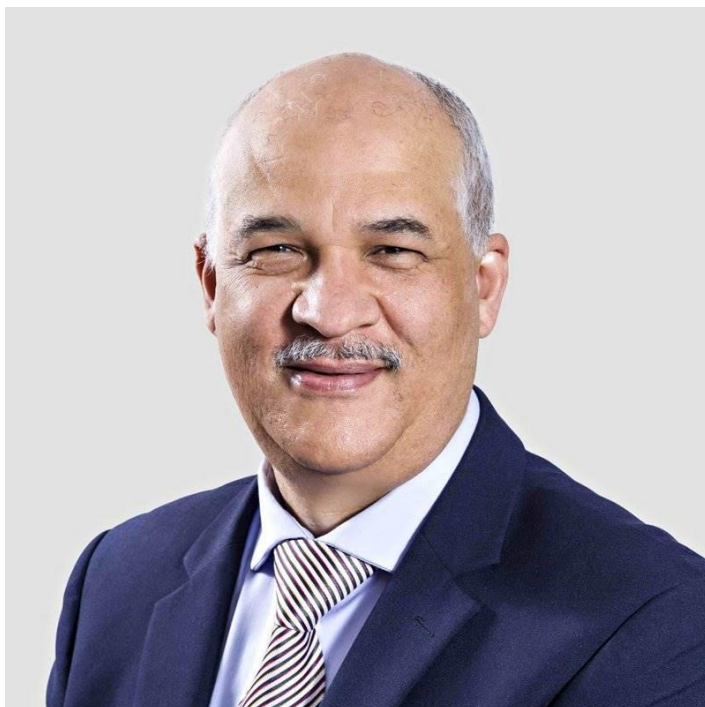
Lungile Binza and Lala Tuku will act in Plaatjies’ and Naicker’s positions, respectively.



Executive for sales Reginald Nxumalo. PHOTO: Supplied



Executive for video entertainment Merlin Naicker PHOTO: Supplied



SABC Group Chief Operating Officer Ian Plaatjies. PHOTO: LinkedIn

The memorandum to staff, dated 7 February, reads: “Management urges staff to give Mr Binza and Ms Tuku the necessary support as they assume these roles.”

Under the controversial deal, the SABC agreed to pay technology company Discover Digital R35 million annually to manage its digital offerings, known as Over the Top (OTT), the multimedia integration platform which streams content.

READ: [State plans to scrap TV licences](#)

The platform, also called SABC Plus, provides the public broadcaster’s best content – from 19 radio stations and three free-to-air TV channels SABC1, SABC2, SABC3, as well as the SABC Sports and the 24-hour news channel. The SABC projected that the platform would make between R150 million to R200 million annually.

But the three executives failed to reveal that, over and above this, Discover Digital was to be paid 7.5%.

The secret profit share agreement was withheld, until the SABC’s then head of legal, Advocate Ntuthuzelo Vanara, questioned the clause. But the three signed the deal without him and then acting CEO Madoda Mxakwe.

Werkmans said the three executives deliberately concealed the crucial information from the executive committee during their presentation before the agreement was signed. They misled the committee when they said the SABC would be getting 100% of the advertising revenue in the deal.

City Press learnt that the contract was initially awarded to TelkomOne in 2022 and had Discover Digital overseeing its implementation. When TelkomOne walked away from the deal, it recommended Discover to take over. The Werkmans report reads:

The business plan that was furnished to the executive committee members in a meeting of 7 November 2022, denoted that the SABC would retain 100% of the revenue generated from the

TelkomOne platform. This version of the business plan was approved by the executive committee and a resolution was taken giving the green light for the contract drafting process to ensue.

“It was only at the commencement of the contract drafting process on 16 November 2022 that the 7.5% advertising revenue share was identified and queried by the SABC’s legal, governance and regulatory department.”

The legal opinion adds that, in response to the legal department’s query, Plaatjies and the managing director of Discover Digital, Stephen Watson, asserted that the 7.5% ad revenue share was applicable to the agreement.

“Resultantly, the final service agreement included the obligation for the SABC to pay the 7.5% advertising revenue share to Discover Digital, notwithstanding its inconsistency with the approved business plan.”

Plaatjies allegedly signed the OTT platform service agreement on 17 November 2022, which contained the clause entitling Discover Digital to the 7.5% advertising revenue share, over and above the company’s quoted fee.

Naicker is alleged to have misrepresented his involvement in the inclusion of the 7.5% revenue share in the service agreement at the 18 November 2022 meeting. He stated that he had questioned its applicability but was unaware of what the final decision on the 7.5% was.

According to the legal opinion, as the project sponsor, Naicker failed to ensure that all project-related costs were clearly defined and properly accounted for. “During the contract drafting phase, Naicker was copied in emails between the legal [department], the group chief operating officer [Plaatjies] and Discover Digital. Evidently, he was privy to the discussion with respect to the 7.5% ad insertion clause in the contract and failed to query its inclusion as it contradicted the approved business plan.”

READ: [SABC caught up in music copyright dispute with Joburg-based composers](#)

The lawyers were not impressed with Nxumalo’s behaviour, saying he misrepresented to executive committee when he gave the impression that he was unaware of the details of the 7.5% at the 18 November 2022 meeting.

The report reads:

He was aware of the 7.5%, as a number, but could not join the dots on what it was for. His response was tantamount to withholding vital information. After the group chief operating officer, via an email of 15 March 2023, identified the group executive: sales as one of the persons who were involved in the negotiations of the 7.5% advertising revenue share, he confirmed his involvement as a member of a committee to the TelkomOne contract negotiations, notwithstanding his previous lack of knowledge of what the 7.5% was for.

The law firm told the SABC that the three executives ought to have “flagged” the 7.5% advertising revenue share and ensured that it fully appreciated the cost implications of this agreement.

“Especially, since the 7.5% is in addition to the fee paid to Discover Digital for managing the SABC Plus platform. This was a significant cost item that should not have fallen through the cracks.”

The Werkmans legal opinion followed the SABC’s own internal audit, which found that the implicated executives had concealed the conditions of the agreement and had not acted in the broadcaster’s best financial interest.



Werkmans found there was a prima facie case to be answered by Plaatjies, Naicker and Nxumalo for gross dishonesty, in that they misrepresented in the business plan presented to the bosses on 7 November 2022 on the total cost the SABC would be liable for. While it is not clear whether the three benefited from the deal, the lawyers found that their failure to act in the best interests of the SABC had broken trust.

Werkmans were not available for comment.

The public broadcaster's spokesperson, Mmoni Seapolelo, told City Press: "The SABC, as a matter of principle, is not at liberty to discuss matters pertaining to an employer-employee relationship in the public space."



News

Home » News

SABC execs suspended for hiding multi-million rand profit share with contractor- report

A legal opinion found that the three had misled the SABC.



Photo: Michel Bega.

The careers of three SABC executives are on the line after an investigation reportedly found that they did not disclose a 7.5% profit share clause with service provider Discover Digital.

Group chief operating officer Ian Plaatjies, group executive for video entertainment Merlin Naicker and group executive for sales Reginald Nxumalo were said to have been suspended on Monday following a legal opinion from law firm Werksmans.

Werksmans said the three executives deliberately concealed the crucial information from the executive committee during their presentation before the agreement was signed in 2022.

Hidden profit share

Discover Digital was contracted by the public broadcaster for an annual R35 million to manage its digital content streaming platform SABC Plus.



However, the three executives failed to reveal that, over and above this, the technology company was to be paid 7.5%, according to a City Press report.

ALSO READ: Sex with a guard for R1k & poison if you know too much: 'Life' in prison with Thabo Bester

It was projected that SABC Plus would make between R150 million to R200 million annually.

READ MORE
Mapisa-Nqakula issue a litmus test for ANC's stance on corruption

EDITOR'S CHOICE

LOCAL NEWS Saps divers recover 5 bodies across Gauteng in a week

POLITICS 'It's only the ANC that has a problem,' says MK party after Electoral Court win

LOCAL SOCCER Ex-Chiefs coach backs Khune to bounce back after suspension

CRIME North West cousins rescued after kidnapping ordeal - 7 arrested

PARLIAMENT Parliament accepts no-confidence motion to remove Mapisa-Nqakula as speaker



Ads by Google

Stop seeing this ad

Why this ad? ⓘ



Click here to get The Citizen news and updates on Whatsapp.

NEWSLETTERS

Do not miss a single story.
Get all the latest news in your inbox.

SUBSCRIBE

Win! with The Citizen

The executives were found to have misled the committee when they said the SABC would be getting 100% of the advertising revenue in the deal.

The secret profit share agreement was kept under wraps until the SABC's then head of legal, Advocate Ntuthuzelo Vanara, questioned the clause.

'Broken trust'

The trio had signed the deal without Vanara and then acting CEO **Madoda Mxakwe**.

Responding to Vanara's query, Plaatjies and Discover Digital managing director Stephen Watson asserted that the 7.5% ad revenue share applied to the agreement.

Weksmans told the SABC that the three ought to have flagged the 7.5% revenue share and ensured that it fully appreciated the cost implications of the agreement.

While it is not clear whether the three benefited from the deal, the lawyers found that their failure to act in the best interests of the SABC had broken the trust.

Nxumalo allegedly caught wind of the impending suspensions and resigned.

Lungile Binza and Lala Tuku were appointed to act in Plaatjies and Naicker positions respectively.

'Ghost workers'

Meanwhile, allegations of ghost workers at the public broadcaster surfaced last year after an anonymous email was sent to its top bosses.

The SABC condemned the email last December but announced an **investigation** into payments made.

"One of the managers under investigation tendered a resignation with immediate effect, while other staff members are facing disciplinary processes.

"The matter is addressed within the SABC's human resources policies and will also be referred to the other relevant authorities for further investigation," the SABC said at the time.

NOW READ: EFF manifesto launch: 'We are in the 2024 elections for nothing else, but to win' – Malema

Read more on these topics

Corruption

Editor's Choice

South African Broadcasting Corporation SOC Limited (SABC)

Suspension



Catch up with the latest news from **The Citizen** on WhatsApp by following our channel. [Click here to join.](#)

FIND OUT MORE

yep! BRINGING YOU YELLOWPAGES DIGITAL SOLUTIONS

with the Yep! Online Banner service

SIGN UP

Rallied by **Telkom BUSINESS**
T&C APPLY. E&OE.



TV with Thinus

News & analysis on South African television

SABC COO Ian Plaatjes and TV boss Merlin Naicker suspended, ad boss Reginald Nxumalo resigns over undisclosed 7.5% profit-share deal with Discover Digital running SABC+.



by Thinus Ferreira

The South African public broadcaster's COO Ian Plaatjes and head of video entertainment Merlin Naicker have both been suspended, with the SABC's ad sales boss Reginald Nxumalo resigning when he heard about his impending suspension, following their failure to disclose a 7.5% profit-share deal with Discover Digital that runs the broadcaster's SABC+ video streaming service.

In an internal memo on 7 February the SABC told staffers that COO Ian Plaatjes and head of video entertainment Merlin Naicker have been suspended this week in news first reported by City Press on Sunday.

The Werkmans legal opinion comes after the SABC did its own internal audit into the secretive profit-sharing deal that came to the conclusion that the three executives failed to act in the SABC's best financial interests.

According to Werkmans Ian Plaatjes, Merlin Naicker and Reginald Nxumalo allegedly deliberately concealed the crucial information of the 7.5% profit-share agreement from the SABC's executive committee during their presentation of the deal, before it was signed and also misled the committee when they said the public broadcaster would get 100% of the advertising revenue made through SABC+.

Werkmans found a prima facie case for gross dishonesty by Ian Plaatjes, Merli Naicker and Reggie Nxumalo in the SABC+ deal with Discover Digital.

Lungile Binza is now acting SABC COO and Lala Tuku, SABC head of local content, is head of video entertainment. The SABC failed to make any public announcement about the high-level suspensions to the public.



Mmoni Seapolelo, SABC spokesperson in response to a media query told *TVwithThinus* "SABC is as a matter of principle not at liberty to discuss matters pertaining to an employer-employee relationship in the public space".

Ian Plaatjes, Merlin Naicker and Reginald Nxumalo allegedly concealed the additional 7.5% profit-share agreement from the SABC executive committee in the deal that the SABC agreed to with Discovery Digital for SABC+.

Discover Digital ran Telkom's Telkom ONE streaming service which was taken over by the SABC. The SABC has a R35 million contract with Discovery Digital, renewable for 5 years, to run SABC+ as its over-the-top (OTT) video streaming service.

The SABC projected to initially make between R100 and R200 million with SABC+.

Ian Plaatjes, Merlin Naicker and Reginald Nxumalo signed the deal with the profit-sharing clause without the SABC's head of legal Nthuthuzela Vanana and Madoda Mxakwe who was acting SABC CEO at the time.

In the internal SABC memo sent to staff this week, the SABC said Ian Plaatjes and Merlin Naicker are on a "leave of absence" and that "management urges staff to give Lungile Binza and Lala Tuku the necessary support as they assume these roles" of acting SABC COO and head of video entertainment.

The controversial 7.5% profit-share agreement that was apparently kept secret, came to light when Ntuthuzelo Vanana asked what the specific clause meant.

According to Werkmans, the SABC business plan for SABC+ that was presented to the SABC's executive committee members during a meeting on 7 November 2022, stipulated that the SABC would get 100% of the revenue generated by SABC+, which used to be Telkom One.

The committee approved this proposal, but then the SABC's legal division picked up and queried the appearance of the 7.5% advertising revenue sharing clause on 16 November 2022 during the contract drafting process.

According to Werkmans, Ian Plaatjes and Stephen Watson, Discover Digital managing director, then allegedly told the SABC that the 7.5% advertising revenue share was part of the SABC+ deal.

Ian Plaatjes signed the SABC+ deal with Discover Digital a day later on 17 November 2022, meaning that Discover Digital gets a 7.5% of the advertising revenue made through SABC+, above the company's quoted fees.

According to Werkmans, Merlin Naicker misrepresented his own involvement in the 7.5% revenue profit-share agreement and failed to make sure that all costs related to the creation of SABC+ were clearly defined and accounted for.



Werkmans found that Merlin Naicker "During the contract drafting phase, was copied in emails between the legal department, the group chief operating officer Ian Plaatjes and Discover Digital. Evidently, he was privy to the discussion with respect to the 7.5% ad insertion clause in the contract and failed to query its inclusion as it contradicted the approved business plan."

According to Werkmans Reginald Nxumalo "was aware of the 7.5% as a number but could not join the dots on what it was for. His response was tantamount to withholding vital information".

Werkmans found that "After the COO, via an email of 15 March 2023 identified the group executive for sales as one of the persons who were involved in the negotiations of the 7.5% advertising revenue share, he confirmed his involvement as a member of a committee to the Telkom One contract negotiations, notwithstanding his previous lack of knowledge of what the 7.5% was for".

"Especially since the 7.5% is in addition to the fee paid to Discover Digital for managing the SABC+ platform, this was a significant cost item that should not have fallen through the cracks."

on 8:14:00 AM



Labels: Ian Plaatjes, Lala Tuku, Lungile Binza, Merlin Naicker, Reginald Nxumalo, SABC+, Telkom One, TelkomONE

Your email address

Subscribe

MYBROADBAND
TRUSTED IN TECH

NEWS

PRESS OFFICE

FORUM

INDUSTRY NEWS

FEATURES

Chaos at the SABC — Royalty cuts planned while bosses face the music

Bradley Prior 11 February 2024



Your email address

Subscribe

The SABC plans to slash the fees it pays to actors and writers for rebroadcasts and will eventually refuse to pay these professionals altogether, respected broadcasting journalist Thinus Ferreira [reports](#) for City Press.

Currently, actors receive 25% of their original payment if a rebroadcast happens during prime time and 15% for all other repeats.

Under the new plan, the SABC wants to allow actors to be paid a maximum of three times — 25% for the first rerun, 14% for the second, and 10% for the last.

Writers get a different deal. They currently earn 50% for the first repeat and 25% for each repeat after.

However, the SABC would amend this to 50% for the first broadcast, 25% for the second, and 15% for the third — with no further payment for subsequent reruns.

It is important to note that the SABC's financial woes mean it increasingly relies on reruns of old shows as it cannot afford new programming.



Executives suspended

The manager reportedly behind the changes to the above rerun payment structures is also one of three senior SABC staff members implicated in hiding a multimillion-rand advertising share agreement within a contract.

Note: These three individuals are referred to as "the manager," "the decision-maker", and "the executive" below.

The contract was regarding the management of its SABC Plus platform and was originally awarded to TelkomOne in 2022, with Discover Digital overseeing the implementation of the specifics.

However, TelkomOne walked away from the deal and recommended that Discover Digital take it over.

According to a City Press [report](#), the SABC executive committee constructed and approved a new business plan on 7 November 2022. This business plan said that the SABC must retain 100% of all revenue generated by its SABC Plus. Discover Digital was to be paid R35 million annually.

However, when it came to writing the official contract, the decision-maker allegedly included a clause that would entitle Discover Digital to be paid 7.5% of all advertising revenue generated by SABC Plus.

On 16 November 2022, when the contract was first drafted, the SABC's legal team questioned the clause, and according to an investigation by legal firm Werksmans, the decision-maker and Discover Digital managing director Stephen Watson responded by saying the clause was, in fact, applicable to the agreement.

The contract was then allegedly signed on 17 November 2022, with the clause included, contradicting the directive given to the decision-maker by the executive committee ten days earlier.

At a meeting with the executive committee the following day, when questioned, the manager allegedly misrepresented his role in including the clause. He claimed he had questioned the clause but was unaware of the final decision — but Werksmans reportedly contested this.

"During the contract drafting phase, [the manager] was copied in emails between the legal [department], [the decision-maker] and Discover Digital. Evidently, he was privy to the discussion with respect to the 7.5% ad insertion clause in the contract and failed to query its inclusion as it contradicted the approved business plan," said Werksmans.

The third individual, the executive, also allegedly misrepresented his knowledge of the clause at the same meeting.

"He was aware of the 7.5%, as a number, but could not join the dots on what it was for. His response was tantamount to withholding vital information," Werksmans reportedly stated.

The manager and senior decision-maker have been suspended, while the executive reportedly resigned upon learning of his impending suspension.

MyBroadband asked SABC to comment on both controversies, and a spokesperson provided the following response:

"The SABC is as a matter of principle not at liberty to discuss matters pertaining to an employer-employee relationship in the public space."





Discover Digital responds

MyBroadband contacted Discover Digital managing director Stephen Watson to hear his company's side of the story, and he provided the following statement.

It is deeply disappointing that City Press failed to approach us for comment prior to publishing its article.

All Discover Digital's Advertising Video on Demand and Adserver service contracts — including its contract with the SABC — contain an advertising revenue share clause.

This is to cover the associated technology, resource and delivery costs.

The revenue share clause had also already been included in the contract wording at the preceding stage, when TelkomOne had been awarded the contract.

Post launching the SABCPlus service, [the decision-maker] alerted us to their omission of these costs in their internal business plan submission and accordingly that the plan had to be corrected to specifically reference these costs, and for the updated plan to be resubmitted to the SABC's Executive Committee and Board of Directors for approval.

Discover Digital decided not to bill the SABC for its part of the agreed revenue share until such time as the business plan had been corrected and internally approved by the SABC.

By the time the one-year term of our agreement with the SABC had matured in November 2023, the proposed approval and ratification of the revenue share clause had not yet occurred.

Over this period the SABC for several months had been without a Board of Directors.

Accordingly, Discover Digital did not bill for, nor did it receive any funds from the SABC pursuant to the revenue share clause.

Discover Digital is willing to co-operate in any SABC investigation into the issue, whether through Werksmans Attorneys, the SABC's own internal audit team or the Auditor-General.

To date, however, we have not received any enquiry or request for comment or to supply supporting documentation.



SABC Plus

Amid this drama, **the SABC has told MyBroadband** that its SABC Plus platform has grown its subscriber base to roughly 600,000 people a year after its relaunch.

It peaked at approximately 210,000 concurrent viewers during the Rugby World Cup Final between the Springboks and the All Blacks.

Perhaps owing to the pressure of handling such volumes, the SABC migrated the service to a new technology system on 1 December 2023.

"This update underscores the SABC's dedication to continue providing audiences with an optimised and enriched SABC+ experience," said the SABC in a statement.

"This will ensure that in future there is an enhanced and more robust digital content delivery for our valued viewers," it added.

MyBroadband noticed the following changes between the old and new systems:

- The primary interface seems less cluttered, with clear divisions between different categories and a new, bolder font.
- The home page on the web-based platform categorises the SABC's free-to-air channels by TV Channels, News, Sports, and Radio Stations.
- The top bar of the website also lets users jump between Home, TV, Radio, Catchup, Games, and a Manage Your TV License section.

- On the new mobile app, users are first presented with the option to stream TV or Radio. From there, they can select their preferred live channel or station to stream.
- Video playback quality increased from 720p to 1080p on both web and mobile.
- There is support for picture-in-picture mode.

The SABC said it would continue implementing new features and modifications to the service post-migration.



Sunday, 11 February 2024 12:57

Three top SABC execs suspended over hidden profit share agreement.



By Lehlohonolo Lehana.

Three SABC executives have been suspended following an internal investigation that uncovered a hidden profit share clause with Discover Digital, a service provider contracted to manage the public broadcaster's digital content streaming platform, SABC Plus.

In an internal memo on 7 February the SABC told staffers that COO Ian Platjes, group executive for video entertainment Merlin Naicker and group executive for sales Reginald Nxumalo have been suspended.

Their suspensions came after legal advice from the Werkmans law firm.

The Werkmans legal opinion comes after the SABC did its own internal audit into the secretive profit-sharing deal that came to the conclusion that the three executives failed to act in the SABC's best financial interests.

According to Werkmans Platjes, Naicker and Nxumalo deliberately concealed the crucial information of the 7.5% profit-share agreement from the SABC's executive committee during their presentation of the deal, before it was signed and also misled the committee when they said the public broadcaster would get 100% of the advertising revenue made through SABC+.

Werkmans found a prima facie case for gross dishonesty by Platjes, Naicker and Nxumalo in the SABC+ deal with Discover Digital.

It was projected that SABC Plus would make between R150 million to R200 million annually.

The executives were found to have misled the company when they said the SABC would be getting 100% of the advertising revenue in the deal.

The secret profit share agreement was kept under wraps until the SABC's then head of legal, Advocate Ntuthuzelo Vanara, questioned the clause.

The trio had signed the deal without Vanara and then CEO Madoda Mxakwe.

Responding to Vanara's query, Plaatjies and Discover Digital managing director Stephen Watson asserted that the 7.5% ad revenue share applied to the agreement, according to a **City Press** report.

While it is not clear whether the three benefited from the deal, the lawyers found that their failure to act in the best interests of the SABC had broken the trust.

Nxumalo caught wind of the impending suspensions and resigned.

Lungile Binza is now acting SABC COO and Lala Tuku, SABC head of local content, is now acting head of video entertainment.



MEDIA NEWS SOUTH AFRICA

NEWS

PRESS OFFICES

COMPANIES

JOB

EVENTS

OPINION

News

Company news

In briefs

New appointments

New business

Latest newsletter

Most read

SABC executives suspended over undisclosed profit-share deal with Discover Digital

12 Feb 2024



Following their failure to disclose a 7.5% profit-share deal with Discover Digital, the SABC's COO Ian Plaatjes and head of video entertainment Merlin Naicker have both been suspended.



Source: © Daily Investor [Daily Investor](#) 3 SABC executives have been suspending following their failure to disclose a 7.5% profit-share deal with Discover Digital

SABC's ad sales boss Peginald Nxumalo resigned when he heard about his impending suspension, according to [TV with Thinus](#) while a report in [The Citizen](#) says he was suspended.

TV with Thinus reports that "in an internal memo on 7 February the SABC told staffers that COO Ian Plaatjes and head of video entertainment Merlin Naicker have been suspended this week in news first reported by *City Press* on Sunday."

Discover Digital runs the broadcaster's SABC+ video streaming service and the broadcaster has an R35 million contract with it, renewable for five years, to run SABC+ as its over-the-top (OTT) video streaming service.

The SABC is projected to initially make between R100 and R200 million with SABC+.

Their suspensions came after legal advice from the Werkmans law firm, which follows the SABC's internal audit, and found the three deliberately concealed the crucial information of the profit-sharing agreement.



It found a prima facie case for gross dishonesty by Ian Plaatjes, Merli Naicker, and Reggie Nxumalo in the SABC+ deal with Discover Digital.

Lungile Binza is now acting SABC COO and Lala Tuku, SABC head of local content, is now acting head of video entertainment. The SABC failed to make any public announcement about the high-level suspensions to the public.

Read more: [digital](#), [fraud](#), [SABC](#), [OTT](#), [Discover Digital](#), [TV](#), [Over-The-Top](#)



→ Next

OPTIONS

Home » Broadcasting and Media » Public trust in the SABC takes another knock

Public trust in the SABC takes another knock

Three SABC executives allegedly concealed a profit share clause in an agreement related to the launch of SABC+.

By Sandra Laurence – 13 February 2024

f Facebook

X Twitter

in LinkedIn



Pranav Bhatt/Flickr

Reaction to the suspension or resignation of three SABC executives last week over the issue of an allegedly “secret” R35-million contract emphasises the need for public trust in the public broadcaster – particularly leading up to the general election.

SABC group chief operating officer Ian Plaatjes, group executive for video entertainment Merlin Naicker and group executive for sales Reginald Nxumalo allegedly concealed a profit share clause from SABC executive committee members during their presentation when the deal was approved last year, according to **City Press** on Sunday.

Plaatjes and Naicker have been suspended and Nxumalo has resigned.

The contract relates to the launch of SABC+, a streaming service launched after Telkom ended its TelkomOne joint venture with the public broadcaster.

SOS Coalition national co-ordinator Uyanda Siyatola said: “At this moment, we have only heard one side of the story – and no details from the implicated executives. [If true] it is disappointing for the SABC executives to conceal such crucial information, particularly given that this impacts the finances of the SABC, which is already in a dire state.

“We know the SABC has suffered a lot from the instability of executive management over the years. Transparency and accountability are important, particularly where the public broadcaster is concerned. The SABC worked hard to stabilise and restore public trust and whenever such reports surface, public trust is eroded – and no public broadcaster can thrive without public trust, as trust directly impacts viewership,” Siyatola said.

Dwindling

“The SABC cannot afford to lose more of its audience because its viewership is already dwindling. This needs to be dealt with strictly to protect the integrity of the SABC and core public broadcasting principles of accountability and transparency.”

The R35-million contract, renewable yearly for five years, was awarded to Discover Digital. But the executives did not disclose that the company would be paid an additional 7.5%, which on



“ The SABC has suffered a lot from the instability of executive management over the years

came to light when the SABC's then head of legal, Ntuthuzelo Vanara, later questioned the clause.

The three allegedly signed the deal without involving him or acting CEO at the time, Madoda Mxakwe.

Read: 'Catastrophic' SABC Bill must be withdrawn

According to the City Press report, law firm Werkmans said the three executives deliberately concealed the crucial information from the SABC executive committee during their presentation. The firm reportedly said the business plan presented to the SABC's executive committee during a meeting on 7 November 2022 stipulated that the SABC would get 100% of the revenue generated by SABC+, which used to be Telkom One.



“The committee approved this proposal, but then the SABC's legal division picked up and queried the appearance of the 7.5% advertising revenue-sharing clause on 16 November 2022 during the contract drafting process.”

While it is not clear whether the three benefited from the deal, legal opinion was that their failure to act in the best interests of the SABC had broken trust.



The SABC declined to comment, saying that as a “matter of principle, it is not at liberty to discuss matters pertaining to an employer/employee relationship in the public space”. – © 2024 NewsCentral Media

Get breaking news alerts from TechCentral on WhatsApp



Ian Plaatjes Madoda Mxakwe Merlin Naicker Reginald Nxumalo SABC TelkomOne



◀ PREVIOUS ARTICLE

Vumacam partners with Gauteng in anti-crime drive

NEXT ARTICLE ▶

Telecoms firms disappointed in Sona speech

RELATED POSTS

Telkom establishes technology committee at board level

27 March 2024

Should South Africa ban kids from social media?

27 March 2024



TH WB 6

15 Feb

Union wants SABC financial chief suspended over irregular profit-sharing deal

City Press

Abram Mashego

[Comments](#)

[Gift article](#)



Communication Workers' Union says SABC chief financial officer Yolande van Biljon should be explain the profit share agreement signed by top executives and Discover Digital.

[NEWS](#)

The Communication Workers Union (CWU) has called for the suspension of SABC chief financial officer Yolande Van Biljon following the revelations that the public broadcaster's top executives signed a secret multimillion-rand profit share agreement with a service provider, Discover Digital.

The unions national bargaining coordinator Nathan Bowers said Van Biljon, as the person in charge of the public broadcaster's finances, should be placed on precautionary suspension.

Bowers said:

She also has to answer during the investigation as the person who holds the purse of the SABC. As CWU we want to know how the 7.5% slipped through her fingers in this digital deal.

The union is currently engaged in a battle for salary increases, which it demands should be backdated to the 1 April 2023. Bowers said the union was dismayed by the allegations published in City Press about the suspension of two senior SABC executives with a third one resigning.

READ: [SABC suspends three execs for hiding multimillion rand profit share agreement](#)

City Press reported that Ian Plaatjies, the chief operating officer had been suspended along the group executive for video entertainment Merlin Naicker while group executive for sales Reginald Nxumalo resigned.

Bowers said if the allegations are true, the union was calling for the investigation to be expedited and followed by serious consequences.

He added:

The SABC continues to plead poverty while allegations of concealing profit are out there in the media. Workers have not had a salary increase for more than three years and every time there are financial losses or a financial crisis, workers have to become the scapegoat and bear the brunt through no salary increases.

Bowers said the plundering of the SABC's finances through shady contracts and wasteful expenditure every financial year could not continue and should not be used as an excuse not to increase workers' salaries, which should be backdated.

In response the CWU's call, SABC spokesperson Mmoni Seapolelo said: "The SABC continuously engages with the union on various important issues pertaining to the organisation. The SABC will continue to utilise the set communication channels that are available to CWU to engage, as the corporation will not be drawn to discuss its internal matters with CWU through the media."

Seapolelo added: "It is imperative to also note that the SABC is committed to good corporate governance that is aimed at achieving long term successful public service broadcaster."



SABC hit by internal scandal

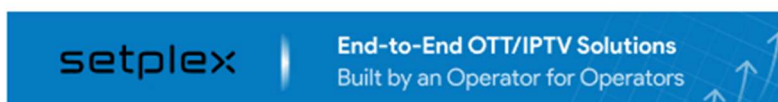
February 15, 2024

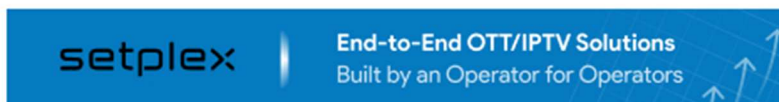
By Chris Forrester



South Africa's public broadcaster SABC has seen three executives resign or be suspended with allegations of being involved in a "secret" contract which gave them a profit share related to the launch of SABC+.

SABC COO Ian Plaatjes, group executive for video entertainment Merlin Naicker, and group executive for sales Reginald Nxumalo, allegedly concealed a profit share clause from SABC executive committee members during their presentation when the SABC+ deal was approved last year, according to local reports.





Plaatjes and Naicker have both been suspended and Nxumalo resigned from their posts.

SABC+ was the broadcasters streaming service launched in conjunction with Telkom.

According to local reports, law firm Werkmans said the three staff members deliberately concealed the crucial information from the SABC executive committee during a presentation. The law firm reportedly said the business plan presented to the SABC's executive committee during a meeting on November 7th 2022 stipulated that the SABC would get 100 per cent of the revenue generated by SABC+, which used to be Telkom One.

"The committee approved this proposal, but then the SABC's legal division picked up and queried the appearance of the 7.5 per cent advertising revenue-sharing clause on November 16th 2022 during the contract drafting process," said the law firm.

At the least, the legal opinion was that their failure to act in the best interests of the SABC had broken trust.



TH

WB 2

WEBBER WENTZEL

in alliance with > **Linklaters**

Mr K Ramkumba
The Chairperson of the South African Broadcasting Corporation

By email: RamukumbaK@sabc.co.za

Mr Ian Plaatzjes
Chief Operating Officer of the South African Broadcasting Corporation

By email: ianplaatzjes@gmail.com

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000

F +27 (0) 11 530 5111

www.webberwentzel.com

Your reference

Our reference

Date

D Milo / K Petersen
4008066

23 April 2024



Dear Mr Ramkumba

REQUEST FOR ACCESS TO MR IAN PLAATJES' DISCIPLINARY HEARING

1. We represent Media Monitoring Africa ("**MMA**"), SOS Support Public Broadcasting Coalition ("**SOS**") and Campaign for Free Expression ("**CFE**").
2. MMA is a non-profit organisation which promotes ethical and fair journalism that supports democracy and human rights. MMA advocates for a responsible media that enables an engaged and informed citizenry in Africa and across the world. It supports the free flow of information to the public on matters of public interest and actively promotes open justice as well as free, fair, ethical and critical media culture.
3. SOS is a civil society coalition that is committed to, and campaigns for, broadcasting services that advance the public interest. While the SABC is our primary focus – as the key site of and the institution established to drive public interest content– SOS also engages in the advancement of community broadcast media in South Africa. SOS is made up of a broad range of civil society organisations, a federation and individuals (including academics, freedom of expression activists, policy and legal consultants, actors, scriptwriters, film makers, producers, and directors). SOS campaigns for independent and effective public service media. We engage with policymakers, regulators, and lawmakers to secure changes that will promote citizen-friendly policy, legislative and regulatory changes to public service media and its associated sectors.
4. CFE is a non-profit public benefit organisation which advocates to defend and expand free expression for all. CFE's aims and activities include monitoring the free flow of ideas and

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beillings AE Bennett AP Blair DHL Booyens AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel AA Felekis G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy A Keyser MD Kota JC Kraamwinkel J Lamb KJ Lebea E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlal M Moloi N Moodley LE Mostert VM Movshovich C Murphy RA Nelson G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AMT Pardini AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjetan GI Rapson K Rew SA Ritchie NJA Robb J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

information and reporting on relevant developments; injecting an informed, principled, consistent and fact-based freedom of expression position into the national discourse; encouraging awareness of and support for free expression across all elements of society; promoting transparency and access to information in all sectors of society.

5. We refer to the disciplinary hearing proceedings instituted by the South African Broadcasting Corporation ("**the SABC**") against its Chief Operating Officer ("**COO**"), Mr Ian Plaatjes. ("**Mr Plaatjes**") for alleged misconduct and gross dishonesty. It is alleged in media reports that Mr Plaatjes was suspended pursuant to his failure to disclose the conclusion of a profit-sharing agreement with Discover Digital to the SABC's Executive Committee. We also refer to an open letter by Mr Plaatjes to you dated 20 March and to the statement by the employees involved in the disciplinary hearing dated 10 April.
6. Our clients understand that the SABC has appointed Werksmans attorneys to act as its representatives in relation to the disciplinary hearing, which has not yet been scheduled. We have been advised that Mr Plaatjes is currently disputing the competency of this appointment and we thus address this correspondence to you directly.
7. Our clients request that the disciplinary hearing be open to members of the media. Our clients make this request because of the significant public interest in this case which triggers the constitutional principle of open justice and the right to freedom of expression.¹ We address below the relevant considerations that all make access in this case by the media irrefutable.



The SABC is a public body and the hearing engages the public interest

8. The principle of open justice applies not only to court proceedings but also to adjudicative functions of public bodies where the public interest is engaged.²
9. The SABC is an important statutory body, regulated by the Broadcasting Act of 4 of 1999. It is the public broadcaster, at least partially funded by taxpayers, and is owned by the state. The public broadcaster plays a unique role in South Africa's deliberative democracy, which it can either foster or undermine. It is no "ordinary" employer. For example:
 - 9.1 The SABC must, in its provision of a public service "provide significant news and public affairs programming which meet the highest standards of journalism, as well as fair and unbiased coverage, impartiality, balance and independence from government, commercial and other interests".³
 - 9.2 Mr Plaatjes' claims concerning the SABC including in relation to the SABC's appointment of Werksmans attorneys as its representatives in this matter, concerns

¹ The principle of open justice is trite and our law reports are replete with cases where the principle has been recognised. As Kriegler J said in *S v Mamabolo* [2001] ZACC 17; 2001 (3) SA 409 (CC): "Since time immemorial and in many divergent cultures it has been accepted that the business of adjudication concerns not only the immediate litigants but is a matter of public concern which, for its credibility, is done in the open where all can see". (Emphasis added)

² *Media 24 Limited and others v National Director of Public Prosecutions and others; Electronic Media Network Limited v National Prosecuting Authority and another* [2012] JOL 29172 (GNP) ("**Media 24 v National Prosecuting Authority**"): paragraphs 39-41. A copy of the judgment is attached as annexure "B".

³ Section 10(d) of the Broadcasting Act.

the SABC's impartiality and independence and the very fact that it is raised is a matter of public interest.

- 9.3 The SABC is a "major public entity" per Schedule 2 to the Public Finance Management Act, 1999.
10. Mr Plaatjes, in turn, occupies an important and senior role at the SABC as its Chief Operating Officer. How Mr Plaatjes discharges his functions as Chief Operating Officer and whether he indeed has acted improperly in leading the SABC in its public functions is a matter of public interest.
11. As is evident from the media publicity attached hereto as "A", the allegations made against Mr Plaatjes are described as having occasioned "*another knock*" on "*public trust in the SABC*"⁴. The allegations forming the subject matter of the hearing are manifestly in the public interest: If true, they would reveal that the public broadcaster's COO, along with other top-level executives, engaged in a scheme of dishonesty with the potential to harm the integrity and stability of the SABC in the run-up to this years' general election.
12. These are serious allegations relating to the public broadcasting principles of accountability and transparency by the SABC'S leadership.
13. These allegations will be ventilated in the hearing. They deal with matters that go to the heart of our democracy, including the role of the SABC as a public broadcaster to embody the constitutional values of openness and accountability. It is critical that the media be present at the hearing in their role as the "eyes and ears" of the public.



There is no bar in its policies to the SABC granting access

14. We understand that the SABC Disciplinary Code and Procedure ("**Code**") is silent on whether the media may access the hearing. There is therefore no bar on attendance. This means that the default rule compelled by the open justice principle must apply: that the Chairperson has the discretion to grant access where appropriate, and at least in matters engaging the public interest.
15. To read the Code otherwise would render it unconstitutional. The Constitutional Court has held that if it is possible to construe an impugned provision to be consistent with the Constitution, this interpretation is preferred over one that would result in an order of invalidity. This is provided that such an interpretation can be reasonably ascribed to the section.⁵ Unless a provision clearly limits a constitutional right, the adjudicator should avoid an interpretation that has this effect. Once again, this is provided that the preferred interpretation is not unduly strained.⁶ Reading in a clause that affords the Chairperson to grant access does not strain the language of the Code, renders it constitutionally compliant, and protects – rather than limits – the right to freedom of expression.
16. It is not the case of our clients that access would be required for *every* SABC disciplinary hearing. It is merely that the Code should be read to afford the Chairperson the discretion

⁴ Page 3 of annexure A.

⁵ *Investigating Directorate: Serious Economic Offences v Hyundai Motor Distributors (Pty) Ltd: In re Hyundai Distributors (Pty) Ltd v Smit NO and Others* 2001 (1) SA 545 (CC) at paragraph 23.

⁶ *National Union of Metalworkers of South Africa and Others v Bader Bop (Pty) Ltd and Another* 2003 (3) SA 513 (CC) at paragraph 37.

to determine whether the facts of the particular case require access by the media. The Chairperson can also regulate the extent of media during the hearing (for instance in respect of the identity of specific witnesses). But what is clear is that a blanket position that no access is permitted would not be constitutionally justifiable.

Mr Plaatjes supports access by the media

17. We understand from both Mr Plaatjes' open letter and his statement on this issue that he has no objection to the hearing being open to the media, and in fact supports media access. In paragraph 2 of his letter, Mr Plaatjes states the following:

- 17.1 *"Since the SABC, through its representatives, has engaged openly and in detail with the media on this matter. It is my considered view that the SABC should open the entire process, including the hearing to the media. I submit that this matter has strong elements of public interest and that the public must have unfettered access to the facts of the matter. Should it be necessary, I hereby give my consent for the media to be present and cover the entire process, including the hearing."*



18. This is significant because the only conceivable basis for confidentiality of the hearing would be to protect the privacy of Ms Mr Plaatjes. Since Mr Plaatjes has waived any right of privacy he may have in the hearing, this rationale for confidentiality evaporates.
19. We confirm that we have copied Mr Plaatjes on this correspondence.

The facts relating to the hearing are in the public domain

20. The fact that Mr Plaatjes is facing a hearing, and the allegations against him, are all firmly in the public domain. We refer to the media reports attached as annexure "A" in this regard.
21. This is therefore not a case where the public is in the dark as to the fact that a hearing is taking place or what it is about. The public knows all of this. This makes the case for access even more pressing: it would be contrary to the interests of justice for the hearing to now take place behind closed doors. Justice must not only be done but be seen to be done.

Precedent supports access by the media

22. There are numerous precedents which support access to a disciplinary hearing of the nature of Mr Plaatjes' hearing. At least three important decisions by South African courts concern the media's right to attend disciplinary hearings of public bodies. In each, media access was granted – even though in two of the cases, the accused did not consent to access (here, Mr Plaatjes does consent, and so ours is an *a fortiori* case).

23. In **Media 24 v National Prosecuting Authority**, the Court held (at paragraph 41):

"the guiding principle in all cases is whether the constitutional imperative of ensuring transparency and accountability from public bodies will be served by opening the doors to the particular forum in question."

24. In that case the Court had to decide whether to allow the media access to the internal disciplinary enquiry instituted against Adv Breytenbach by the National Prosecuting Authority. The Court ruled in favour of allowing media access (indeed, the Court even permitted a television broadcaster to televise the hearing – which is not sought in this case).

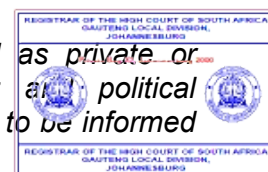
The Court held that the constitutional nature of the NPA and its functions was a central consideration and had two important consequences in that case, viz (at paragraph 35):

"1. The question of whether the NPA or any member has acted in breach of its constitutional mandate, and specifically its duty to prosecute without fear, favour or prejudice, is a matter of inherent and critical public interest and import.

2. The NPA is subject to the constitutional principles of transparency and accountability to the public it serves. This means that the constitutional imperative of open justice must apply in circumstances where this question is investigated."

25. The Court concluded as follows (at paragraph 36):

"The disciplinary proceedings in this matter cannot be described as private or ordinary. Given the allegations of corruption, mismanagement and political interference serious constitutional issues arise, and the public's right to be informed under these circumstances is undeniable."



26. In 2014, the Johannesburg Bar Council granted two media houses access to the disciplinary enquiry of Menzi Simelane,⁷ the former director-general of the justice department. This was the first time that the bar council opened a disciplinary hearing to the media. Adv Simelane opposed the application for access. The Bar Council ruled that the imperative of open justice is applicable to disciplinary enquiries of the Bar Council. In the matter of *Media 24 Limited and Another v Menzi Simelane and Another*, the Bar Council held as follows:

*"It is certainly in the public interest that the manner in which the Society disciplines its members is not shrouded in secrecy. All advocates and in particular, members of the Society, are expected to be committed to the highest ethical standards. The rules of the Society are directed at maintaining those standards. The public has the right to expect that the Society will not falter in holding its members to account when they are accused of transgressing the rules. The process must be transparent. If it is not conspiracy theories will thrive. For an association that is committed to the maintenance of the rule of law and the administration of justice, it is also in the interests of the Society that it be seen to hold its members to account. To do this, the Society must act transparently when it disciplines its members."*⁸

27. The Bar Council therefore concluded that *"the constitutional imperative of open justice is applicable to disciplinary enquiries of the Bar Council"* and *"the default position concerning disciplinary enquiries of the Bar Council must be that the press is entitled to attend the proceedings and to report thereon, unless the circumstances of the particular case justify a denial of access."*⁹

28. In 2016, Media24, along with Times Media Group and M&G Media,¹⁰ brought an application to allow reporters to access the disciplinary hearings of Department of Public Works officials

⁷ The ruling can be accessed here: <https://www.news24.com/news24/johannesburg-bar-grants-media-access-to-menzi-simelane-disciplinary-20150429>

⁸ At paragraphs 25-26.

⁹ At paragraph 30.

¹⁰ *Media 24 (Pty) Ltd and Others v Department of Public Works and Others* [2016] 3 All SA 870 (KZP). A copy of the judgment is attached as annexure "C".

TH *WB*

fingered by the Special Investigation Unit over their role in the building of President Jacob Zuma's Nkandla homestead.

29. The Court ruled that the disciplinary hearings should be open to the media and said that:

"The very public nature of the Nkandla upgrades demands that the public are given the full facts to make informed choices, including whether or not the disciplinary hearings instigated against the employees are properly founded.

*"The public interest is heightened by the fact that the disciplinary proceedings concern the alleged wrongful expenditure of public funds by public servants acting in the public sphere. The employees are not simply ordinary employees in a private context, possibly wasting the funds of their private employer, but state employees, like the advocates employed by the NPA or a magistrate, whose salaries are paid by the tax payer. Ultimately, they are accountable to the tax payer for their conduct and they must satisfy taxpayers that they have not been responsible for any misappropriation or unauthorised spending of funds."*¹¹



30. The employees did no more than assert a generalised "right of privacy" and obliquely the "right to labour practices" and the "right to dignity". In this regard the Court held:

*"The allegations lack details and are unsubstantiated, and accordingly are without foundation. Generally an employee does not have the right not to have his or her explanation of his conduct made public, where the exercise of a public power is involved. The right to privacy is 'more intense the closer it moves to the intimate personal sphere of the rights of human beings, and less intense as it moves away from that core'. This means that the right to privacy and also dignity ripple away and become less immediate when they relate to matters over which the public at large have an interest."*¹²

31. There is nothing to distinguish Mr Plaatjes' disciplinary hearing from those of Adv Breytenbach, Adv Simelane and the Public Works officials. The common features are that all concern the internal process of public entities in matters of public interest. What is more, as mentioned above, in the present case, as in the Breytenbach case, access is not opposed by the accused in the hearing.
32. Our clients request details of the date of the commencement of the disciplinary hearing.
33. Our clients look forward to hearing from you as a matter of urgency by no later than 29 April 2024.
34. Our clients' rights to institute urgent court proceedings are reserved.

Yours faithfully

¹¹ *Ibid* paragraphs 54-55.

¹² *Ibid* paragraph 57.

WEBBER WENTZEL

in alliance with > **Linklaters**

Page 7

WEBBER WENTZEL

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically



WEBBER WENTZEL

in alliance with > **Linklaters**

Professor T Madima SC
House of Lords Chambers
Sandton
2196

By Email: barrister@law.co.za

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000

F +27 (0) 11 530 5111

www.webberwentzel.com

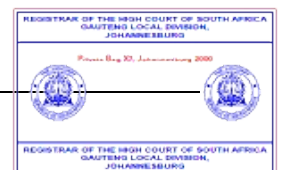
Your reference

Our reference

D Milo / K Petersen
4008066

Date

2 May 2024



Dear Professor

SOUTH AFRICAN BROADCASTING CORPORATION ("SABC") // PLAATJES & NAICKER

1. We represent Media Monitoring Africa ("**MMA**"), SOS Support Public Broadcasting Coalition ("**SOS**") and Campaign for Free Expression ("**CFE**").
2. We refer to the above matter and to our letter addressed to the chairperson of the SABC dated 23 April 2024. A copy of our letter is annexed marked "**A**".
3. We have been advised by Mr Plaatjes, the first employee in the above matter, that a copy of our letter was forwarded to you in support of Mr Plaatjes' interlocutory application for media access ("**the interlocutory application**"). A copy of Mr Plaatjes' correspondence in this regard is annexed marked "**B**".
4. Mr Plaatjes has also provided our clients with a copy of the ruling in the interlocutory application dismissing the request for media access. We note from its contents that the submissions contained in our letter, particularly those in relation to the public interest which subsists in the above matter, do not appear to have been considered. Indeed, the ruling refers only to the arguments advanced by the parties to the above matter to the exclusion of those put forward by our clients.
5. We submit that the contentions of our clients as well-established supporters of constitutionally enshrined media freedoms are of considerable importance in deciding the interlocutory application. A decision on the issue of media access which is made without considering the position of the media itself which seeks a vantage point of transparency in reporting on this matter can not, with respect, be said to have been made in full consideration of all the relevant circumstances.
6. In view of the above, our clients respectfully request the following:

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazal G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Hofeld PM Holloway J Howard AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

WB
TH

WEBBER WENTZEL

in alliance with > **Linklaters**

Page 2

- 6.1 that the submissions contained in our letter be considered;
- 6.2 that you provide our clients with a response indicating whether the ruling in the interlocutory application is reconsidered in light of our clients' submissions; and
- 6.3 to the extent that the interlocutory application will not be reconsidered, that you provide confirmation that the proceedings in this matter will be postponed pending review proceedings that our clients may decide to bring.
7. In view of the fast-approaching start date of the hearing in this matter, our clients would appreciate your urgent response.
8. We look forward to hearing from you.
9. All our client's rights are reserved.



WEBBER WENTZEL

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically.

From: [Taki Madima SC](#)
To: ["Sandile Tom"](#); [Kenan Petersen](#)
Cc: ["Ian Plaatjes"](#); [Dario Milo](#); [zzExt-Sandile July](#); ["Sello Xama"](#); ["Rekgopetše Pula"](#)
Subject: RE: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER
Date: 03 May 2024 13:48:47
Attachments: [image001.png](#)

Dear All

Indeed. The hearing shall commence on Monday 6 May 2024.
My apologies.

Regards

Professor T Madima (S.C.) MCIArb

LL.M (Essex) eMBA (UCT) LL.M (UJ) MPhil (UCT) Ph.D (Essex).

Advocate of the High Court of South Africa. Member of the Cape and Johannesburg Bars.
Member : Arbitration Foundation of Southern Africa (AFSA).
Mauritius International Arbitration Centre (MIAC).
Member of the Chartered Institute of Arbitrators (UK)
Associate Member : Association of Arbitrators (Southern Africa) NPC.
Adjunct Professor of Law: University of Cape Town.



House of Lords Chambers 2nd Floor Grindrod Tower 8A Protea Place Sandton
Ground Floor [40 Queen Victoria Street, Cape Town](#).
Tel: 010 443 7669 Cell: 082 563 3664
Email: barrister@law.co.za

GOOD COUNSEL KNOW THE LAW. GREAT COUNSEL KNOW THE JUDGE.

From: Sandile Tom <stom@werksmans.com>
Sent: Friday, May 3, 2024 1:43 PM
To: Taki Madima SC <barrister@law.co.za>; 'Kenan Petersen' <Kenan.Petersen@webberwentzel.com>
Cc: 'Ian Plaatjes' <ianplaattjes@gmail.com>; 'Dario Milo' <dario.milo@webberwentzel.com>; Sandile July <SJuly@werksmans.com>; 'Sello Xama' <XamaSE@sabc.co.za>; Rekgopetše Pula <rpula@werksmans.com>
Subject: Re: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER

Dear Chairperson

I think Chairperson is mistaken in saying that the hearing is on 8 May. The hearing is on 6 May 2024 (Monday).

Kind regards

Get [Outlook for Android](#)

From: Taki Madima SC <barrister@law.co.za>
Sent: Friday, May 3, 2024 9:53:47 AM
To: 'Kenan Petersen' <Kenan.Petersen@webberwentzel.com>
Cc: 'Ian Plaatjes' <ianplaattjes@gmail.com>; 'Dario Milo' <dario.milo@webberwentzel.com>; Sandile July <SJuly@werksmans.com>; Sandile Tom <stom@werksmans.com>; 'Sello Xama' <XamaSE@sabc.co.za>; Rekgopetše Pula <rpula@werksmans.com>
Subject: RE: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER



Dear Sir / Madam

I take note of your letter dated 2 May 2024.

You are correct in asserting that I did not consider the content of the letter you addressed to the Chairperson of the SABC Board.

My reasons are two-fold:

- a. The letter is not addressed to me.
- b. Your client is not before me in the disciplinary hearing.

Your client is still not before me.

I have dismissed the Employees' application.

The hearing is scheduled to commence on 8 May 2024.

Regards

Professor T Madima (S.C.) MCIArb

LL.M (Essex) eMBA (UCT) LL.M (UJ) MPhil (UCT) Ph.D (Essex).

Advocate of the High Court of South Africa. Member of the Cape and Johannesburg Bars.

Member : Arbitration Foundation of Southern Africa (AFSA).

Mauritius International Arbitration Centre (MIAC).

Member of the Chartered Institute of Arbitrators (UK)

Associate Member : Association of Arbitrators (Southern Africa) NPC.

Adjunct Professor of Law: University of Cape Town.



House of Lords Chambers 2nd Floor Grindrod Tower 8A Protea Place Sandton
Ground Floor 40 Queen Victoria Street, Cape Town.
Tel: 010 443 7669 Cell: 082 563 3664
EMail:barrister@law.co.za

GOOD COUNSEL KNOW THE LAW. GREAT COUNSEL KNOW THE JUDGE.

From: Kenan Petersen <Kenan.Petersen@webberwentzel.com>

Sent: Thursday, May 2, 2024 10:13 PM

To: barrister@law.co.za

Cc: Ian Plaatjes <ianplaattjes@gmail.com>; Dario Milo <dario.milo@webberwentzel.com>

Subject: RE: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER



Dear Sir

We attach correspondence for your attention.

Yours faithfully

Kenan Petersen | Associate | Webber Wentzel

T: +27115305530 | M: +27762262451 | kenan.petersen@webberwentzel.com | www.webberwentzel.com

WEBBER WENTZEL
in alliance with > **Linklaters**

**B-BBEE
LEVEL 1
CONTRIBUTOR**

South Africa Law Firm of the Year – Chambers Africa Awards 2024

South Africa Law Firm of the Year – IFLR Africa Awards 2024

South Africa Firm of the Year – International Tax Review EMEA 2023

ESG Initiative of the Year – African Legal Awards 2021, 2022 and 2023

Chambers Global 2024 – the most individual & band one practice rankings in South Africa for the last decade

Our purpose is to have a transformative and sustainable impact through our work and actions. One way in which we achieve this is through our [Pro Bono](#) and [CSI](#) initiatives.

This email is confidential and may also be legally privileged. If you are not the intended recipient, please notify the sender immediately and then delete it. Please do not copy, disclose its contents or use it for any purpose. Webber Wentzel will not be liable for any unauthorised use of, or reliance on, this email or any attachment. This email is subject to and incorporates our standard [terms of business](#) and [privacy policy](#).

CAUTION: Prior to making any payment to us, please ensure you verify our banking details directly with your designated Webber Wentzel contact, either telephonically or in person. Be highly suspicious of any notifications suggesting changes to our banking details, and

immediately report them to us before making any payment. We will not be responsible for payments made to incorrect accounts.



WEBBER WENTZEL

in alliance with > **Linklaters**

Werksmans Attorneys

The Central
96 Rivonia Road
Sandton
2196

By Email: sjuly@werksmans.com

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com

Your reference

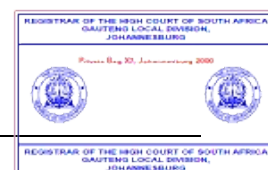
Mr S July/ Izsa/SOUT5167.146/
#10144405v1

Our reference

D Milo / K Petersen
4008066

Date

3 May 2024



Dear Sirs

SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LTD ("SABC") / IAN PLAATJES - REQUEST FOR MEDIA ACCESS

1. We refer to our email correspondence with Professor Taki Madima SC dated 3 May 2023, on which you were copied.
2. In view of the Professor's refusal to consider our clients' submissions in the interlocutory application, our clients are considering launching a review application so as to ensure that the media is afforded an unfettered opportunity to report on this matter.
3. To the extent that our clients proceed with a review application, kindly confirm whether your client is willing to postpone the proceedings in this matter pending its outcome.
4. In any event, please confirm that the proceedings are being electronically recorded and that Werksmans will retain custody of the recordings.
5. In view of the fast-approaching start date of the hearing in this matter, our clients would appreciate your urgent response by no later than 14h00 on 4 May 2024.
6. We look forward to hearing from you.
7. All our client's rights are reserved.

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld PM Holloway J Howard AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Marais G Masina T Masingi NMbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlal M Moloi N Moodley LE Mostert VM Movshovich C Murphy G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warrington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

WEBBER WENTZEL

in alliance with > **Linklaters**

Page 2

WEBBER WENTZEL

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically.



From: [Sandile Tom](#)
To: [Kenan Petersen](#); [zzExt-Sandile July](#); [Dario Milo](#)
Cc: [Rekgopetše Pula](#)
Subject: Re: Request for access to Mr Ian Plaatjes' Disciplinary Hearing [IWOV-LITIGATION.FID667129]
Date: 04 May 2024 14:39:56
Attachments: [image002.png](#)

Dear Sir

We confirm hearing will be digitally recorded.

Kind regards

Get [Outlook for Android](#)

From: Kenan Petersen <Kenan.Petersen@webberwentzel.com>
Sent: Friday, May 3, 2024 9:59:45 PM
To: Sandile July <SJuly@werksmans.com>; Dario Milo <dario.milo@webberwentzel.com>
Cc: Rekgopetše Pula <rpula@werksmans.com>; Sandile Tom <stom@werksmans.com>
Subject: RE: Request for access to Mr Ian Plaatjes' Disciplinary Hearing [IWOV-LITIGATION.FID667129]

Dear Sirs

We attach correspondence for your attention.

Yours faithfully

Kenan Petersen | Associate | Webber Wentzel

T: +27115305530 | M: +27762262451 | kenan.petersen@webberwentzel.com | www.webberwentzel.com



From: Lisa Appelgryn <lappelgryn@werksmans.com> **On Behalf Of** Sandile July
Sent: Monday, April 29, 2024 12:19 PM
To: Dario Milo <dario.milo@webberwentzel.com>; Kenan Petersen <Kenan.Petersen@webberwentzel.com>
Cc: Rekgopetše Pula <rpula@werksmans.com>; Sandile Tom <stom@werksmans.com>
Subject: RE: Request for access to Mr Ian Plaatjes' Disciplinary Hearing [IWOV-LITIGATION.FID667129]
Importance: High



This email and its attachments are private, confidential, may be subject to legal professional privilege and are only for the use of the intended recipient.

Dear Sirs

Please find attached correspondence for your attention in the above matter.

Kind regards,



Sandile July
Director
T +27 11 535 8163 F +27 11 535 8663 E sjuly@werksmans.com
The Central, 96 Rivonia Road, Sandton, Johannesburg, 2196
Private Bag 10015, Sandton, 2146, South Africa
T +27 11 535 8000 F +27 11 535 8600 W www.werksmans.com

Important Fraud Warning

Criminal syndicates may attempt to induce you to make payments due to Werksmans Inc ("Werksmans") into bank accounts that do not belong to Werksmans. Fraud of this nature may be perpetrated using emails, letters or other forms of correspondence that may appear to have emanated from Werksmans. Before making any payment to Werksmans, please verify that the account into which payment will be made is a legitimate bank account of Werksmans. Please telephone us to confirm such details.

Important Disclaimer

Werksmans and its Associates shall have no liability to you (whether in contract, delict or otherwise) arising from or in connection with this email or its attachments (if any), save to the extent specifically provided in any agreement concluded between Werksmans and you. Werksmans' "Associates" means Werksmans' shareholders, Werksmans' subsidiaries and the directors, employees and consultants of Werksmans or of any of its subsidiaries. This email and its attachments (if any) are subject to the Werksmans email disclaimer and the terms of any agreement that may have been concluded between Werksmans and you. The Werksmans email disclaimer is available on our website at [Disclaimer](#) or on request from our Marketing Department on +27 11 535 8000 or at info@werksmans.com.

A list of Werksmans Directors is available at [People Profiles](#).



WEBBER WENTZEL

in alliance with > **Linklaters**

Werksmans Attorneys
96 Rivonia Road
Sandton
2196

By Email: sjuly@werksmans.com

Professor T Madima SC
House of Lords Chambers
Sandton
2196

By Email: barrister@law.co.za

Mr Ian Plaatjes

By email: ianplaattjes@gmail.com

Mr Merlin Naicker

By email: merlin@mediawizardconsulting.com

90 Rivonia Road, Sandton
Johannesburg, 2196

PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa

Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com



Your reference
Mr S July/Izsa/SOUT5167.146 /
10144405V1

Our reference
D Milo / K Petersen
4008066

Date
6 May 2024

Dear Sirs

SOUTH AFRICAN BROADCASTING CORPORATION ("SABC") // PLAATJES & NAICKER

1. We represent Media Monitoring Africa ("**MMA**"), SOS Support Public Broadcasting Coalition ("**SOS**"), Campaign for Free Expression ("**CFE**"), and Mondli Makhanya, the editor-in-chief of the *City Press* newspaper ("**our clients**").
2. As you are aware, our clients contend that the SABC's disciplinary inquiry concerning Mr Ian Plaatjes and Mr Merlin Naicker ("**the inquiry**") should be open to the media, as Mr Plaatjes and Mr Naicker have requested. The *City Press* newspaper wishes to send a journalist to report on the inquiry. Our previous correspondence has canvassed the reasons and legal grounds for this.

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa NG Alp RL Appelbaum DC Bayman KL Beilings AE Bennett AP Blair AR Bowley J Braum MS Burger M Bux RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies PM Daya L de Bruyn PU Dela M Denenga DW de Villiers BEC Dickinson MA Diemont DA Dingley MS Dladla G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen MJR Evans K Fazel G Fitzmaurice JB Forman L Franca KL Gawith OH Geldenhuys MM Gibson CI Gouws PD Grealy S Haroun JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld PM Holloway J Howard AV Ismail ME Jarvis CA Jennings JC Jones CM Jonker S Jooste LA Kahn ACR Katzke M Kennedy KE Kilner A Keyser MD Kota JC Kraamwinkel J Lamb E Louw M Mahlangu V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer AJ Mills D Milo NP Mngomezulu P Mohanlall M Moloi N Moodley LE Mostert VM Movshovich C Murphy G Niven ZN Ntshona M Nxumalo AN Nyatumba A October L Odendaal GJP Olivier N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips DJ Rafferty D Ramjettan GI Rapson K Rew SA Ritchie J Roberts G Sader M Sader H Samsodien JW Scholtz KE Shepherd AJ Simpson N Singh N Singh-Nogueira P Singh S Sithole J Smit RS Smith MP Spalding PS Stein MW Straeuli LJ Swaine Z Swanepoel A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Tihavani G Truter PZ Vanda SE van der Meulen JP van der Poel CS Vanmali JE Veeran B Versfeld MG Versfeld TA Versfeld DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans DJ Wright M Yudaken

Chief Operating Officer: SA Boyd

WB TH

WEBBER WENTZELin alliance with > **Linklaters**

Page 2

3. This letter serves to inform you that our clients intend, tomorrow, to launch an urgent application in the Johannesburg High Court for an order in inter alia the following terms:
 - 3.1 The SABC and the Chair shall grant the *City Press* newspaper access to the disciplinary inquiry, which shall include a reasonable opportunity to:
 - 3.1.1 inspect and copy documents exchanged between the parties;
 - 3.1.2 attend and take notes at the hearings of evidence and argument, and at the delivery of rulings and decisions; and
 - 3.1.3 consider and transcribe any recordings of any parts of the inquiry that may have taken place before the date of the order.
 - 3.2 The Chair shall retain a discretion to direct that a specific document or specific part thereof, or a specific witness or a specific part of their evidence, shall be excluded from the arrangement described above, on the grounds that its disclosure would do more harm than good to the public interest, after giving *City Press* a reasonable opportunity to make representations.
4. Our clients intend to have the matter heard in accordance with the following timetable:
 - 4.1 Notices of intention to oppose the application would be due on Wednesday 8 May 2024;
 - 4.2 Answering affidavits would be due on Tuesday 14 May 2024;
 - 4.3 Our clients' replying affidavit, if necessary, would be due by 12h00 on Thursday 16 May 2024;
 - 4.4 The parties' heads of argument would be due on Saturday 18 May 2024; and
5. The application would be called for hearing in the urgent court on Tuesday 21 May 2024, or as soon thereafter as the Court may direct.
6. Our clients intend to serve the application by email to the same email addresses as this letter. Kindly let us know if you would prefer to nominate an alternative email address for service.
7. Our clients' rights are reserved.

**WEBBER WENTZEL**

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com*Letter sent electronically.*

From: Taki Madima SC
To: Kenan Petersen; zzExt-Sandile July; "Ian Plaatjes"; merlin@mediawizardconsulting.com; "Sandile Tom"; "Rekgopetše Pula"
Cc: Dario Milo
Subject: RE: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER
Date: 06 May 2024 19:37:55

Dear Parties ? Webber Wentzel

I note the content of the letter from Webber Wentzel.
I shall abide the decision of the Court.

Until then, the hearing shall continue tomorrow as scheduled.

Regards

Professor T Madima SC

From: Kenan Petersen [mailto:Kenan.Petersen@webberwentzel.com]
Sent: Monday, 06 May 2024 17:09
To: zzExt-Sandile July <sjuly@werksmans.com>; Taki Madima SC <barrister@law.co.za>; Ian Plaatjes <ianplaates@gmail.com>; merlin@mediawizardconsulting.com; Sandile Tom <stom@werksmans.com>; Rekgopetše Pula <rpula@werksmans.com>
Cc: Dario Milo <dario.milo@webberwentzel.com>
Subject: Re: SOUTH AFRICAN BROADCASTING CORPORATION // PLAATJES & NAICKER



Dear Sirs

We attach correspondence for your attention.

Yours faithfully

Kenan Petersen | Associate | Webber Wentzel

T:+27115305530 | M:+27762262451 | kenan.petersen@webberwentzel.com | www.webberwentzel.com



South Africa Law Firm of the Year – Chambers Africa Awards 2024
South Africa Law Firm of the Year – IFLR Africa Awards 2024
South Africa Firm of the Year – International Tax Review EMEA 2023
ESG Initiative of the Year – African Legal Awards 2021, 2022 and 2023
Chambers Global 2024 – the most individual & band one practice rankings in South Africa for the last decade

Our purpose is to have a transformative and sustainable impact through our work and actions. One way in which we achieve this is through our [Pro Bono](#) and [CSI](#) initiatives.

This email is confidential and may also be legally privileged. If you are not the intended recipient, please notify the sender immediately and then delete it. Please do not copy, disclose its contents or use it for any purpose. Webber Wentzel will not be liable for any unauthorised use of, or reliance on, this email or any attachment. This email is subject to and incorporates our standard [terms of business](#) and [privacy policy](#).

CAUTION: Prior to making any payment to us, please ensure you verify our banking details directly with your designated Webber Wentzel contact, either telephonically or in person. Be highly suspicious of any notifications suggesting changes to our banking details, and immediately report them to us before making any payment. We will not be responsible for payments made to incorrect accounts.



COURT ONLINE COVER PAGE

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

CASE NO: **2024-050140**

In the matter between:

**Media Monitoring Africa Trust,SOS
Support Public Broadcasting
Coalition,Campaign for Free
Expression,Mondli Makhanya**

Plaintiff / Applicant / Appellant

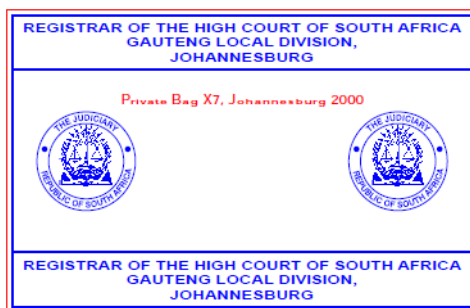
and

**South African Broadcasting Corporation Defendant / Respondent
SOC Ltd,Takalani Madima NO ,Ian
Plaatjes ,Merlin Naicker**



Notice of Motion (Long Form)

NOTE: This document was filed electronically by the Registrar on 8/5/2024 at 9:19:24 AM 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:

[Handwritten signature]

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

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

CASE NO:

In the matter between:

MEDIA MONITORING AFRICA TRUST

1ST APPLICANT

SOS SUPPORT PUBLIC BROADCASTING COALITION

2ND APPLICANT

CAMPAIGN FOR FREE EXPRESSION

3RD APPLICANT

MONDLI MAKHANYA

4TH APPLICANT

and



**SOUTH AFRICAN BROADCASTING
CORPORATION SOC LTD**

1ST RESPONDENT

TAKALANI MADIMA SC N.O.

2ND RESPONDENT

IAN PLAATJES

3RD RESPONDENT

MERLIN NAICKER

4TH RESPONDENT

NOTICE OF MOTION

TAKE NOTICE that the applicants will apply to this Court, on **TUESDAY 21 MAY 2024** at **10h00**, or as soon thereafter as counsel may be heard, for an order in the following terms:

1. This application is heard as a matter of urgency under Rule 6(12), the ordinary requirements of the Rules relating to service and time periods being dispensed with and the applicants' non-compliance therewith being condoned.

2. The first and second respondents shall grant the *City Press* newspaper access to the disciplinary inquiry of the third and fourth respondents, which shall include a reasonable opportunity to:
 - 2.1. inspect and copy documents exchanged between the parties;
 - 2.2. attend and take notes at the hearings of evidence and argument, and at the delivery of rulings and decisions; and
 - 2.3. consider and transcribe any recordings of any parts of the inquiry that may have taken place before the date of this order.
3. The second respondent shall retain a discretion to direct that a specific document or specific part thereof, or a specific witness or a specific part of their evidence, shall be excluded from the arrangement described in paragraph 2 above, on the grounds that its disclosure would do more harm than good to the public interest, after giving the fourth applicant, or his representative, a reasonable opportunity to make representations.
4. The costs of this application, including the costs of two counsel, shall be paid by any party or parties opposing it, on party-and-party scale C.
5. Further and/or alternative relief.



TAKE NOTICE FURTHER that the accompanying affidavit of **WILLIAM BIRD** will be used in support of this application.

TAKE NOTICE FURTHER that the applicants have appointed **WEBBER WENTZEL** as their attorneys of record in this application, at whose addresses (including the email

addresses), set out below, they will accept service of all process and documents in these proceedings.

TAKE NOTICE FURTHER that if any respondent intends to oppose this application, they are required:

- (a) by **WEDNESDAY 8 MAY 2024**, to deliver a notice of intention to oppose and appoint an email address for the service of documents in these proceedings; and
- (b) by **TUESDAY 14 MAY 2024**, to deliver their answering affidavit.

KINDLY enrol the matter accordingly.



SIGNED at **SANDTON** on this the **7TH** day of **MAY 2024**

Kenan Petersen

WEBBER WENTZEL

Attorneys for the applicants

90 Rivonia Road

Johannesburg

Tel: +27 11 530 5232

Email: dario.milo@webberwentzel.com
kenan.petersen@webberwentzel.com

Ref: 4008066

TO:
THE REGISTRAR
 High Court of South Africa
 Gauteng Local Division. Johannesburg

AND TO:

WERKSMANS ATTORNEYS

First respondent's attorneys

96 Rivonia Road

Sandton

2196

Tel:

Email: sjuly@werksmans.com ; rpula@werksmans.com ;
stom@werksmans.com

Ref: Mr S July/Isza/SOUT5167.146
10144405V1

BY EMAIL

AND TO:

TAKALANI MADIMA SC N.O.

Second respondent

House of Lords Chambers

Sandton

2916

Tel: +27 82 563 3664

Email: barrister@law.co.za



BY EMAIL

AND TO:

IAN PLAATJES

Third respondent

Email: ianplaatjes@gmail.com

BY EMAIL

AND TO:

MERLIN NAICKER

Fourth Respondent

Email: merlin@mediawizardconsulting.com

BY EMAIL

DELIVERED BY EMAIL

Mr Dario Milo & Mr Kenan Petersen
Webber Wentzel

Email: Kenan.Petersen@webberwentzel.com
[Dario Milo <dario.milo@webberwentzel.com>](mailto:Dario.Milo@webberwentzel.com)

Johannesburg Office
The Central
96 Rivonia Road
Sandton 2196 South Africa
Private Bag 10015
Sandton 2146
Docex 111 Sandton
Tel +27 11 535 8000
Fax +27 11 535 8600
www.werksmans.com

YOUR REFERENCE:

OUR REFERENCE: Mr S July/rp/SOUT5167.146/#10184986v1

DIRECT PHONE: +27 11 535 8163 / 8328

DIRECT FAX: +27 11 535 8663

EMAIL ADDRESS: sjuly@werksmans.com / stom@werksmans.com

17 May 2024



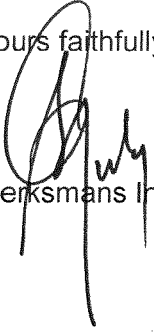
Dear Sirs

MEDIA MONITORING AFRICA TRUST & OTHERS // SOUTH AFRICAN BROADCASTING CORPORATION (SOC) LTD (CASE NO: 2024-050140)

- 1 We refer to the above matter.
- 2 As you may know the disciplinary proceedings initiated by the SABC against Messrs Ian Plaatjes and Merlin Naicker commenced on 26 April 2024 and were scheduled to be finalised today, 17 May 2024.
- 3 As a matter of courtesy, we thought it appropriate to inform you that the proceedings were finalised today, 17 May 2024, as scheduled.
- 4 In light of the above, it is our view that the matter has become moot.
- 5 In the circumstances, we request that you advise whether you still wish to proceed with having the above application heard on 21 May 2024.

Yours faithfully,

Werksmans Inc.



WEBBER WENTZEL

in alliance with > **Linklaters**

Werksmans Attorneys
The Central
96 Rivonia Road
Sandton
2196

By Email: sjuly@werksmans.com ; stom@werksmans.com ;
rputa@werksmans.com

90 Rivonia Road, Sandton
Johannesburg, 2196
PO Box 61771, Marshalltown
Johannesburg, 2107, South Africa
Docex 26 Johannesburg

T +27 (0) 11 530 5000
F +27 (0) 11 530 5111

www.webberwentzel.com

Your reference

Mr S July/Izsa/SOUT5167.146 /
10144405V1

Our reference

D Milo / K Petersen
4008066

Date

19 May 2024



Dear Sirs

Media Monitoring Africa Trust and others // South African Broadcasting Corporation (SOC) Ltd and others Case No: 2024-050140

1. We refer to your letter dated 17 May 2024.
2. In the changed circumstances, and without admitting any of the allegations contained in your letter or in your client's answering affidavit, we are instructed to withdraw our client's urgent application.
3. Our client's rights to seek alternative appropriate relief arising from the facts in this matter are fully reserved.

Yours faithfully

WEBBER WENTZEL

Dario Milo

Partner

Direct tel: +27 11 530 5232

Direct fax: +27 11 530 6232

Email: dario.milo@webberwentzel.com

Letter sent electronically. A signed copy will be provided on request.

20240519 WW To Werksmans

Senior Partner: JC Els **Managing Partner:** SJ Hutton **Partners:** BW Abraham RB Africa C Alexander AK Allie NG Alp RL Appelbaum TB Ball DC Bayman AE Bennett AP Blair K Blom AR Bowley M Bux V Campos RI Carrim T Cassim SJ Chong ME Claassens C Collett KL Collier KM Colman KE Coster K Couzyn DB Cron PA Crosland R Cruywagen JH Davies KM Davis PM Daya HM de Villiers ST Dias L de Bruyn PU Dela-Cron M Denenga DW de Villiers BEC Dickinson DA Dingley G Driver W Drue GP Duncan HJ du Preez CP du Toit SK Edmundson LF Egypt KH Eiser AE Esterhuizen K Fazel G Fitzmaurice JB Forman L Franca M Garden OH Geldenhuys MM Gibson H Goolam C Gopal CI Gouws PD Grealy L Green JM Harvey JS Henning KR Hillis Z Hlophe CM Holfeld PM Holloway KT Inglis ME Jarvis JC Jones CM Jonker S Jooste LA Kahn M Kennedy KE Kilner A Keyser A Khumalo MD Kota JC Kraamwinkel AC Kruger J Lamb LC Lambrechts E Louw M Mahlangu S Manley V Mannar L Marais G Masina T Masingi N Mbere MC McIntosh SJ McKenzie CS Meyer A Mhlongo AJ Mills D Milo M Mkhabela P Mohanlall N Moodley L Moolman LE Mostert VM Movshovich A Muir C Murphy D Naidoo P Naidoo DC Nchabeleng DP Ndiweni C Nöthling M Nxumalo AN Nyatumba MB Nzimande A October L Odendaal N Paige AS Parry S Patel N Pather GR Penfold SE Phajane M Philippides BA Phillips MA Phillips CH Pienaar MP Pool DJ Rafferty D Ramjettan GI Rapson K Rew G Richards-Smith SA Ritchie J Roberts Y Robbertse S Rule G Sader H Samsodien KE Shepherd N Singh N Singh-Nogueira P Singh S Sithole J Smit MP Spalding MW Strauli LJ Swaine Z Swanepoel WV Tembedza A Thakor T Theessen TK Thekiso C Theodosiou T Theunissen R Thavani G Truter PZ Vanda SE van der Meulen JP van der Poel MS van der Walt CS Vanmali L van Tonder JE Veeran HM Venter B Versfeld MG Versfeld TA Versfeld C Vertue T Viljoen DM Visagie EME Warmington J Watson AWR Westwood RH Wilson KD Wolmarans

Chief Operating Officer: SA Boyd

WB TH