

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

**CASE NO: 26339/21
SCA:581/23
CCT 267/23**

In the matter between:

**LEON AMOS SCHREIBER
THE DEMOCRATIC ALLIANCE**

**First Applicant
Second Applicant**

And

THE AFRICAN NATIONAL CONGRESS

Respondent

AFFIDAVIT IN SUPPORT OF THE COMPLIANCE OF THE ORDER

I, the undersigned,

FIKILE APRIL MBALULA

do hereby make oath and say that:

1. I am an adult male and the Secretary General of the African National Congress ("the ANC").
2. The facts stated in this affidavit fall, unless the context indicates otherwise, within my personal knowledge and are both true and correct
3. I depose to this affidavit on behalf of the Respondent, the ANC. I do so on the basis of the authority bestowed upon me by the ANC National Executive Committee. To that end, I attach a resolution to that effect as annexure "ANC 1".



4. To the extent that there are any submissions of law, these submissions are made on the advice of my lawyers which advice I believe to be true and correct.

PURPOSE OF THE AFFIDAVIT

5. This affidavit is an affidavit in compliance with the judgement handed down by the Honourable Judge Wepener on 2 February 2023 (“the Judgement”).

6. The Judgement states the following:

“In my view, it may very well be so that Schreiber has a clear case to bring the application (and his right was not disputed save to the extent set out below), but that does not permit the DA to attempt to enforce provisions of PAIA without it having complied with the prerequisites contained in PAIA to enable it to launch an application of this nature. The DA failed to follow the prerequisite steps in order to rely on a right to approach a court for relief, and thus failed to lay a basis for its right to be an applicant in this matter as it never qualified as a ‘requester’ in terms of s 78(1) of PAIA.”

7. Accordingly, the ANC, in compliance with the Order, hands the information requested to the First Applicant only, as the Second Applicant was found to not be entitled to the information.
8. Below, and in terms of the First Applicant’s Form C request, is a description of the record or relevant part of the record which was requested by the First Applicant, and provided by the Respondent.
9. The following information has been attached;
 - a. The full contents of the ANC’s Cadre Development Policy and Deployment Strategy for the period 1997 to 1 January 2021 (Annexure “ANC 2”).

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- b. Complete minutes for meetings of the National Deployment Committee (“the Committee”) between 1 January 2018 to 1 January 2021 (Annexure “**ANC 3**”).
 - c. A list of all decisions taken by the Committee in relation to, and in correlation with, the minutes of the Committee meetings held between 1 January 2018 to 1 January 2021 (Annexure “**ANC 4**”).
 - d. It was the modus operandi of the Committee that, under certain circumstances, decisions were dealt with by Round-Robin (Annexure “**ANC 5**”).
 - e. Emails, WhatsApps, and other social media exchanges where decisions of the Committee were discussed, deliberated upon, or taken during the period 1 January 2013 to 1 January 2021, and the contents thereof (Annexure “**ANC 6**”). These exchanges are only between Mr Thapelo Masilela and the members of the Committee and not the individual exchanges between the members themselves.
 - f. Copies of CV’s and vacancy notices which were considered for the period 1 January 2013 to 1 January 2021 (Annexure “**ANC 7**”).
 - g. All other correspondence communicating the decisions of the Committee for the period 1 January 2013 to 1 January 2021 which is in possession of the ANC at the time of signing this affidavit (Annexure “**ANC 8**”).
10. The following information has not been attached:
- a) Minutes for meetings of the Committee between the period December 2012 to December 2017. There are no minutes of meetings for this period as minutes were not kept. Minutes for these meetings were confirmed not to have been kept by Ms Desmoreen Carolus and Mr Lungi Mtshali, who were often present during those meetings during that period. Same is confirmed by Ms Desmoreen Carolus and Mr Lungi Mtshali in their confirmatory

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affidavits attached, marked as annexure “ANC 9” and “ANC 10”, respectively.

- b) Not all minutes were adopted and the minutes for 15 June 2020 could not be located.
- c) The non-existence of minutes for the period December 2012 to December 2017 was communicated to the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector (“Zondo Commission”) by the then ANC legal adviser, Mr Krish Naidoo, and is attached hereto as annexure “ANC 11”.
- d) The Zondo Commission’s report further confirmed this and same can be seen in an extract of the report, attached as annexure “ANC 12”.
- e) Decisions taken between December 2012 to December 2017 could not be retrieved as there are no minutes to confirm what decisions were deliberated upon, and supposedly taken by the Committee. It is possible that the Committee took decisions during that period, however, in the absence of minutes, any attempt at compiling a list of decisions would be an inaccurate reflection of the Committee’s decisions during that period.
- f) Email addresses, telephone numbers, names and other biometric information that compromise the privacy and security of individual data subjects that appear in the annexures above have been redacted in compliance with the Protection of Personal Information Act No 4 of 2013 (“the POPI Act “). The POPI Act provides for:

Section 2 Purpose of Act

The purpose of this Act is to-

(a) give effect to the constitutional right to privacy, by safeguarding personal information when processed by a responsible party,

subject to justifiable limitations that are aimed at-

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- (i) *balancing the right to privacy against other rights, particularly the right of access to information; and*
- (ii) *protecting important interests, including the free flow of information within the Republic and across international borders;*

- (b) *regulate the manner in which personal information may be processed, by establishing conditions, in harmony with international standards, that prescribe the minimum threshold requirements for the lawful processing of personal information;*

- (c) *provide persons with rights and remedies to protect their personal information from processing that is not in accordance with this*

Act; and

- (d) *establish voluntary and compulsory measures, including the establishment of an Information Regulator, to ensure respect for and to promote, enforce and fulfil the rights protected by this Act.*

Section 9 Lawfulness of processing

Personal information must be processed-

- (a) *lawfully; and*
- (b) *in a reasonable manner that does not infringe the privacy of the data subject.*

Section 26 Prohibition on processing of special personal information

A responsible party may, subject to section 27, not process personal information concerning-

- (a) *the religious or philosophical beliefs, race or ethnic origin, trade union membership, political persuasion, health or sex life or biometric information of a data subject; or*


11. The above quoted portions prevent the ANC from disclosing the personal information of the individual data subjects who appear in the records. Should the receiver of the information, as decided by the High Court, request the details which have been redacted to protect the personal information of individual data subjects, the information can be made available for physical inspection provided the respective individuals duly consent thereto.
12. The receiver of the information may inspect such information at our attorneys' offices with the explicit consent of the individual data subjects. We draw the receiver's attention to the provisions of POPIA against the misuse of information concerning individual data subjects, and the sanctions provided for such misuse.

STEPS TAKEN TO LOCATE THE DOCUMENTS.

13. We also outline the steps which were taken to locate the documents which the ANC could not provide, as per section C of the PAIA request.
14. The search began with the files of the late Deputy Secretary General, Ms Yasmin "Jessie" Duarte, who was the coordinator of the Deployment Committee for the period in question.
15. This also entailed consultations with the staff who provided secretarial services to the Committee during the period concerned.
16. With regard to the Minutes and *modus operandi* of the Committee the staff members indicated that these documents were not kept for the period in question.
17. It is worth mentioning that until 2018, the Deployment Committee did not keep minutes of its meetings. It was from the beginning of 2018, that minutes were kept. As indicated above, these minutes were submitted to the Zondo Commission.

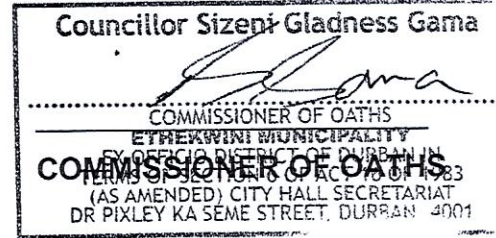
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18. In the absence of minutes of the Committee for the period in question, attempts were made to reconstruct the decisions taken by the Committee, based on other documents, including Organisational Report by the Secretary General to National General Councils (NGCs) and National Conferences for the period concerned. This proved to be of no avail as no decisions reported upon in these documents.
19. The policy and regulations governing the work of the Committee were communicated by the Secretary General's Office to ANC Ministers, as per decision and minutes of the Deployment Committee meeting of 14 October 2019.
20. Searches of emails and other forms of communications also confirm the non-existence of minutes for the period December 2012 to December 2017.
21. Mr. Thapelo Masilela (Strategic Support Manager: Deputy Secretary General's Office) confirmed that some information in respect to the Committee had unfortunately been lost when his laptop crashed. During 2023, his personal email account, which he used for the work of the Committee was full. In an attempt to free up space, he sorted emails by size and deleted the majority of the larger files. A number of emails which related to the Committee were included. Same is confirmed in his confirmatory affidavit, attached as annexure "ANC 13".
22. The information provided by the ANC is the information found to be in possession of the organization at the time of the signing of this affidavit, following a thorough search of our records.
23. All avenues available to the ANC have been exhausted in order to comply with the Court order. We submit that the ANC has taken all reasonable measures to comply with the order and the relevant legislation.



DEPONENT

I HEREBY CERTIFY THAT THE DEPONENT HAS ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, WHICH WAS SIGNED AND SWORN BEFORE ME AT DURBAN ON THIS THE 19 DAY OF February 2024, THE REGULATIONS CONTAINED IN GOVERNMENT NOTICE NO R1258 OF 21 JULY 1972, AS AMENDED, AND GOVERNMENT NOTICE NOR1648 OF 19 AUGUST 1977, AS AMENDED, HAVING BEEN COMPLIED WITH



FULL NAMES: Sizeni Gladness GAMA
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