



CONSTITUTIONAL COURT OF SOUTH AFRICA

Case CCT 19/24

In the matter between:

MANDLAKAYISE JOHN HLOPHE	Applicant
and	
SPEAKER OF THE NATIONAL ASSEMBLY	First Respondent
CHAIRPERSON: PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES	Second Respondent
ALL POLITICAL PARTIES REPRESENTED IN THE NATIONAL ASSEMBLY	Third Respondent
PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	Fourth Respondent
MINISTER OF JUSTICE AND CORRECTIONAL SERVICES	Fifth Respondent
JUDICIAL SERVICE COMMISSION	Sixth Respondent

DIRECTIONS

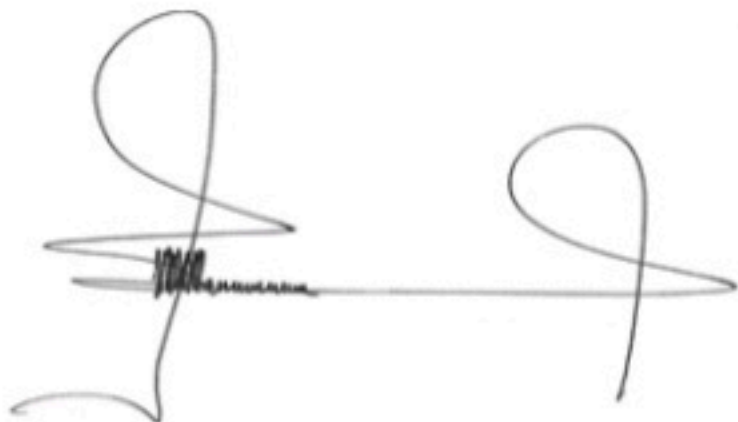
The Chief Justice has issued the following directions:

1. Ten Justices are currently sitting in this Court, namely Zondo CJ, Bilchitz AJ, Chaskalson AJ, Dodson AJ, Madlanga J, Majiedt J, Mathopo J, Mhlantla J, Theron J and Tshiqi J. With the exception of Bilchitz AJ, Chaskalson AJ and Majiedt J, the Justices are of the view that they may have reason to recuse themselves in this application. Their reasons are

different but relate to some of the following: allegations of enmity between one Justice and the applicant; being a member and chairperson of the Judicial Service Commission (JSC), which is one of the respondents; having previously adjudicated cases relating to the applicant; having appeared as counsel for two Justices of this Court in the disciplinary process that the JSC conducted against the applicant and at which oral evidence was heard; having appeared as counsel in judicial review proceedings in respect of a decision of the JSC affecting the applicant; attempting to mediate the dispute between Justices of this Court and the applicant; or a prior personal friendship with the applicant. If all seven Justices were to recuse themselves, the Court would not have a quorum to adjudicate the application before it.

2. In light of the above, parties are directed to lodge written argument not later than Monday, 22 April 2024 in which they deal with the following issues:
- (a) Do the parties agree that the above grounds are sufficient for recusal?
 - (b) Assuming that the grounds are sufficient for recusal, with the result that the Court is not quorate, must the Justices who ought to recuse themselves participate in the determination of this application?
 - (c) What would the basis for the participation of the Justices referred to in the preceding paragraph be? In this regard, the parties are invited to address this Court's judgments in *Hlophe v Premier of the Western Cape* [2012] ZACC 4; and *Nkabinde v Judicial Service Commission* [2016] ZACC 25 and the doctrine of necessity developed in certain other jurisdictions;
 - (d) Does this matter lie within the exclusive jurisdiction of the Constitutional Court in terms of section 167(4)(e) of the Constitution?
 - (e) Would the doctrine of necessity allow this Court, including any members who ought to recuse themselves, to determine—
 - (i) whether this matter lies within its exclusive jurisdiction?
 - (ii) the application on its merits, in the event of it being held that it does lie within the Court's exclusive jurisdiction?
 - (f) What is the appropriate order that the Court must make?

3. The entities reflected in the list below and any other entity with an interest in the matter may file written argument on the questions set out in paragraph 2(b) (c) and (e) not later than Monday, 22 April 2024.
4. Further directions may be issued.



SIBUSISO MAPOSSA
REGISTRAR
CONSTITUTIONAL COURT

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REGISTRAR OF THE CONSTITUTIONAL COURT OF SOUTH AFRICA		