IN THE HIGH COURT OF SOUTH AFRICA

(GAUTENG DIVISION, PRETORIA)

CASE NO: 46468/21

In the matter between:

HELEN SUZMAN FOUNDATION **Applicant**

And

NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES **First Respondent**

DEPARTMENT OF JUSTICE AND CORRECTIONAL SERVICES **Second Respondent**

MEDICAL PAROLE ADVISORY BOARD **Third Respondent**

JACOB GEDLEYIHLEKISA ZUMA **Fourth Respondent**

AND

CASE NO: 46701/21

In the matter between:

AFRIFORUM NPC **Applicant**

And

NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES **First Respondent**

THE MEDICAL PAROLE ADVISORY BOARD **Second Respondent**

JACOB GEDLEYIHLEKISA ZUMA **Third Respondent**

THE SECRETARY GENERAL OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE **Fourth Respondent**

THE MINISTER OF JUSTICE AND CORRECTIONAL SERVICES **Fifth Respondent**

THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA **Sixth Respondent**

AND

CASE NO: 45997/21

In the matter between:

DEMOCRATIC ALLIANCE **Applicant**

And

THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES **First Respondent**

THE MEDICAL PAROLE ADVISORY BOARD **Second Respondent**

JACOB GEDLEYIHLEKISA ZUMA **Third Respondent**

THE SECRETARY OF THE JUDICIAL COMMSSION
OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION, AND FRAUD IN THE PUBLIC SECTOR
INCULDING ORGANS OF STATE **Fourth Respondent**

THE MINISTER OF JUSTICE AND CORRECTIONAL
SERVICES **Fifth Respondent**

FILING SHEET

Filing of Respondent's Answering Affidavit who is Fourth Respondent under Case Number 46468/21, Third Respondent under Case Number 45997/21 and Case Number 46701/21.

DATED AT HONEYDEW ON THIS THE 28TH OCTOBER 2021.

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

CASES NOS: 45997/21
46468/21 and 46701/21

In the matter between:

THE DEMOCRATIC ALLIANCE	1st Applicant
THE HELEN SUZMAN FOUNDATION	2nd Applicant
AFRIFORUM NPC	3rd Applicant

and

THE NATIONAL COMMISSIONER OF CORRECTIONAL SERVICES	1st Respondent
THE MEDICAL PAROLE ADVISORY BOARD	2nd Respondent
JACOB GEDLEYIHLEKISA ZUMA	3rd Respondent
THE SECRETARY-GENERAL OF THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF STATE CAPTURE AND FRAUD IN THE PUBLIC SECTOR INLCUIDNG ORGANS OF STATE	4th Respondent
THE MINISTER OF JUSTICE AND CORRECTIONAL SERIVCES	5th Respondent
THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA	6th Respondent

THIRD RESPONDENT'S COMPOSITE ANSWERING AFFIDAVIT

I, the undersigned,

JACOB GEDLEYIHLEKISA ZUMA

do hereby make oath and say that:

1. I am an adult male and the former president of the Republic of South Africa residing at Kwa Nxamalala in Nkandla.

2. I am the third respondent in this consolidated application.

3. The facts set out below are, to the best of my knowledge, both true and correct. Save where the contrary is expressed or appears from the context.

4. Where I make the submissions of a legal nature, I do so on the advice of my legal representatives which advice I accept.

5. I have read the founding affidavits of John Steenhuisen in the **DA** application (case No 45997/21), Francis Antonie in the **HSF** application (case No 46468/21) and Ernest Roets in the **Afriforum** application (case No 46701/21) and I wish to respond to all three founding affidavits in this composite answering affidavit so as to avoid unnecessary repetition and prolixity.

6. The factual matrix is largely common cause, the documentation relied upon is common cause and the legal grounds raised by the three applicants overlap to a considerable extent. It will therefore be convenient to deal with all the issues raised in this single affidavit. Whenever necessary, clear indication will be given as to which affidavit is being dealt with.

7. Before dealing *ad seriatim* with some of the allegations made in the respective founding affidavits it will be appropriate to firstly raise certain all-inclusive preliminary legal points *in limine* in respect of all three applications and thereafter to spell out certain general and all-encompassing legal submissions which put the defences raised by me into perspective.

8. I am fully cognisant of the fact that the main thrust of the application(s) is to review the decision of the National Commissioner to place me on medical parole. I however, it is a matter in which I self-evidently have a direct interest and my perspective is therefore essential to consider, more particularly in that whatever the outcome of the present litigation is, it will have a huge impact on my health and well-being. If necessary, further legal argument will be advanced in this regard at the hearing of the application.

A: POINTS *IN LIMINE*

9. I now deal with the preliminary legal points, each of which may be dispositive of the matter, namely:

9.1. Urgency;

9.2. *Locus standi*;

9.3. Mootness; and

9.4. Non-joinder.

Urgency

10. This matter has been unusually brought as an urgent review application. Our courts only very rarely conduct urgent reviews because such matters are usually complex. The normal procedure is for an applicant to seek urgent interim relief to protect any urgently threatened rights and then to proceed with the actual review application itself in due course, also known as the Part A / Part B format. This particular matter is particularly complex due to the legal issues which arise, the proliferation of parties and the voluminous papers.

11. This matter also raises complex issues of separation of powers and the necessary judicial deference to public officials like National Commissioners who have been clothed with certain polycentric decision-making by the legislature.

12. The applicants have not advanced any sufficient grounds to demonstrate that this Part B application must be dealt with in terms of Rule 6(12)(a) of the Rules, or, as it is usually more simply put, why this case must jump the queue ahead of equally and more deserving cases

13. The spurious grounds advanced by the applicants, including the unsustainable notion that merely because a matter raises alleged violations of the Constitution or the rule of law, then it must *ipso facto* be heard as one of urgency, merely needs to be stated to be rejected. These various claims must be assessed against the threatened violations of any fundamental rights to life, dignity, bodily integrity and humane treatment in accordance with the values of ubuntu.

14. In any event, as indicated below in respect of mootness and to the extent that I am now eligible for ordinary parole, this entire exercise may well be only of academic and political value.

15. It is common cause that the relevant term of imprisonment will maximally end in October 2022, some 13 months after the institution of the application. There is no basis laid out in the papers why an application in due course will not have been long finalised by that time.

16. For its part, the HSF presents self-contradictory grounds of urgency. On the one hand, it seeks an order in its Prayer 5 that the period served under medical parole should not count towards the fulfilment of the sentence. In the same breath, the HSF states that the matter is urgent because Mr Zuma would otherwise "benefit" from an unlawful reduction of his sentence. This argument is illogical and untenable.

17. Apart from invoking the irrelevant factors relating to the alleged offence and judgment of the Constitutional Court, the HSF feigns surprise at the fact that Mr Zuma's personal medical information is not being splashed in public like all other human beings, even putting aside the obvious safety and security considerations or classified status thereof.

18. As far as Afriforum is concerned, no additional facts or real grounds for urgency have been addressed. As with the other applicants, reliance is merely placed on unsubstantiated and unsustainable legal conclusions.

19. Last but not least, the relief sought by the applicants in respect of both the merits and the remedy is so outlandish that it can be described as fanciful and unattainable. The idea that this Honourable Court can review and set aside a polycentric decision taken by the duly designated functionary and then go on to substitute its own decision, all this without any contradictory medical expert evidence or allegations of exceptional circumstances, is so outrageous that it can never be granted, either urgently or in due course. This would indeed be a textbook case of judicial overreach, a step which ought not to be in the urgent court and without affording the parties their full rights and the opportunity to engage with the issues.

20. In the circumstances, the application must be struck out on the grounds of lack of urgency.

Locus standi

21. Even if it is somehow found that the application is urgent, none of the three applicants have established the requisite *locus standi* to institute the present proceedings. In short, they have failed to provide sufficient grounds for this Honourable Court to find that a sufficient interest has been shown to exist on the part of the persons on whose behalf the application(s) has (have) been allegedly instituted. We deal with each applicant in turn.

The DA

22. The DA claims to be acting in its own interest in terms of section 38(a) of the Constitution and also in the public interest in terms of section 38(d).

23. No substantial facts are advanced to support either claimed basis for standing. The mere fact that the DA, like thousands of other organisations, is "*committed to the value (sic) of the rule of law*" cannot constitute sufficient basis for it to launch any application in which the rule of law has been allegedly infringed, which is the case in practically all judicial review applications. Neither is the public entitled to be directly represented in every court case simply because it has an interest "*in ensuring that the government abides by the law*". Such glib utterances do not even approximate the satisfaction of the sufficient interest test. I am advised that further legal argument will be advanced at the hearing to support the submission that the DA lacks the requisite standing to bring this application.

27. Afriforum also claims to have been approached by its unnamed ad unidentified members on an unspecified date and by unspecified means or medium, "*to launch this application*".

28. It too claims to be "*committed to the value (sic) of the rule of law and the equal application of the law*".

29. Suffice to reiterate that none of the pleaded grounds satisfies the sufficient interest test.

General remarks on *locus standi*

30. Putting aside the inadequacies identified in the pleadings which lack the necessary averments to establish *locus standi*, there are additional objections which will be elaborated upon in argument and which cut across all three applicants.

31. In my humble view, this application is a thinly-veiled political stunt aimed at cheap electioneering, racist hatred, opportunism and the unwanted attention of busybodies, such as the three applicants. They do not have any legitimate interest in the outcome of the application apart from posturing, attention-seeking and settling political and historical scores.

32. All three are white-dominated and proto-racist rightwing organisations whose mission in life is to mock the current black-dominated government, which I recently led as Head of State and President of the ruling party. I am one hundred percent certain that these organisations would not even dream of bringing a similar application if the person involved was one of the racist white former "Presidents" of South Africa, such as FW de Klerk or PW Botha, who

The HSF

24. The HSF only claims own interest standing. It bases its assertion of standing on two grounds, namely its "participation" in the litigation in the Constitutional Court, which resulted in the incarceration of Mr Zuma without the benefit of a trial. It claims to have been "*a party*" to that litigation. This claim is false since the HSF was only admitted as an *amicus curiae*, which fact was specifically reconfirmed by the Constitutional Court during the recent hearing of the matter in July 2021.

25. In passing, the HSF also claims to have "*in any event, public-interest standing given the public importance of the National Commissioner's decision and its effect on the rule of law*". Whatever this means, it is woefully inadequate to form a basis for standing under section 38(d) of the Constitution. Simply put, there is no basis pleaded in support of public-interest standing except alleged "importance".

Afriforum

26. The basis upon which Afriforum claims standing is rather confusing and confused. On the one hand, it claims to bring the application "*in the public interest and on behalf of its members*". This phrase suggests reliance on section 38(d) and 38(e). In the same breath and at paragraph 10.9, it claims to be an interested person, without any substantiation, and to be acting "specifically" in terms of section 38(d) and 38(e) of the Constitution.

NR FW

led the last two racist regimes under the system of apartheid which was a crime against humanity. This Honourable Court can no longer be the playground of apartheid apologists who nostalgically hanker for "*the good old days*" when black people, especially Africans, were treated as sub-humans. Their present conduct is nothing short of seeking a judicial lynching of their political opponent or enemy.

33. In any event and even if these were genuine and democratically minded organisations, which is denied, there should be no place in our courts for aimless busybodies to litigate in respect of matters in which they have no sufficient or legitimate interest. This will set a dangerous precedent, which will burden our already strained legal system by pushing out deserving cases and wasting scarce judicial resources.

34. What makes matters worse, these organisations, without any claim to any medical expertise, seek to second-guess the expert and educated opinions of qualified experts and prison officials which, upon the impugned decision to place me under medical parole, was based on the common-cause facts. Only arrogance can drive any lay person to do so without soliciting the assistance of their own experts. Our court system does not allow or condone such conduct.

35. In short, no party can have the *locus standi* to abuse the court process to advance ulterior, improper and/or racist motives and agendas. Apart form platitudes about the rule of law, the applicants have not revealed any rights or interests of theirs or those they represent which have been violated by the

conduct of the National Commissioner, which seeks to protect my own constitutional rights referred to in the rest of this affidavit.

36. I am advised that, based on the above, it will be strongly argued at the hearing that this application ought properly to be dismissed on the grounds of lack of standing, with punitive costs, so as to serve as a deterrent to other like-minded and would-be offenders.

Mootness

37. I am legally advised that in terms of the applicable regulations, and given my 15-month sentence, I am in any event eligible for ordinary parole and/or remission of sentence with effect from the point of having served a sixth of my sentence. That point was reached on or about the end of September 2021. In any event, as at the agreed date of hearing of this application, the point will have long passed. In terms of the law, the decision to place me on parole lies with the Head of the Correctional Centre, the same person who approached the National Commissioner because he disagreed with the recommendation to deny me medical parole. The decision is therefore *a fait accompli*, whether in his hands or those of the National Commissioner.

38. Whatever decision is reached by the court, if appealed, the final outcome of this application is unlikely to be determined before October 2022, when the full term of my sentence will expire.

39. In either event and based on the above, this application is only likely to yield academic outcomes, quite apart from interfering with my rights to attend to my obvious and indisputably pressing health issues. It is clear from the available

information that I have recently undergone a medical procedure and may be due for at least another one.

40. The application is accordingly moot, and it must be dismissed on that separate ground even in the unlikely event that this Honourable Court finds that it is urgent and that the applicants have *locus standi*, both of which are still denied.

Non-joinder

41. The applicants ought to have known from the start and, in any event, they were specifically advised by the National Commissioner that the documents upon which their cases were premised were in the possession of the Surgeon General (and/or SAMHS). They nevertheless voluntarily elected not to join the Surgeon General even in their supplementary affidavits.

42. The application ought accordingly to be dismissed for failure to join an interested and necessary party. Alternatively, the applicants must live with the consequences of their election, which, bearing in mind where the onus lies, amount to a dismissal of the applications.

43. All of the points *in limine* must be considered not only individually but also cumulatively.

AD THE MERITS

44. Before dealing separately and *ad seriatim* with the six separate affidavits delivered by the three applicants, it will be appropriate to deal briefly with the main thrust of the over-arching legal submissions which, I am advised, will

form the backbone of the defences to be raised on my behalf during legal argument.

45. First, it will be submitted, as already alluded to above, that the applications must fail for the applicants' failure to produce the necessary evidence to support their claims of reviewability, let alone the far-reaching relief they seek.

46. Second, the applicants clearly depart from the incorrect premise that the impugned decision of the National Commissioner was founded only on section 79 of the Act, read with the Regulations, when it has been specifically indicated that primary reliance was based on section 75 of the Act.

47. Third and even assuming that the decision was based on section 79, the applicants fail to appreciate that the National Commissioner has self-standing powers to grant medical parole, as separately provided on a proper interpretation of sections 75(7) and/or 79(1), whether read separately or together.

48. Fourthly, the role of the MPAB is to make a recommendation. A recommendation is, by definition, non-binding. The applicable regulations are silent on what must happen if the recommendation of the MPAB is negative. The regulation in any event only applies in the event of a section 79(2) application. Section 79(1) stands apart from section 79(2). It is also significant that the National Commission did consider the recommendation of the MPAB but together with other relevant medical evidence. In the present case, there was evidently no section 79(2) application.

49. Fifthly, most importantly and in any event (ie even if the above analysis is not upheld), what is crystal clear is that Regulation 29A, on which the present applications are pivoted, only apply section 79(2) applications and find no relevance to a decision taken in terms of section 75(7) of the Act. Section 75(7) clearly applies "*despite sections 75(1) to 75(6)*" and only in relation to "*a sentenced offender serving a sentence of incarceration for 24 months or less*". That is the category in which I fall. That a section 79(2) based decision is procedurally different from a section 75(7) decision is more clearly illustrated by the totally different cancellation and delegation regimes attached to each.

50. I also wish to point out that upon a proper reading of the available medical information and also information which was unfortunately leaked into the public domain by the NPA, it is by now publicly known that I suffer from a condition which "*carries significant risk to (my) life*". For obvious reasons, I do not wish to disclose the exact nature of the said condition, save to confirm that as an accurate description of what the relevant medical professionals have, *inter alia*, communicated to me and to each other, verbally and in writing, at all material times hereto. If necessary or disputed, the specific document referred to will be shared with the court. The applicants already have public access thereto.

51. In any event, on any reading of the medical opinions of Drs Mafa, Mdutywa and Mphatswe, considered together, there can be no doubt that the clinical requirements of medical parole were expertly found to exist. The interpretation of these reports must be done in accordance with the usual rules.

AJC

52. Accordingly and in totality, the grounds of review relied upon by the applicants fall to be dismissed in that the decision of the National Commissioner was both lawful and natural.

53. I am advised that further argument will be advanced in support of the approach enunciated above and the necessary dismissal of the applications.

54. I now turn to dealing *ad seriatim* with the relevant six separate affidavits. Any allegations not specifically dealt with must be regarded as having been specifically denied to the extent that hey differ from my version.

B: ANSWERING AFFIDAVIT TO THE FOUNDING AFFIDAVIT OF THE DEMOCRATIC ALLIANCE

AD PARAGRAPH 1 to 4 THEREOF

55. I admit that the deponent is an MP and a leader of the DA – which is the official opposition to the ANC – a party of which I am an ardent member and its former President. The DA is very hostile to the ANC and has made its political mission to use the courts to humiliate me in the political hope that this would strengthen its political interests and ideology.

56. I deny that the deponent has any personal knowledge to the facts contained in his affidavit. The facts on which he grounds this application are a political hunch and the false allegations he makes against me are natural political instincts borne out of the vast political differences that we have. Political banter and licence are allowed in parliament and political rallies but have no place in a court of law.

57. The fact that he brings this urgent application on information obtained from the mass media – the veracity of which is yet to be established from official sources – demonstrates the recklessness with which he uses the courts for his political interests. There is no rule of admissibility justifying reliance on newspaper articles and media statements on a matter which has official records. I specifically deny that there is a basis based on section 3(1)(c) of the Law of Evidence Amendment Act 45 of 1988. I am advised that reliance on these statutory provisions will be disputed during legal argument. The affected "evidence" is accordingly irrelevant and ought to be struck out or simply not taken account of in the determination of the matter.

58. I deny that the legal advice given to this deponent and his political party is true and correct. As will be shown below, it is woefully false and inaccurate and inadmissible.

AD PARAGRAPH 5

59. Save that I was sentenced to a term of imprisonment by the Constitutional Court without a trial and in circumstances that the minority judges held as unconstitutional circumstances, I note these allegations. I may mention in passing that I have since instructed my legal team to take the necessary steps to invalidate my incarceration without trial in the appropriate forums of international law, including the African Court of Human Rights and/or the UN Human Rights Committee.

AD PARAGRAPH 6

60. The allegations in this paragraph are admitted.

AD PARAGRAPH 7

61. Save that there is a legal or factual basis to conclude that the decision to place me on medical parole is "patently unlawful", it is admitted that I was placed on medical parole.

62. There is no evidence that my medical parole was taken for ulterior purposes. It is not clear what those ulterior purposes are and given that this political party does not describe those so-called "ulterior purposes" for which it alleges that my medical parole was given, I am unable to give a sensible response to this false statement.

63. The overwhelming objective evidence is that the decision was taken in line with the applicable law and my human rights. Our Supreme Court of Appeal has endorsed the correct view that "*it remains the continuing responsibility of Courts to enforce the constitutional rights of all persons, including prisoners*".

AD PARAGRAPH 8

64. That the applicant engages in senseless speculation as to the lawfulness of the decision is consistent with its propaganda on me to advance its political motives.

AD PARAGRAPH 9

65. It is false that the granting of medical parole is to evade the Constitutional Court's decision. I remain a prisoner of the Constitutional Court serving my sentence while on medical parole. The allegation that my contempt was so

serious as to constitute a near-existential threat to the authority of the court is false. It is mere political rhetoric devoid of any truth.

AD PARAGRAPH 10

66. According to this political party, the parole decision harms the courts only because it involves me. It is these false and an irresponsible attack on my rights by this political party that must be resisted firmly. To suggest that a system of imprisonment widely used and internationally practiced will be misunderstood by the public as a mockery of the judicial system is false and patronising nonsense. There are medical grounds on which I was granted medical parole and it is below the standard of inherent dignity to suggest that I was falsely given medical parole without any medical basis for it.

AD PARAGRAPH 11

67. I note these paragraphs.

AD PARAGRAPH 12

68. I admit that the DA is the applicant. It has no legal standing to bring this application. Section 38(a) and (d) of the Constitution has routinely been abused by this political party to use the courts for its political programs against me. There is no factual basis – other than the fact that I am a former political leader in the ANC and its committed member – for the false allegation that there is a basis to be concerned that the medical parole system has been abused by me or the State. This political party advances no factual basis for this false political narrative, but bases the allegations on political instincts, rumours and speculation routinely paraded in the media about me.

AD PARAGRAPH 13

69. I admit the allegations. Mr. Arthur Fraser has served his country well and I have the highest respect for his professionalism and integrity. He would not have abused the medical parole system to advantage me simply because I appointed him as the Director-General of State Security. His previous position as head of State Security is irrelevant to the relief sought by the DA but had to be mentioned just to give the false narrative the lies it needs to gain any speculative attraction. The DA does not mention that Mr. Fraser was appointed to the relevant position as then Commissioner by the incumbent President Ramaphosa and not by me.

AD PARAGRAPH 18

70. It is unclear why this Commission of Inquiry has been cited in a matter involving my medical parole, but it is unsurprising that this political party sees it fit to do so for political reasons. The Commission itself has publicly indicated that it will not participate in this vindictive political witch hunt disguised as a court application. Like the applicants, the Commission has no legal interest in my medical affairs.

AD PARAGRAPH 19 to 25

71. It is correct that I was forced by the Courts to establish a Commission of Inquiry on the terms of the remedial actions of the Public Protector. The lawfulness of the remedial action of the Public Protector remains a troubling matter for me and at the right time, the Constitutional Court must determine whether it

was competent for the Public Protector to direct the Chief Justice to appoint a judge to preside over a Judicial Commission of Inquiry under our Constitution.

72. The rest of the allegations, save to admit who the Commissioner is and the citation of the Minister of Justice, are simply noted.

AD PARAGRAPH 26 to 28

73. The legal submissions made in these paragraphs are noted. They will be addressed in written submissions if necessary.

AD PARAGRAPH 29 to 37

74. The legal submissions made in these paragraphs are denied to the extent that they are relied on for the conclusion that there was an ulterior motive in the Commissioner granting me medical parole. Further legal submissions will be made at the hearing of this application.

75. At the level of fact, the requirements for my medical parole were met. Given that the party seeking my imprisonment is a political opponent which gloats in my medical condition, I consider it unwise to surrender my constitutional right to refuse to disclose my medical condition. The DA has no interest in protecting my constitutional rights involved in my medical condition. I have no doubt it would feed its political ego to know that I suffer from a medical condition that makes it difficult for me to endure prison conditions without any assistance. I am serving my time while in medical parole and remain a prisoner in terms of the Constitutional Court's orders.

NB

AD PARAGRAPH 39 to 47

76. The backgrounds facts are irrelevant to whether the decision to grant me medical parole is lawful. The comments of the DA about me are a heap of a false political narrative so dangerous to my life that it has resulted in my unfair and unconstitutional incarceration. My story was not told by the Commission truthfully and fairly. A fair trial against me was not conducted to test the accuracy of the allegations made against me on which I was summarily convicted by the Constitutional Court. Since this is not a matter in which it is necessary to place the true and accurate facts, I do not set out to correct them. The DA can ride the political mileage it gains from my unfair and unlawful incarceration. I am entitled to hold the opinion or view that my incarceration without a trial was unconstitutional. While I serve my imprisonment I do so as I did under apartheid where my imprisonment, although ironically achieved through a criminal trial, was to silence me from criticising the abominable system of political oppression and fighting injustice. Ultimately, the DA's reference to why I am serving a term of imprisonment is irrelevant to whether the Commissioner acted lawfully in granting me medical parole. The separate issue of the lawfulness of my incarceration is a mater which has served before he domestic courts and is likely to be referred to the appropriate international fora.

AD PARAGRAPH 48 to 49

77. These allegations are a false political narrative amounting to despicable propaganda. I am entitled to use the law to protect myself from going to prison. Being a prisoner is not a pleasant experience, but I am a man of conscience

and will go to prison if I have to for my beliefs. I am currently a prisoner for my beliefs which I hold dearly. So, the allegation that I tried to avoid going to prison was somehow an indication that I was not prepared to go to prison is a despicable political lie consistent with the political propaganda of the DA about me. It would come as a surprise that even those who were sent to the gallows by those supported by the political organisation seeking my re-incarceration did not wish to die but would die for their beliefs. It is unfortunately not an experience any of these organisations have any experience of – fighting – even to death or prison on basis of conscience.

AD PARAGRAPH 50 to 56

78. These allegations are noted – they are however irrelevant to main issue on which the DA seeks its relief. They have been employed in this application to feed the political narrative that I abuse the state.

AD PARAGRAPH 57

79. Unless the DA has information that I was not in prison during this time, it is irresponsible to make irresponsible allegations that are irrelevant to the issue of medical parole. I was in prison and not at my home, if the DA should know that.

AD PARAGRAPH 58 to 61

80. The allegations in these paragraphs are noted.

AD PARAGRAPH 62

81. There is nothing suspicious about the public information or statements made conveying to the public my situation. Only the DA saw something wrong even without pointing out exactly what it is that is wrong or unlawful with the statements.

82. Even this paragraph does not say what it is that is wrong about the medical parole decision.

AD PARAGRAPH 63

83. The DA would have obtained the information had it wished to. There was no need to use moles in the system who do not like me to obtain information that could be obtained without any problem – who granted medical parole and who else was involved.

AD PARAGRAPH 64 to 66

84. The Department has a duty to ensure that decisions involving the constitutional rights of citizens are safeguarded. There was nothing unlawful with the Department's position.

AD PARAGRAPH 67 to 68

85. As stated above, there was nothing wrong with how the Department went about performing the duties of law imposed on them to carefully consider and grant medical parole. Had the DA asked the right questions to the right persons, they would have known that the Commissioner granted the medical parole.

AD PARAGRAPH 69 to 70

86. I should not be expected to engage in speculation of what happened. The DA now has the record to know the process that was followed to reach the decision. No allegation is made of impropriety other than to question why the centre manager did not make the medical parole decision if delegated to do so. The decision to grant me medical parole is not unlawful because the centre manager did not exercise a delegation.

87. The Commissioner will no doubt explain the reasonableness of his decision to grant medical parole.

AD PARAGRAPH 71 to 76

88. The legal submissions of the DA will be addressed in written submissions. They are denied to the extent that it is suggested that I acted in any way inappropriately and obtained a benefit unlawfully or in an unjustified manner.

AD PARAGRAPH 77 to 82

89. It would advance the insatiable political appetite of the DA to know the details of my medical condition. It is in any event not entitled to my medical information and cannot abuse the court to obtain such information without any legal basis. It is not a legal basis to violate my right to privacy of my medical records that the DA is a political party with a public that is interested in having me humiliated and displayed as a political rogue for its political interests.

90. The doubts of the DA on my medical conditions do not ground a legal entitlement to access my medical records. The DA would gloat endlessly if it

was in possession of written confirmation that its formidable political foe was sick with a terminal illness. The Courts must refuse to feed this political appetite which has no constitutional entitlement to my medical records for political reasons.

91. The DA has no interest in my medical records in order to ensure that I get good medical intervention or management. It has no interest in my medical condition to advise my doctors on what to do in order for my health to improve. Their main interest is political humiliation and degradation. It would make the DA a happy political party if it knew when I would die so that a major huddle to its political agenda of trapping South Africa in its racist narrative is eliminated.

92. It is not a constitutional interest to wish for my incarceration in circumstances where my medical team has determined that there are objective medical facts and circumstances that justify my release to serve my prison sentence on medical parole.

93. It is irrelevant that I refused to have the NPA appointed doctors to conduct a physical medical examination of me. The conduct of the NPA itself in relation to my medical records is a matter for criminal investigation. That the DA rides on the NPA's irresponsible and unlawful handling of medical issues involving me confirms my suspicion that the DA has unlawful access to the NPA – having managed to secure the affidavit which supports the review application setting aside the NDPP's decision to terminate my prosecution.

94. To the full knowledge of the applicants, the reference to Shaik is irrelevant and only intended to add political spice. It is intended to suggest impropriety in

circumstances where there is no factual or legal basis. The decision to place Shaik on medical parole has never been reviewed by the DA or any of these applicants. The inclusion of political cartoons and satire merely confirms the callous and bloodthirsty disregard by the applicants for my dignity, health and well-being, which to them is a source for comedy and derisive laughter.

AD PARAGRAPH 83

95. The DA has not placed any known facts to suggest that I am not entitled to medical parole. There is no publicly available evidence to support the false premise of the DA to which it has referred to. If indeed there is such evidence, there is nothing in this affidavit that has been alleged as evidence that I am not entitled to medical parole. The problem with the DA is that it is politically obsessed with me that it has budgeted and committed substantial resources to humiliate me without a cause.

96. The onus is on the DA and its fellow applicants to establish grounds to review and set aside the decision of the National Commissioner to place me on medical parole in terms of section 75 of the Act and not the other way round.

AD PARAGRAPH 84

97. There is no basis advanced by the DA for the Court not to accept the *ipse dixit* of the medical professionals and the Department on the medical parole. The Court has not brought this application but the DA. There is no evidence that the granting of medical parole was an abuse of the system. It cannot be an abuse of the parole system just because the DA says so. There must be a credible and objective factual basis to second-guess the Department's

decision and the DA has dismally failed to meet the threshold calling for the Department to answer its queries. Reckless and unfounded political statements based on political interests will not suffice to attract judicial intervention.

98. The Court must refuse to be used as a DA platform for advancing its political propaganda against me or the ANC or government. The DA application is an abuse of the court process which it is using to advance the politicisation of my medical information to impugn my medical parole. It is a despicable abuse of the court process which should be deprecated by an appropriate order of cost.

AD PARAGRAPH 85

99. These are again reckless speculations that are not supported by any evidence. Just so it is understood by the DA, I remain a prisoner serving my sentence on medical parole. Our law allows it, all decent democracies allow it and international law allows it.

AD PARAGRAPH 86 to 88

100. This matter is self-evidently not urgent. In essence the DA contends that it is my physical presence in a physical prison that is urgent. That clearly cannot be urgent, even if it were found that the Commissioner was wrong in granting medical parole.

101. The application must be struck off the roll of the court for lack of urgency with costs, including the costs of three counsel, for the reasons already advanced above.

AD PARAGRAPH 89 to 90

102. The DA is not entitled to prescribe to the Department what the Rule 53 record should contain. However, to the extent that the DA hopes the Department to breach the law by disclosing the details of my medical record, it is denied that there is a constitutional entitlement to my medical records by private parties and private organisations with no *locus standi* to bring this litigation in the first place. Rule 53 cannot be abused to obtain the confidential information of a political enemy. It is intended for *bona fide* litigants.

AD PARAGRAPH 91 to 92

103. Everyone in South Africa, including the deponent, has a right to have his or her medical record protected from unlawful disclosure. It would be unconstitutional and unlawful to force me to disclose my medical records in order to arm a political foe with information it can use to humiliate and degrade my constitutional rights for political purposes. I have no doubt that if my medical records where to be known by the DA I would predictably be exposed to the most unpleasant political humiliation and controversy. It would be a reckless disregard of my constitutional rights to arm my political foes with my medical records. The DA has no medical interest in my information but political interest. It has no legal right to access my medical information.

AD PARAGRAPH 93 to 94

104. The legal submissions are simply absurd and outrageous, but that is not surprising for the DA has no capacity for self-reflection on the appropriateness of violating my constitutional rights.

105. The warning of dire consequences to the Commissioner, should he insist on protecting my constitutional rights, constitutes hot air, false political bravado that can only be powered by an inflated sense of political entitlement and mere arrogance. The DA is warned not to violate my constitutional rights and to stop demanding my medical records for its political agenda. It is not lawfully entitled to this information.

AD PARAGRAPH 95

106. There is no basis for a substitution order sought by the DA. The DA has not provided the documents and information necessary for the Court – inclined to adopt this rather extraordinary remedy – to do so. No exceptional circumstances have been pleaded or established by any of the applicants to justify such an order.

107. It would in any event not a just and equitable order to, upon reviewing and setting aside the medical parole decision, to order my immediate incarceration. A great amount of work has been done to ensure that I have access to the support that I need in my medical situation. In any event, a medical parole, even incorrectly granted, does not undermine the purpose of imprisonment. There is no proof that I have abused the medical parole conditions or intend to engage in any manner that undermines the terms of my medical parole. I continue to serve my imprisonment while at home.

No TP C

C: AD RESPONSE TO DA SUPPLEMENTARY AFFIDAVIT

AD PARAGAPH 1 TO 5

108. I dispute that the by virtue of the political positions that the deponent has, he is entitled to the relief sought by the DA. The DA has no right to abuse the processes of the court to advance their political objectives against me. More importantly, the DA does not have a right to my medical information which forms the basis of this ill-conceived application.

109. I also deny that the facts contained in this affidavit fall within his personal knowledge. I reiterate my objections to the *locus standi* of the DA to pursue this application.

AD PARAGRAPH 6

110. The contents of this paragraph are noted.

AD PARAGRAPH 7 to 9

111. It is admitted that this application was launched by the DA on 10 September 2021 and that organisations of similar political interests did the same. It is admitted that I am opposed to having my medical records disclosed to these political organisations, which have no constitutional entitlement or right to my private medical information.

AD PARAGRAPH 10

112. The allegation that the Commissioner has failed to provide private medical information to a political party which seeks to abuse it for its political interests

is denied. The Commissioner is under a legal duty not to disclose private medical information which is sought by a political party that is not entitled to it but wants to abuse private medical records for political interests. The Commissioner's refusal to give this political party a record of my medical records is consistent with the Constitution – for it is ultimately a constitutional obligation of the Commissioner under section 7(2) of the Constitution "*to respect, protect, promote and fulfil the rights in the Bill of Rights.*"

113. If this political party is interested in challenging the lawfulness of the Commissioner's action in relation to the Rule 53 record, it has ready legal remedies which it has voluntarily elected not to invoke. Having accepted the record in its current format, it is legally precluded from alleging that the Commissioner has acted unlawfully or failed to meet the requirements of rule 53 of the Rules of the High Court. The political party cannot seek to benefit from its own failure to invoke applicable legal remedies for the purpose of obtaining the full record on which the medical parole was granted to me. It cannot blow hot and cold.

AD PARAGRAPH 11

114. The reasons advanced by the Commissioner are consistent with its obligations in terms of the law and the Constitution. As an organ of state, it has a duty to act in terms of section 7(2) of the Constitution in relation to my constitutional right to the privacy of my medical records. My constitutional rights that the Commissioner is enjoined to protect are set out in the following sections of the Constitution:

114.1. Section 9(1) which guarantees that I am equal before the law and have a right to equal protection and benefit of the law;

114.2. Section 10 which guarantees my right to inherent dignity;

114.3. Section 12 which guarantees my right to freedom, security and bodily integrity and not to be treated or punished in a cruel or degrading way;

114.4. Section 14 which guarantees my right to privacy and

114.5. Section 24(1) which guarantees my right to an environment that is not harmful to my health or well-being;

115. Just to be clear, I do not consent to have my medical records disclosed to political adversaries as these applicants – whose only interest in having access to the records is to have me incarcerated in a prison, to ridicule me and my health condition and in doing so, to satisfy its insatiable political ego. I also do not consent to my medical information disclosed to anyone other than my medical team who have my medical health at the fore of their interests. I do not even consent to my medical information disclosed to the judge or court hearing this matter. The Court does not possess the medical expertise to appreciate the decisions taken by medical experts on my medical conditions or by those directly involved in dealing with prisoners who are not well.

116. Neither can I be forced to enter into a confidentiality regime or "agreement" against my free will and with persons who harbour animosity, hatred and racist intentions towards me.

AD PARAGRAPH 12

117. I deny that withholding my consent to have my medical records paraded before political party platforms which may include rallies or disclosed to my political adversaries whose main interest is advancing a political vendetta against me is unlawful. I do have a veto over the security or disclosure of my medical information. If the DA wants to challenge the Commissioner's legal understanding of his or her legal responsibilities with regards to the disclosure of medical records of prisoners, they ought to make a frontal attack on that understanding and position. It is not permissible for this political party to allege that the Commissioner has acted unlawfully without frontally challenging the decision to not disclose the private medical information on the basis that I decline to give my consent. Legal arguments on this will be advanced at the hearing of this application.

AD PARAGRAPH 13

118. There is no legal challenge to my refusal to give the Commissioner the right to disclose my medical records. I deny that my refusal is unreasonable. The applicants are political bodies interested in humiliating and devaluing my constitutional rights in order to advance their political objectives. I do not believe that the applicants have any constitutional entitlement to my medical record – even under the ill-defined concept of accountability. I do not account to the applicants for my medical situation. My refusal to accede to the so-called robust confidentiality agreement is based on the fact that I do not believe that the legal representatives of these hostile political adversaries have a right to my medical records either. The lawyers of the applicants are

dutybound to represent the inseparable political and legal interests of their clients. The confidentiality agreement is therefore not a justifiable limitation on my constitutional rights to the privacy of my medical information.

119. As far as it is suggested that a judge must be given the right to peek into my medical records, it is unhelpful to do so, unless it is suggested that the judge will, upon peeking into my medical record, decide whether the medical basis on which I was granted medical parole is reasonable, without any submissions from the parties. A judge should not be placed in such a position, unless it is suggested that the parties involved in the litigation will make submissions on the medical record, based on contrary expert evidence.

120. My decision to decline giving access to persons who have no interest in helping me to improve in my health would be an act of self-hate. How can it possibly be a reasonable demand on me to give the enemies of my peace and freedom access to the very information that they need in order to continue heaping abuse on me and my family? My refusal to give the DA and HSF my medical records is perfectly reasonable and lawful in all the relevant circumstances.

121. Given that my refusal is not a subject of direct challenge by these adversaries, it stands uncontroverted by any evidence of unreasonableness. Essentially, all the applicants believe that my refusal to give them access to my medical records is unreasonable because they are unable to abuse it for their political goals.

NB

AD PARAGRAPH 14

122. The allegations in this paragraph have been answered. I disagree that my refusal to give the applicants access to my confidential medical record is an unjustified limitation on their rights to have access to them.

AD PARAGRAPH 14.1

123. The lawyers of the applicants do not have higher rights to my medical records than their clients. The confidential agreement that allows the lawyers to seek access to my medical records on the threat of a punitive cost order against me is not worth its salt and I decline to have my medical records published to the lawyers of the applicants. The lawyers can only perform their duties if they share the information with their clients. Otherwise, it will be of no use or relevance to them. They have no such rights.

124. The allegation that my refusal to give these lawyers access to my medical records so that they can challenge the lawfulness of my medical parole is "*self-serving and unreasonable*" is preposterous. The submissions on why my refusal to accede to an "only-lawyers" confidentiality agreement is not unreasonable as it is not a legal obligation on me. I certainly do not have a legal obligation to agree to the release of my medical records to lawyers of my political opponents. I trust that professional integrity of the lawyers but the same cannot be said about their clients.

AD PARAGRAPH 15

125. The applicants have not frontally challenged the lawfulness of the classification regime on any basis. It must be taken that such classification

regime is lawful until set aside on the basis of law. On the basis of their classification, the medical records cannot be given to the applicants so they can parade them in their political platforms and programs. This too demonstrates the lawfulness of the Commissioner's decision not to breach the classification requirements on my medical records. If the applicants wish to challenge the lawfulness of this classification regime, they should do so, but my leave me alone in that challenge. On the *Oudekraal* principle, until such time that the classification requirements are reviewed and set aside, they are binding on everyone, including the lawyers of the applicants.

126. Even if I were to grant consent, the applicants would still have to navigate the applicable intelligence classifications and the protocols of SAMHS.

AD PARAGRAPH 16

127. The allegations are without merits. The choice of the applicants to pursue this application in this manner is what has drawn them into this litigation quagmire. The applicants knew that the legal and constitutional issues involved in their respective applications were too complex to be resolved through back-door deals and procedural short-cuts. It is clear that the bringing of the application on an urgent basis was not based on a principled legal basis supported by clear constitutional grounds. These political organisations brought the applications to advance their political interests, rather than vindicate constitutional disputes between them and me or the Commissioner.

128. It is therefore the fault of the applicants that they seek to have this matter resolved on an urgent basis without first resolving very engaging constitutional questions relating to their entitlements to my medical records.

AD PARAGRAPH 17

129. It is unsurprising that the DA falsely alleging that there is a bait from me to drag it into any litigation. I do not wish to have anything to do with the DA at all and if I could avoid it I would do so. It is the DA that took its own bait by taking political chances with the courts to advance what is essentially a political interest. It is false that there is such an appearance on the Commissioner who has correctly applied the law to protect my constitutional rights and to avoid placing in the hands of my political adversaries my medical information for them to do what they wish with it outside this litigation. The election to proceed with the litigation despite this complaint shows the false pretences at seeking to obtain any legal basis for accessing my medical records. Without my medical records, it is impossible for the DA and its allies in this litigation to contend that the Commissioner acted unlawfully. It is equally so that a Court cannot find that there is a basis on which to review and set aside the decision of the Commissioner in the absence of essential facts – known to the applicant to exists – but for political reasons, the applicant elected not to seek a judicial remedy on whether it is entitled to my medical record.

130. On the basis of its election – it must be accepted that there is no factual basis – for contending that the Commissioner or myself acted unlawfully in relation to my medical parole. There is no basis for contending that there are no medical grounds for my medical parole. It is clear even on the redacted version of the record that the Commissioner took into account medical grounds for his decision to place me on medical parole.

NK

131. More significantly, there is no basis upon which this Honourable Court could possibly determine as a fact that the undisclosed portions of the record do not contain evidence in support of the decision. It is for the applicants to allege the contrary, upon a proper legal foundation. The court cannot engage in speculative guesswork. Neither can it aid and abet a fishing expedition.

AD PARAGRAPH 18 to 34

132. The applicants have failed to take appropriate steps necessary to determine whether there is a legal duty on the Commissioner to disclose my medical records to them. It must therefore be accepted that the Commissioner's conduct is lawful.

133. The applicants have not frontally challenged the lawfulness of the Commissioner's duty not to disclose my medical records based on my refusal to give him consent and the classification. Instead, they seek to circumvent this duty on the Commissioner by proposing the so-called robust 'confidentiality agreement'.

134. The applicants have also failed to challenge my right to refuse to have my medical records disclosed to them. The allegation that my refusal to accede to a confidentiality agreement is unreasonable cannot be a legal challenge worthy of any response. There is no legal duty on me to accede to a confidentiality agreement that I have been advised on. Given the political purpose for which this medical information is sought by the applicants, it cannot be unreasonable that I declined to give in to their demands. The applicants seek access to my medical records in order to humiliate me. They seek my physical re-incarceration and thereafter to gloat in their political

platforms of a political victory. They seek to abuse my medical records so as to bolster their political insignificance. Ultimately, they seek to abuse the processes of the courts to continue their narrative that I am corrupt and have obtained this medical parole in a corrupt manner. That is why they falsely contend that my refusal to accede to their demands for access to my medical information is self-serving.

135. None of the allegations set out in these paragraphs in any event amount to an obligation to disclose confidential medical information either by the Commissioner exercising his legal powers or without my consent.

AD PARAGRAPH 40

136. It is false that the Commissioner's conduct sets a dangerous precedent. Instead, given the constitutional obligations in section 7(2) of the Constitution, read with the statutory powers of the Commissioner, it would be constitutionally dangerous for the Commissioner to disclose medical records of inmates to political parties. What is a danger to the protection of our constitutional rights is a commissioner who will bow to the litigation and political bullying tactics of political parties wishes to use private medical records in his possession to advance political interests that have nothing to do with the management of the medical conditions? The danger to our constitutional democracy is allowing political parties to abuse the courts by seeking orders that endorse the violation of constitutional rights. An order that my medical records are disclosed to political groups for use in their political programs would violate my rights and an abuse of the judicial process.

D: JUST AND EQUITABLE ORDER

137. There is no basis for any order of review and set aside, let alone substitution.

138. This application must be dismissed with costs including a punitive costs order or attorney and own client. It is clear that the application has been brought in order to abuse the court for the political interests of the DA. In its political campaigns, the DA has made its goal to scandalise my medical condition by calling into doubt whether or not I am not well. The public statements made on my medical parole is reckless and inconsistent with the principles of ubuntu as I should not be expected to defend myself against a political party on my medical condition.

139. In any event, the matter is not urgent. It is not urgent that I am physically placed in a prison to serve my sentence. I am serving my sentence on medical parole.

140. Finally, the application has presented no factual basis or evidence to challenge the decision of the Commissioner. It is engaged in speculation which in itself serves its political narrative rather than an attempt to have a genuine constitutional dispute resolved. In the absence of any orders challenging the lawfulness of the Commissioner's decision not to disclose my medical record, or my decision not to grant my consent to my medical records disclosed to a hostile political foe for its political use, the threshold required to review and set aside the Commissioner's decision on any basis has not been met.

NB

141. Even if there were grounds to review and set aside the impugned decision, which is denied, then the appropriate remedy would be a remission order and not a substitution order. None of the legal requirements for a substitution order have been pleaded or are in existence. Simply put, none of the exceptional circumstances justifying a substitution, as set out in the leading case of *Trencon Construction v IDC* 2015 (5) SA 245 (CC), are in place.

E: ANSWERING AFFIDAVIT TO FOUNDING AFFIDAVIT OF AFRIFORUM

AD PARAGRAPH 1 to 4

142. I admit that the deponent but deny that he is authorised to depose to this affidavit. There is nothing in this affidavit supporting the allegation of authority to depose the affidavit.

143. I deny that the deponent has any personal knowledge to the facts contained in his affidavit. He has no knowledge of the facts on which my medical parole was granted. He has no knowledge of my medical condition on which I was considered and granted medical parole.

144. I deny that the legal advice given to this deponent and this organisation is true and correct. As will be shown below, it is woefully false and inaccurate.

145. For the reasons already advanced above, I also dispute Afriforum' s *locus standi*.

NB JGZ

AD PARAGRAPH 5

146. There are no grounds set out to support the allegations of urgency. The only urgency that this applicant may claim is my physical incarceration. That cannot ground urgency.

AD PARAGRAPH 6 to 9

147. There is no basis on which newspaper articles and medial statements issued by known persons should be admitted on the basis of the law of evidence in section 3(1)(c) of the Law of Evidence Amendment Act, 45 of 1998.

148. A matter seeking to have my physical incarceration cannot be based on hearsay, speculation and conjecture. A civil rights organisation ought not seek the incarceration of anyone hearsay evidence. No reasons are granted why hearsay evidence should be relied on for my urgent re-incarceration.

AD PARAGRAPH 10

149. It is surprising that an organisation that pretends to be involved in the protection and development of civil rights within the Constitution should disregard its mission to support this irresponsible attempt to violate my constitutional rights.

150. It is denied that the application is brought in the public interest. I also dispute that it has brought this application at the request of its members. However, I deny their constitutional entitlement to the relief sought and its basis. Nothing in its designation entitles this applicant to be granted access to my medical records on which I was granted medical parole. Neither the public on which

the applicant claims to bring this application nor its members are entitled to have access to my medical records from which it may challenge the lawfulness or the medical parole decision.

151. It is denied that this matter has anything to do with public accountability. My medical parole was dealt with in accordance with the law and so far, no sensible basis has been advanced to justify the standing to challenge the medical parole decision on the basis of rule of law.

152. The rest of the paragraphs are vacuous instances of self-praise that do not accord with its demonstrated activities.

153. There is no evidence whatsoever in this application that supports the allegation that members of this organisation decided on this application.

154. There is also no evidence that I have abused the medical parole system by this civil rights organisation. But it is unsurprising that these same allegations in this paragraph are glibly made by political organisations with a political agenda involving my humiliation. A true civil rights organisation must always seek to advance legal principles that protect human rights and not engage in political agendas as in this case. The affidavit so far reads as that of the DA, and one is left with the distinct impression that there was political collusion by the three applicants to engage in this fruitless litigation.

AD PARAGRAPH 11 to 16

155. It is unclear why the President of the Republic and the Commission of Inquiry headed by Justice Zondo has been cited as respondents. They self-evidently have no legal interest in the decision on my medical parole.

AD PARAGRAPH 17 to 19

156. There is no relief to my knowledge sought against these respondents at all and their citation is justified for speculative interests that they may have without pointing out exactly what that interest may be. This is an irresponsible citation of parties with no legal basis for doing so.

AD PARAGRAPH 20 to 21

157. The allegations in this paragraph are admitted.

AD PARAGRAPH 22 to 23

158. Save that this application has no merit, the allegations in these paragraphs are not noted.

AD PARAGRAPH 24

159. The grounds for seeking to set aside my medical parole are without any merit to the extent that they are based on medical grounds. The Commissioner will no doubt explain the legal basis on which he took his decision to grant medical parole. I fully align myself with his grounds save that in the event that it is found that he erred, a just and equitable order, consistent with proven facts, is to refer the matter back to the Commissioner for reconsideration. While that takes place, I should be allowed to remain on medical parole until that position is revoked by the Commissioner or any responsible functionary.

AD PARAGRAPH 25 to 26

160. This applicant and its litigation allies should know that medical parole is not given for the public but based on specific medical circumstances. That the public may be invited to make representations on whether an inmate should be granted medical parole does not give the general public a legal right against a medical parole decision.

161. The public which is imbued with the principles of ubuntu rather than vengeance and vindictiveness would not wish to have an 80-year-old man kept in prison for the sake of it or because it pleases political bodies like this applicant.

162. There is no evidence that my medical parole was taken for ulterior purposes. It is not clear what those ulterior purposes are and given that this political party does not describe those so-called "ulterior purposes", for which it alleges that my medical parole was given, I am unable to give a sensible response to this false statement.

AD PARAGRAPH 27

163. There are no facts on which a court may reasonably exercise its substitution powers. In fact, the principles on substitution do not support the relief sought by this applicant.

AD PARAGRAPH 28

164. It is not stated in what way and on what procedure the court should substitute its role for that of the Commissioner. It is denied that the legal threshold for

substitution has been reached based on the correct facts of what happened. Legal argument in this regard will be advanced at the hearing, with specific reference to the relevant decided and binding authorities.

AD PARAGRAPH 29 to 34

165. I do not need to answer these allegations. They are irrelevant to me.

AD PARAGRAPH 35

166. The Commissioner is obligated to respect my constitutional right to the privacy of my medical information. This applicant and its members are not entitled to my medical information.

AD PARAGRAPH 36 to 40

167. The application in Part A does not make out a case for interdictory relief. In the main, there is no clear or prima facie right that the applicant has demonstrated to my medical information on which the medical parole was granted. In any event, there is no basis for any interdict over my medical records since the applicant has no right to them.

AD PARAGRAPH 41 to 43

168. These allegations do not make out a case for the urgent review of the Commissioner's decision. There is no factual or legal basis to impugn the Commissioner's decision to grant medical parole.

AD PARAGRAPH 44 to 46

169. The allegations involving why I am serving a jail term are irrelevant to whether a decision to grant medical parole is lawful, rational or reasonable. It is well-known that the Constitutional Court summarily tried and sentenced me without any trial and opportunity to defend myself in criminal proceedings.

AD PARAGRAPH 47 to 62

170. The legal submissions on the law of parole are noted. They will appropriately be dealt with in written submissions on my behalf. To the extent that it is alleged or implied that I breached any of the provisions on medical parole or abused any aspect of the medical parole, I deny the allegations.

AD PARAGRAPH 63 to 65

171. I deny that the facts in this affidavit support any basis to review and set aside this medical parole decision.

172. I am not aware of any other reason why I was granted medical parole other than medical reasons. This civil rights organisation has not provided a factual basis to support the false allegations that my medical parole was made for any other reasons other than medical reasons. I should not be expected to engage in divination on what this organisation believes are the reasons for the granting of medical parole other than medical reasons.

PARAGRAPH 66 to 73

173. The legal grounds for seeking to review and set aside the medical parole decision are denied. It is unclear on what facts they are made since this

organisation does not know the medical basis on which the decision was made. What the applicant seeks to achieve is to obtain far-reaching orders based on speculations and hearsay information obtained in the media and rumour.

AD PARAGRAPH 74 to 76

174. I have dealt with why this application is not urgent. My physical incarceration is not urgent for purposes of satisfying the orders of the Court. As this civil rights organisation should know I continue to serve my sentence on medical parole. It is not urgent that I should do so in the confines of a prison.

F: AD REPONSES TO THE AFRIFORUM SUPPLEMENTARY AFFIDAVIT

AD PARAGRAPH 1 to 4

175. The allegations in this supplementary affidavit are noted save to deny that the deponent has proven his authority to depose to this supplementary affidavit.

AD PARAGRAPH 5 to 7

176. The allegations in this affidavit are noted.

AD PARAGRAPH 8

177. This organisation never expected these respondents to oppose the relief it seeks. They should not have been joined in the first place because there is no legal interest that they have in the decision of the Commissioner.

AD PARAGRAPH 10 to 12

178. There was no legal basis to seek the record on an urgent basis. The rest of the allegations are noted.

AD PARAGRAPH 13

179. It is noted that the record was produced as demanded by this organisation.

AD PARAGRAPH 14

180. I note the approach of this applicant.

AD PARAGRAPH 15 to 17

181. The legal submissions made in these paragraphs are noted but will be thoughtfully engaged with at the hearing of this application and in written submissions.

AD PARAGRAPH 18 to 21

182. These legal submissions will appropriately be dealt with at the hearing of this application and in written submissions.

AD PARAGRAPH 22 to 28

183. Even if the regulations were relevant, the operative word underpinning the role of the MPAB is "recommend". Their recommendations do not bind the decision-maker who must do so independently and without any undue influence.

184. It is specifically denied that the law, properly interpreted, prevented the Commissioner to place me on medical parole.

AD PARAGRAPH 29 to 30

185. The conditions of my medical parole include that I be given medical support on a continuous basis. Medical parole entitles me to serve my sentence while I am at home. My home is at Nkandla.

AD PARAGRAPH 31

186. These argumentative submissions will be dealt with in argument and with reference to the available medical evidence.

G: JUST AND EQUITABLE ORDER

187. This application must be dismissed with costs including a punitive costs order or attorney and own client. It is clear that the application has been brought in order to abuse the court for the political interests of the DA. In its political campaigns, the DA has made its goal to scandalise my medical condition by calling into doubt whether or not I am not well. The public statements made on my medical parole is reckless and inconsistent with the principles of ubuntu as I should not be expected to defend myself against a political party on my medical condition.

188. In any event, the matter is not urgent. It is not urgent that I am physically placed in a prison to serve my sentence. I am serving my sentence on medical parole.

NR TATE

189. Finally, the application has no factual basis to challenge the decision of the Commissioner. It is engaged in speculation which in itself serves its political narrative rather than an attempt to have a genuine constitutional dispute resolved. In the absence of any orders challenging the lawfulness of the Commissioner's decision not to disclose my medical record, or my decision not to grant my consent to my medical records disclosed to a hostile political foe for its political use, the threshold required to review and set aside the Commissioner's decision on any basis has not been met.

H: RESPONSE TO HSF FOUNDING AFFIDAVIT

AD PARAGRAPHS 1 AND 2

190. It is denied that the contents of this affidavit are true and correct. The HSF does not operate any incarceration facilities for purposes of managing inmates. It is also denied that Mr Antonie has any personal knowledge the facts on which this application is based.

AD PARAGRAPH 3 to 5

191. It is denied that the application is urgent. There is no basis set out in this application for why my physical incarceration in prison walls is an urgent matter. It is within the law to serve prison sentence on medical parole or any other form of parole. The fact that the HSF, for no lawful reasons – other than its political hatred of me – wish for my physical incarceration is not an urgent matter. The rule of law is not undermined when I continue to serve my sentence as a prisoner of the Constitutional Court.

JGZ

192. It is denied that the review application is justified by the principle of legality. Serving sentence under parole conditions is not a violation of the rule of law. That is why our penal system allows under specific conditions for an inmate to be granted early release from prison, medical parole or general parole. The only reasons I can see for this self-manufactured urgency is the desire to feed the popularised narrative that I am so corrupt that I am able to gain undeserved medical parole – even where it is clear that there is a medical basis for such parole.

AD PARAGRAPH 6 to 10

193. The political interests of the HSF are noted. They do not give it the HSF the standing to interfere with the granting of my medical parole.

194. The fact that the HSF participated in previous related litigation does not give it the standing to bring any or this application. Its standing must be determined for each case and not a blanket one. It is also noteworthy that its participation in the previous case was as an *amicus curiae*. It has now all pretence of neutrality and shows its true colours as an intended adversary. This in itself constitutes an abuse of the court process.

AD PARAGRAPH 11

195. These facts suggest that the only basis for urgency is to achieve my physical incarceration in prison walls to serve the sentence of the Constitutional Court. However, that I am serving my sentence on medical parole does not breach any rule of law but is justified by my medical condition and expert consideration

MB JTG C

on how to manage my medical condition. It is not an act of corruption as the HSF and its litigation allies appear to suggest.

196. It is not a basis for urgency to seek my physical incarceration in prison walls. I am not breaching any laws by serving my time on medical parole.

AD PARAGRAPH 12 to 15

197. The allegations in this paragraph are noted, save to deny that the Commissioner has given his reasons for granting me medical parole.

AD PARAGRAPH 16 to 25

198. The basis of the decision was given – medical considerations are paramount in the granting of medical parole. There is no requirement to draft the statement as HSF would have. The statement conveyed to a reasonable reader with no political animosity against me sufficient basis on which I was granted medical parole.

199. In any event, it is clear from the Rule 53 record, what the Commissioner considered in order to grant medical parole.

200. The record has been provided save the disclosure of my confidential medical records. I do not trust the intentions of the HSF in respecting the confidentiality of my medical information.

AD PARAGRAPH 25 to 28

201. There is a legal duty on the Commissioner to respond to the HSF in the manner that demand. This application is not necessary not for the reasons

MR

advanced by the HSF. It is not necessary because it has no merits. The fact that the HSF wishes to see me physically incarcerated in prison walls is not a justifiable dispute justifying this application to politised my medical condition.

202. There is simply no basis for urgent which it is clear is manufactured to conveniently fit the political narrative and program involving the elections.

AD PARAGRAPH 29

203. First there are no rule of law risk to serving a prison sentence on medical parole. The claim of the HSF is inflated and self-serving. The rest of the reasons advance for this nonsensical view that I am not serving my sentence, as imposed by the Constitutional Court only serves to point to the real political motives for wanting this matter heard and disposed of on an urgent basis. According to the HSF and its litigation allies, I must be humiliated and stripped of all dignity for no other reason but politics.

AD PARAGRAPH 30

204. It is nonsensical to suggest that the rule of law is only vindicated when I am physically constrained in a prison wall, even where there are medical grounds for serving my sentence on medical parole. As HSF knows, I do not agree with the findings of the Constitutional Court and I serve my imprisonment under a strong protest. I belleve very much that the judgment of the minority accurately describes the majority judgment.

205. I should not be deprived the privilege of being considered for medical parole because of the HSF's inflated sense of superiority over issues of the rule of law and the virtues of its liberal democracy.

MR

206. I remain a prisoner serving my sentence – and so it is an ill-conceived and incompetent view that the rule of law is violated simply because I serve my sentence under justified medical parole conditions.

AD PARAGRAPH 31

207. It is not correct that the decision is shrouded in any secrecy. The HSF would love to get hold of my medical records so that it can parade me in abusive terms – and its clear to me that nothing will make HSF happier than knowing how bad my medical condition is. In fact, I do not believe that HSF would accept that there is a medical basis for my medical parole because it is deeply invested in its program and narrative that as long as I live, I am a danger to its political liberal democracy.

208. That the HSF would like a public scrutiny of my medical condition justifies my view that if it were to get hold of my medical records, it would employ the crudest and unstrained methods of ensuring that I am a permanent disability to its liberal democratic project of devaluing the inherent dignity of persons like myself who hold very strong views about the need for this country to move away from being trapped in political dogma of elitists and colonial beneficiaries.

209. We do not need the New York Times to know and appreciate the value of the rule of law. The rule of law is not violated where there is a medical basis for granted medical parole. The only reason that the HSF is hot under the collar is that I am a subject of its political project of liberal democracy.

MB

210. I do not believe that serving imprisonment on medical parole is lacking in accountability. As a fact, I do not believe that I was jailed in accordance with the law and no liberal democrat should believe that on the right facts.

AD PARAGRAPH 33 to 37

211. The HSF has obtained access to the record. The complaint is baseless. Confidentiality of medical records in a constitutional democracy accords with the right to inherent dignity. The HSF has no right to my medical record. There is no legal obligation on me to give the HSF any aspect of my medical record so that it can play political games with it and perpetrate its agenda of humiliating me for my medical condition.

212. There is justification in terms of the principles of open justice and accountability to give the HSF access to my medical records so that it can play its political games with it. Despite its obnoxious view of me and my political beliefs, it holds no higher rights to my right to inherent dignity.

AD PARAGRAPH 38 to 40

213. The legal submissions made in these paragraphs will be dealt with in legal argument. It is denied that there is any legal basis on which the HSF has a legal right to access my medical information for the purpose of humiliating and degrading my constitutional rights to inherent dignity.

MB.

AD PARAGRAPH 41

214. The legal arguments on the powers of the Commissioner in relation to the advisory role of the Board will be dealt with in legal argument at the hearing of this application. The arguments are denied.

AD PARAGRAPH 42 and 43

215. There is no factual or legal basis with reference to the established principles on substitution that justifies the involvement of the Court to order my physical incarceration even when there is no dispute about the existence of a medical basis for my medical parole.

AD PARAGRAPH 44

216. It is noted that the HSF wishes for these orders which have no merit.

I: ANSWERING AFFIDAVIT TO SUPPLEMENTARY FOUNDING AFFIDAVIT OF HFS

AD PARAGRAPH 1 to 3

217. I admit that the deponent but deny that he has any personal knowledge to the facts contained in his affidavit. He has no knowledge of the facts on which my medical parole was granted. He has no knowledge of my medical condition on which I was considered and granted medical parole.

218. I deny that the legal advice given to this deponent and this organisation is true and correct. As will be shown below, it is woefully false and inaccurate.

NB

AD PARAGRAPH 5

219. I accept that it is HSF's wish to have me physically incarcerated rather than serve my imprisonment on medical parole. This organisation has not ceased to scandalise everything that concerns me. In its worldview, together with its political and litigation allies, my medical parole has been achieved through corruption and not a good faith application of the law by the relevant authorities.

220. There is no factual or legal basis set out by this applicant for a substitution order.

AD PARAGRAPH 6 to 8

221. The allegations in these paragraphs are largely irrelevant to the relief sought but are nonetheless noted.

AD PARAGRAPH 9 to 26

222. There was no basis for urgency and the truncation of the timeframes other than to open a litigation front that feeds the political narrative that I am corrupt and even this medical parole was achieved through corruption. It is unsurprising that HSF, DA and Afriforum has banded together to seek to politicise my medical condition – which it appear to believe is also a corrupt claim.

223. My physical incarceration – which this review application appears intended to achieve – does not justify an urgent application to the Court. I continue to serve my sentence on the basis that I have medical parole.

MB JG

224. I have addressed elsewhere in my answering affidavit to the DA the reasons why I cannot consent to a confidentiality agreement with any of the applicants and their lawyers. I stand by those.

225. HSF would abuse me if they were to given access to my medical information. They have invested much in scornfully deriding me for their own political interests. On that basis, I should not be expected to give my consent for the HSF to view my medical records for the purpose of arguing for my physical imprisonment.

AD PARAGRAPH 27 to 30

226. I did not give myself medical parole and the fact that it could be found that the Commissioner erred should not affect me. It would violate my constitutional rights to revoke my medical parole just to satisfy the vindictive appetite of these political organisations.

AD PARAGRAPH 31 to 50

227. The allegations in these paragraphs are noted. They do not make out a case for the revocation of my medical parole. What they demonstrate though is that a series of medical decisions and protocols have carefully been followed to ensure that my medical health does not deteriorate. These medical decisions involving my incarceration are lawful and reasonable – based on medical reasons and not acts of corruption as the HSF believes.

228. Of-course the suggestion that there is no evidence that I would be taken care of by my family if released into their care is ludicrous and by its own standards of civilisation an outrageous proposition. Mthonti's actions are thorough and

careful. They can only be criticised because they were done to ensure that I am medically safe.

AD PARAGRAPH 51 to 69

229. There is clear evidence that there is a medical basis on which the decision to grant medical parole is justified. It is clear that the Medical Parole Advisory Board did not wish to recommend medical parole for reasons not associated with adequate medical information on my medical condition. There were ample medical reports to support a decision to grant medical parole which it appears the Medical Parole Advisory Board was unprepared to consider for purposes of making the recommendation. Since it was the view of specialist doctors involved in managing my medical condition that, as part of the management of my medical condition, I should be placed on medical parole, it is clear that the decision of the view of the Medical Parole Advisory Board was itself unreasonable. They are not entitled to override the view of medical doctors that are responsible for the management of my medical condition. In any event, the applicants are not entitled to cherry-pick only the medical opinions which suit their narrative and turn a blind eye to those which are or might be in my favour.

AD PARAGRAPH 70 to 78

230. The Commissioner acted within his powers and therefore lawfully. He was entitled to ensure that I was not only safe in prison but that my health would not be compromised by the prison conditions.

MB TTC.

231. Matters involving me invoke intense public interest. The intensity of litigation against me by this organisation bears testimony to that fact. HSF and its litigation allies claim that there is public interest in my incarceration and the conditions of my incarceration. However, these applicants do not consider it lawful for the Commissioner to consider the scope of public interest involved in my incarceration. That is duplicity at its worst and a clear indication that the intention of this application is to humiliate me.

232. The basis for granting medical parole is lawful and, on the facts, reasonable.

AD PARAGRAPH 79

233. I deny that the Commissioner acted *ultra vires* his powers. Even a cursory analysis of the applicable statutory provisions bear out the executive powers of the National Commissioner.

AD PARAGRAPH 80

234. The Board's powers are to make recommendations to the Commissioner who must make a decision. The Commissioner is expected to act independently even as he considers the recommendations of the Board. As the decision-maker on the issue of medical parole, he is entitled to reject a recommendation of the Board that he finds to be patently irrational and not taken with due regard to the medical facts relevant to a decision on medical parole.

AD PARAGRAPH 81 to 82

235. The Board is not the decision maker but has powers of recommendation. The Commissioner did not ignore the recommendations of the Board but granted

a considered basis on which he differed with their conclusion on whether there were competing facts and circumstances relevant to the medical grounds on which to grant medical parole.

AD PARAGRAPH 83 to 84

236. The Commissioner is not a doctor to have been expected to make medical conclusions on my medical situation. The specialist doctors treating me did so and recommended a treatment regime in which I would be granted medical parole.

AD PARAGRAPH 85 to 86

237. The reasons given by the Commissioner are in addition to the medical reasons of my doctors. The applicant cannot contradict these reasons, as they are all true. The HSF has not given any medical basis for suggesting that I do not fit within the medical requirements for the granting of medical parole. It cannot do so because it has no medical expertise to explain my medical situation.

AD PARAGRAPH 87 to 88

238. The view of my medical experts is that the management of my medical situation would be better if I am given medical parole. I am under the medical management of my doctors at my home.

AD PARAGRAPH 89 to 93

239. This jurisdictional requirement was met. There were medical reports considered by the Board. I do not consent for these reports to be given to anyone else who is not involved in the management of my medical situation.

Unless it is alleged that such medical reports do not exist, which the HSF cannot know, I am content that the decision to grant medical parole was based entirely on my medical condition and consideration of how to manage that condition.

AD PARAGRAPH 94

240. The law does not give the Board the power to make determinations at all. It makes recommendations. Only specified persons may make a decision and the Commissioner is one of the specified decision-maker on whether medical parole should be granted.

AD PARAGRAPH 95

241. The reasons given by the Commissioner are reasonable and rational. The only basis on which this applicant contends differently is that there should be evidence that I am on my death-bed. That is not the law. The reasons given by the Commissioner for granting medical parole are not unreasonable as they consistent with the medical reports of the experts that are managing my medical condition.

AD PARAGRAPH 96 to 97

242. It is denied that the decision does not meaningfully engage with the requirements of the law. What that even means is unclear because there is no benchmark against which to test this nonsensical proposition.

MB JGT

AD PARAGRAPH 98 to 100

243. It is clear ex facie the document provided why the Commissioner did not accept the Board's unreasonable approach to my medical parole issue. He was not bound by the recommendations of the Board. The advice of the Board may not unreasonably deviate from the medical report or advice of a medical specialist, unless it has on its own obtained an independent medical report of a medical specialist.

244. Since the Board appear to have ignored relevant medical reports, without obtaining its own medical view on the matter, the Commissioner was entitled to ignore its incompetent advice.

AD PARAGRAPH 101

245. The Board recommendation does not contain such conditions because it unreasonably rejected the medical opinion on my medical condition. Importantly though, the Board's view that my medical condition had stabilised does no more that prove that there is an underlying medical condition. The Board's view differed with that of the medical experts who were directly responsible for managing my medical situation. The Commissioner was correct to believe and accept the view of medical experts on the management of my medical condition. In any event, he did so in terms of section 75(7) of the Act, which does not oblige him to follow any recommendations.

AD PARAGRAPH 102

246. It is a false interpretation of the Commissioner's report to suggest that he did not engage frontally with its recommendation and reasons. He did as he was

enjoined to and came to the conclusion that the recommendations were unreasonable on the basis of the medical advice of medical experts.

AD PARAGRAPH 103

247. The Commissioner has no duty to advice the Board. He has a duty to make a decision based on a number of factors, including the recommendation of the Board, where applicable.

AD PARAGRAPH 104 to 105

248. The Board's view that it had a veto over the Commissioner's decision-making powers is wrong. The Board's responsibility is to act reasonably and not to ignore critical factors. In this case the invitation on the applicants for medical parole to provide information required by the Board. The Board cannot simply ask for the applicant to provide it with unspecific "other information" that does not exist for its consideration. It is obliged to ask for specific information relevant to the matter at hand.

249. The Commissioner has no obligation to put information before the Board. It is the applicant for medical parole that may do so, if required. The Board, must, after making its recommendation, leave it to the Commissioner to consider whether or not to accept that recommendation or to act in terms of a separate statutory provision which gives him unfettered powers.

AD PARAGRAPH 106

250. The reports of the medical experts is what really matter when medical parole is considered. Why it is irrational or unreasonable or even arbitrary to accept

the report of persons directly responsible for the management of the medical condition of the parolee is not explained. But again, the HSF's preference for the Board's advisory opinion over those that speak directly to the issue of whether there is a medical basis to grant medical parole is not surprising – seeing that its only objective is to ensure that I am in locked up in prison irrespective of my medical situation.

251. Theirs is a self-serving interpretation of the law which it bends in order to advance a "special Zuma law" that only applies to me.

AD PARAGRAPH 107

252. Even calling the medical reports as those of "Zuma's SAMHS medical team is demonstrative of the HSF's bias against me. The SAMHS is not a Zuma medical team – and it should be clear from its terms that they do not look only after me. This is the same team that looks after the health of all former Presidents. There is no basis for suggesting that the medical report of the SAMHS is not an independent. The SAMHS does not play the political games with the health of its patients and have no interest in presenting anything that is not independent. It is the Board's independence that is questionable because it ignores medical advice without providing any rational basis for ignoring that advice.

AD PARAGRAPH 108

253. Whether or not medical parole should be granted is based on medical reports and factors relevant to the management of a medical situation involving a parolee.

254. It is incorrect that there is a requirement on the medical team, when issuing their medical report to dictate or even express an opinion on the desirability or necessity of medical parole. The medical experts must express their views on the medical condition of the applicant for medical parole – which they did. They also expressed an opinion on the management needs of the medical conditions.

255. The medical team should not be expected to express itself on the necessity for medical parole other than supporting an application for medical parole. The fact that the medical team supported the application for medical parole is enough and it is for the decision-maker, taking into account the medical report to determine whether medical parole should be granted.

AD PARAGRAPH 109 to 110

256. The medical reports of the SAMHS gave the decision-maker the facts on which to determine the necessity to place me on medical parole. That is the sole duty of the medical experts and not to deal with incarceration conditions – an area on which they are not legally bound to delve into and in any event, an area on which they do not possess the expertise.

257. As stated above, the medical team's role is not to determine the necessity for medical parole but to provide a medical report on which the regulatory functionary with the power to make a decision, should decide whether to place the convicted person on medical parole.

258. This court is duty bound to accept the medical opinions of the medical team at face value, unless contrary expert evidence is produced.

AD PARAGRAPH 111

259. The allegations are correct. As stated above, it is not the case made out by HSF that there is no medical basis on which my medical parole was granted. Their case is entirely premised on their baseless suspicion that the medical reasons are non-existent.

AD PARAGRAPH 112

260. The management of the medical parole system is based on a number of variables referred to by the Commissioner. The fact of the matter is that it is the responsibility of the Commissioner to ensure the correctional services facility is able to provide ideal conditions for the management of an inmate's medical condition viewed as a whole. This is particularly so in the case of persons serving a sentence of 24 months or less, such as me.

AD PARAGRAPH 113

261. The reasons given by the Commissioner are rational and reasonable. The question is not why the Commissioner accepted the medical opinion of the treating doctors of the inmate but why he should reject that medical opinion. As stated above, the Commissioner's decision is not unreasonable because he did not accept the Board's ultimate recommendation on the question of the continued medical management conditions for my medical issues.

AD PARAGRAPH 114

262. The Board is not entitled to override the views of a medical expert and make recommendations about the medical management of the medical condition of

an inmate. The Board's view that there was insufficient information is imprecise and lacked the detail necessary for the Commissioner to appreciate the basis on which its recommendations should be accepted in relation to the conditions that are necessary for the management of the medical condition.

AD PARAGRAPH 115 to 116

263. Given that there is no frontal attack on the report of Dr Mphatswe, it stands as a relevant report of a medical expert carrying weight on the question of whether medical parole should be considered or granted. It is not clear why the HSF – other than their dislike of the report – should be discarded on the basis that it was tainted by irrelevant considerations. The HSF does not say why these considerations are irrelevant. Furthermore, the HSF has not set out what it would consider as relevant considerations and why. The deponent is not a medical expert who would know what a medical person in the position of Dr Mphatswe should consider as relevant fact for the medical management of a medical condition of an inmate. Other than its unjustified outrage and general dislike of me, the HSF offers no standard against which to determine the relevance or irrelevance of the facts taken into account by Dr Mphatswe. Nor have his expertise or objectivity been questioned.

AD PARAGRAPH 117

264. It is denied that considering the medical report of the treating doctors is irrational and unreasonable. The treating doctors have all the medical information on me to assist the Commissioner with making the correct decisions.

MB · TPL.

AD PARAGRAPH 118 to 122

265. The Commissioner has provided a compelling, reasonable and rational basis for his decision. The HSF does not like it for its political reasons but not because it does not meet the objective standards expected of a commissioner exercising this power.

AD PARAGRAPH 123

266. The allegations are denied for the reasons set out in the Commissioner's response and report.

AD PARAGRAPH 124 to 135

267. It is not stated on what basis the considerations of the Commissioner are irrelevant. It is also not stated what relevant consideration the Commissioner failed to take into account.

268. The factors taken into account by the Commissioner are relevant and necessary to consider. Had the Commissioner not considered them, he would have committed a reviewable irregularity. In any event, the HSF's premise for relevant considerations is colored by its political hatred of me and has nothing to do with upholding the principle of legality.

269. It is clear in this application that the HSF has again utilised the courts to advance its political programs.

NB JAT

AD PARAGRAPH 136 to 138

270. It is denied that a case has been made out for reviewing and setting aside the Commissioner's decision. In any event, it would not be in the interest of justice to – based on medical reports to order that I am reincarcerated, if the decision were set aside. Such an order would simply be mean and vindictive and not just and equitable, taking into account that what is sought by the HSF and its litigation allies is my physical detention at a correctional facility. If they had their way, I do not believe that HSF would not hesitate to recommend my incarceration under the conditions of Robben Island which i endured for ten years – so they can enjoy the right to devalue my right to inherent dignity.

271. As stated elsewhere in this affidavit, I continue to serve my sentence as the prisoner of the Constitutional Court.

272. The relief sought, particularly the substitution order, has no basis in law, for the reasons already discussed.

273. Where applicable, these responses to the different applicants must be read together and as universally applicable.

CONDONATION

274. This affidavit is two days late. A request was made to the applicants to accept the late filing. Afriforum accepted. The DA accepted conditionally, and the HSF refused.

275. In a nutshell, the reasons for the lateness are that:

MB JGZ,

275.1. The large body of material to be dealt with proved to have been under-estimated. This is largely confirmed by the size of this affidavit. The matter is complex but certainly not urgent; and

275.2. On the agreed date for filing, I appeared in court in Pietermaritzburg in respect of my separate and ongoing criminal trial, where a judgment was handed down. My legal team and I were forced to engage with that judgment, which is more than 100 pages long, and this temporarily shifted our attention away from completing the present matter.

276. The delay, for which I apologise, is relatively short. No prejudice will be suffered by any party. The hearing date is still far away.

277. The prospects of success overwhelmingly favour the respondents due to the ill-advisedness and frivolity of these applications, which are in any event meritless, as demonstrated above.

278. To the extent that it may be necessary, I therefore pray that the lateness be condoned by this Honourable Court.

WHEREFORE I pray that it may please this Honourable Court to dismiss all three applications, with punitive costs.

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 NKANDLA on this the 28 day of **October** 2021, 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.

M B SIKHOSANE
CAPT

COMMISSIONER OF OATHS

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