PARLIAMENT
OF THE REPUBLIC OF SOUTH AFRICA

REPORT OF HOUSE CHAIRPERSON A T DIDIZA ON THE REFERAL TO THE RULES COMMITTEE, IN TERMS OF ASSEMBLY RULE 92(12), OF RULING MADE ON 7 NOVEMBER 2018.

A. BACKGROUND

1. On 6 November 2018, while taking Questions to the President the unacceptable reactions of members to a number of points of order eventually saw the House descend into disorder.
2. Two members, Mr M A Tlouamma and Mr N M Paulsen, became involved in a physical altercation which also involved certain other members of the Democratic Alliance and Economic Freedom Fighters. As a result of this grossly disorderly conduct, as defined by Rule 69, I then called upon the Serjeant-at-Arms to remove Mr Tlouamma and Mr Paulsen in terms of Rule 73(1). In order for the members to be assisted to leave the Chamber, business was suspended for three minutes.
3. On Thursday, 7 November 2018, I gave a ruling on the points of order that were raised on 6 November 2018.
4. The key aspects of the ruling were that:

    a. Mr J H Steenhuisen should withdraw the words that the "*VBS bank looters*", in reference to Mr M Q Ndlozi and Mr Mr J S Malema who were interjecting him, should give him a chance to speak;
    b. Mr J S Malema should withdraw the words "*a racist young man who was accused of rape*" in reference to Mr J H Steenhuisen.
    c. the Speaker was requested to refer the conduct of Mr Tlouamma and Mr Paulsen, as well as other members that could be identified in the video footage as being part of the ensuing scuffle, to the disciplinary committee.

5. Both Mr Steenhuisen and Mr Malema refused to withdraw the remarks that they had made. The members, having disregarded the authority of the chair, were ordered to withdraw from the Chamber for the remainder of the sitting.
6. On 7 November 2018, a letter was sent to the Speaker by Mr J H Steenhuisen requesting that my ruling be referred to the Rules Committee in terms of Assembly Rule 92(12). Mr Steenhuisen contends that the remarks he made were in reference to a political party, the Economic Freedom Fighters, and not individual members of the House. He cites two rulings from 15 and 17 September 1998, respectively, in support of his argument that his remarks fall

"well within the bounds of ordinary political discourse and political comment" and should therefore not have been ruled as unparliamentary. He further states that should the Rules Committee concur with the ruling made by myself, that he will be seeking urgent legal remedy to overturn the ruling.

B. APPLICABLE CONSTITUTIONAL PROVISIONS AND ASSEMBLY RULES

1. Section 57(1) of the Constitution, 1996 provides that the National Assembly may determine and control its internal arrangements, proceedings and procedures; and make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency and public involvement.
2. Section 58(1) of the Constitution states that cabinet members, deputy ministers and members of the National Assembly have freedom of speech in the Assembly and in its committees, subject to its rules and orders. As such they are not liable for civil or criminal proceedings, arrest, imprisonment or damages for anything that they have said in, produced before or submitted to the Assembly or any of its committees.
3. Assembly Rule 84 states that no member shall use offensive, abusive, insulting, disrespectful, unbecoming or unparliamentary words or language, nor offensive, unbecoming or threatening gestures.
4. Assembly Rule 85 states that no member may impute improper motives to any other member or cast personal reflections upon a member's integrity or dignity or verbally abuse a member in any other way. A member who wishes to bring any improper or unethical conduct on the part of another member to the attention of the House, may do so only by way of a separate substantive motion, comprising a clearly formulated and properly substantiated charge that in the opinion of the Speaker prima facie warrants consideration by the House.
5. Assembly Rule 69 states that members may not engage in grossly disorderly conduct in the House and its forums, including, (a) deliberately creating serious disorder or disruption, (b) in any manner whatsoever physically intervening, preventing, obstructing or hindering the removal of a member from the House who has been ordered to leave the House, (c) repeatedly undermining the authority of the presiding officer or repeatedly refusing to obey rulings of the presiding officer or repeatedly disrespecting and interrupting the presiding officer while the latter is addressing the House, (d) persisting in making serious allegations against a member without adequate substantiation or following the correct procedure,(e) using or threatening violence against a member or other person, or (f) acting in any other way to the serious detriment of the dignity, decorum or orderly procedure of the House.
6. Assembly Rule 92(12) gives a member who is aggrieved by a presiding officer's ruling on a point of order to request the Speaker that the principle or subject matter of the ruling be referred to the

Rules Committee. The Rules Committee may deal with the referral as it deems fit, provided that it must confine itself to the principle underlying, or subject matter of the ruling concerned and may not in any manner consider the specific ruling which is final and binding.

C. PRECEDENT AND PRACTICE

1. It is the responsibility of the presiding officer to determine if a particular remark made in a debate is offensive or contrary to the Rules.
2. The National Assembly Guide to Procedure, 2004 indicates that when considering whether a remark is unparliamentary a presiding officer takes into consideration the context and tone of a particular remark or inference. An unparliamentary remark is equally offensive and damaging if it is made indirectly by reference to views held by others or even if put forward by way of a question. Should a member make unsubstantiated allegations against the integrity of any member or impute improper or unworthy motives to them it will almost always be ruled as unparliamentary.
3. On 18 June 2013, the then Speaker (Mr M V Sisulu) conveyed his concerns that the House should not allow normal political discourse and debate to degenerate into aggressive confrontation between members.
4. In respect of the distinction made between remarks directed at members and those directed at political parties the then Speaker (Dr F N Ginwala) on 15 September 1998 ruled that –

   We have always drawn a distinction between allegations against members of the House and the expression of opinions about the beliefs and policies of political parties. Accordingly references to a member as "a racist" have been ruled to be unparliamentary. Allegations that a political party supports racist views, or has or is implementing racist "policies" are made frequently and have not been held to be unparliamentary. They are in my view a part of normal political discourse and any attempt to limit this would set a dangerous precedent.

5. This ruling was formulated in the context that members should not be constrained in reflecting on the policies and different positions of political parties. It was, however, never meant to give members licence to insult or cast aspersions on fellow members under the guise of the remarks being about a political party – such action does not render remarks parliamentary. It is an over simplification to state that by not mentioning any member by name the remarks should be viewed as being intended to reflect on a political party.

D. RULING IN RESPECT OF THE REMARKS OF MR J H STEENHUISEN

1. In framing my ruling, I indeed took into account the context and intent of the remarks made by Mr Steenhuisen. In this regard it is always unpaliamentary to insinuate that another member is acting dishonourably, whether directly or by implication. In 2016 the National Assembly Rules Committee (see *Announcements Tablings and Committee Reports* document of 2 June 2016), in considering a ruling made by the Deputy Speaker which dealt with quoting from court judgements in the House, upheld the principle that members should not verbally abuse each other through name-calling. Disparaging and insulting personal remarks about any member did not contribute to meaningful debate. On the contrary, by their very nature they would lead to a breakdown in debate and prevent the House and the collective of members from engaging meaningfully in matters of national importance. In such instances, the rules on unparliamentary language would always apply.
2. In Mr Steenhuisen's correspondence of 7 November 2018 he states that "*without prefixing it with any individual members' name as well as the use of the plural form is ample evidence that the remarks were directed at the EFF as a party that was collectively disrupting me and hurling racial epithets*".
3. It has always been upheld that remarks are no less offensive if they are made by inference. It is disingenuous to contend that as the member did not preface his remarks with a name that it should be interpreted as a reference to a political party. The only reasonable and rational interpretation of the words used within the context of events of that day, namely, "*can the VBS bank looters please give me a chance*" was that the primary target of his words were individual members interjecting him and intended to give personal affront.
4. Mr Steenhuisen indicates that he used the plural form "looters" to address the "collective" who were "disrupting" him and "hurling racial epithets" at him. However, again, the only reasonable and rational conclusion was that he was surmising criminal misconduct by individual members of the Economic Freedom Fighters hence his use of the plural "looters".
5. Furthermore, Mr Steenhuisen's reference to members of the Economic Freedom Fighters as "looters" and his contention that this falls within the bounds of ordinary political discourse is not upheld by practice. By referring to members of the Economic Freedom Fighters as "looters" the accusation is that individual members are involved in criminal behaviour. Such remarks are intended to give personal insult and this is indeed the way in which they were interpreted by the members concerned.
6. I also took into consideration that if such allegations were to be generally allowed during the course of debate they would not only undermine members in the performance of their duties, but would undermine the image of Parliament itself. Members have undertaken an oath to

uphold the Constitution and the laws of the country, inferring that a member is a looter is not a political or ideological departure point, but an accusation of criminal activity and intent.

7. In *Chairperson of the National Council of Provinces v Julius Malema and Another [2016]*, the Supreme Court of Appeal held that "*The purpose of the standing order is to ensure the parliamentary debates are not clouded by personal insults. Ad hominem attacks do not contribute to democratic discourse; hence they are not protected. But the standing order does not – constitutionally cannot – go as far as impeding political speech. It does not censor criticism of the government or its ruling party.*"
8. In *Economic Freedom Fighters v Speaker of the National Assembly; Julius Malema and Another v Speaker of the National Assembly [2016],* the Western Cape High Court held that "*for this reason the immunities that deal with the consequence of free speech, as contained in section 58(1)(b), are a necessity for the standing order, which does not impede or limit free speech, but sets out the circumstances under which such free speech must be exercised when a member wishes to bring any improper conduct on the part of another member to the attention of the House or impute improper motives, or cast personal reflections on the integrity of other members or verbally abuse them in any other way, may do so. A member therefore, due to the provisions of section 58(1)(b) would have no recourse against another member who personally insults, imputes improper motives, casts personal reflections on his or her integrity or verbally abused him or her. That is exactly what the standing order seeks to manage and regulate.*
9. In *Mosiuoa Lekota and Another v The Speaker of the National Assembly and Another [2012]*, the Western Cape High Court emphasised that *"the task of controlling debates in Parliament requires particular skills and is best dealt with by the presiding officers who are appointed for this purpose and have to do it on a daily basis. A court should be loath to encroach on their territory and only do so on the strength of compelling evidence of a constitutional transgression."*
10. When taking into account the context of the remarks and being called upon to exercise my discretion I found the remarks of Mr Steenhuisen to be derogatory and offensive to fellow members of the House and thus unparliamentary.
11. The distinction between reflections directed at the government or a political party, which are generally acceptable, and personal reflections that seek to cast aspersions on individual members were also taken into consideration when I framed my ruling.
12. The remarks of Mr Steenhuisen, and indeed also those of Mr Malema which followed, exceeded the bounds of normal political discourse, and descended instead into the realm of personal insult and character assassination. If such remarks were to be allowed during the course of debate they have the potential to cause serious disruption, restrict the House from performing its constitutional functions and undermine members in the performance of their duties. The events that then unfolded are a testimony to this.

Submitted By:

A T Didiza, MP
House Chairperson

15 November 2018

Attachments: Copy of Unrevised Hansard transcription of 6 and 7 November 2018
Audio visual clip of proceedings on 6 November 2018.
Copy of Minutes of Proceedings of 6 November 2018
Copy of Minutes of Proceedings of 7 November 2018.