

**HEARINGS OF POWERS AND PRIVILEGES COMMITTEE
IN RELATION TO 16 AFFECTED MEMBERS
ARISING FROM THE EVENTS OF 11 JULY 2019**

CLOSING ARGUMENTS

Introduction

1. On 15 July 2019 the Speaker of the National Assembly referred the circumstances of the physical removal of members of the Economic Freedom Fighters ('the EFF') from the mini-plenary on Vote 9 – Public Enterprises on Thursday 11 July 2019, to the Subcommittee on Physical Removal of Members from the Chamber for consideration, in terms of Rule 73 (12).
2. Rule 211 of the Rules of the National Assembly establishes the Powers and Privileges Committee ('the Committee') as required by section 12(2) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act'). The Committee is mandated by section 12(1) of the Act to inquire into and pronounce "*upon any act or matter declared by or under*

section 13 to be contempt of Parliament by a member, and taking the disciplinary action provided therefore”.

3. Furthermore, section 12(3) of the Act requires the Committee to inquire into the matter in accordance with a procedure that is reasonable and procedurally fair, and table a report on its findings and recommendations in the National Assembly.

Notice

4. In terms of the Schedule to the Rules of the National Assembly, charges were finalised against the 16 affected members, and notices containing the charges against them were served by emailing them to both the personal and parliamentary email addresses of the affected members.

Hearing into allegations of contempt of Parliament

5. The hearing, initially scheduled to begin on 17 November 2020, was rescheduled to begin on Tuesday 24 November 2020.
6. On 24 November 2020, the Committee considered, and granted a request from the affected members’ legal representatives to begin the hearings on Wednesday

25 November 2020, due to a health issue that had arisen in relation to their counsel. The affected members were not in attendance.

7. On Wednesday 25 November 2020, the affected members were not in attendance. Their attorney of record and counsel were in attendance.
8. After considering whether a request had been properly made for legal representation in terms of the Schedule, the Committee decided that the contents of the correspondence from the affected members' attorney of record since 11 November 2020 constituted a request properly made in terms of the Schedule for such representation.
9. The Committee granted the request for legal representation.
10. The Committee was referred to the procedural and substantive complaints raised on behalf of the affected members in relation to the proceedings, as crystallised in the letter by their attorney of record dated 18 November 2020.¹
11. In regard to the procedural complaints, the affected members had exercised an election to submit written explanations in response to the charges delivered to them. They were required to do so on Monday 23 November 2020. No such written explanations were submitted.

¹ Record p. 619

12. Substantive complaints were raised on their behalf in the letter of their attorney of record dated 18 November 2020.² In regard to the complaint that the procedure adopted by this Committee to determine the guilt or innocence of the affected members would not be fair because it consisted of an ANC majority, the Committee was referred to paragraph 23 of the judgement of Dlodlo J in the Western Cape High Court in the matter of *The Economic Freedom Fighters and Others v The Speaker of the National Assembly Case number 21471/2014*. In that case, the second applicant, Mr Julius Malema, had raised a similar objection. He claimed that the composition of this Committee was a basis for perceiving bias against the members of the EFF in hearings conducted against them.

13. The judge disagreed and stated the following:

'I can perceive no basis for the claim that the composition of the Committee is biased, unfair or unreasonable. I remain unpersuaded in this regard. The fact is that Parliament works with Committees. It cannot be that each time the Committee is given work to do, it passes such responsibility to some other outside body. That would be illegal and untenable.'

² Record p. 619

14. I am informed that the EFF was granted leave to appeal this judgement but the appeal was not pursued.
15. Another complaint raised by the affected members in the correspondence of their attorney of record is that the affected members were selectively charged in circumstances where other members of Parliament carried out and participated in the same conduct which is alleged to amount to contempt of Parliament.
16. But it is not correct, at a level of fact that other members of Parliament carried out and participated in the same conduct as the affected members.
17. In this regard, it bears noting that section 7 of the Act sets out various prohibited acts that constitute contempt of Parliament in terms of section 13(a).
18. As is evident from the video footage that was presented at the hearing, and the evidence of Mr Mahlangu, Ms Boroto and Mr Maleema, the other members from the ANC, DA and ACDP did not participate in any of the acts in section 7, with which the affected members have been charged. Specifically, these members did not:
 - 18.1. Improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions as provided for in section 7(a) of the Act;

- 18.2. Improperly interfere with the performance by the Minister of Public Enterprises with his functions as stated in section 7(b) of the Act;
- 18.3. Create or take part in a disturbance while Parliament was meeting as stated in section 7(e) of the Act.
19. Section 12(3) of the Act states that before a House may take any disciplinary action against a member for contempt of Parliament, the standing committee must enquire into the matter and table a report on its findings and recommendations in the House. This did not occur in relation to the members who were not removed from the House.
20. The Committee at the hearing on 24 November 2020 decided to proceed with the hearings in the absence of the affected members.
21. The legal representatives of the affected members then advised the Committee that they had been instructed to withdraw from the proceedings; and that their clients would not attend the hearings and give legitimacy to what they regarded as a process tainted by procedural and substantive unfairness. In addition, the legal representatives informed the Committee that their instructions were to instead launch legal proceedings challenging the constitutionality of the relevant provisions in the Act and the Rules.

22. The hearing then proceeded in the absence of the 16 affected members.

Charges against the affected members

23. The Initiator read the charges against each of the affected members.

24. Honourable N S Matiase faced the following seven charges:³

“Charge 1

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (‘the Act’) in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened in Committee Room E249 on 11 July 2019 for the purposes of holding a Debate on Budget Vote 9: Public Enterprises, you contravened section 7(a) of the Act when you wilfully refused and/or failed to obey Rule 92(8), Rule 92(9) and Rule 92(11) of the Rules of the National Assembly, read together, by persisting with a point of order after the Presiding Officer, whose ruling was final and binding, had ruled that the matter raised was not a point of order. This conduct improperly interfered with, or impeded the ability of the House to exercise its authority or functions; continue with the business of the day, and was disruptive of the proceedings in the House.

³ Record p. 540

Charge 2

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened in Committee Room E249 on 11 July 2019 for the purposes of holding a Debate on Budget Vote 9: Public Enterprises, you contravened section 7(b) of the Act when you wilfully refused and/or failed to obey Rule 92(8), Rule 92(9) and Rule 92(11) of the Rules of the National Assembly, read together, by persisting with a point of order after the Presiding Officer, whose ruling was final and binding, had ruled that the matter raised was not a point of order. This conduct improperly interfered with the performance by the Minister of Public Enterprises of his functions as a Member of Parliament.

Charge 3

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249 for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act

when, during the proceedings, you wilfully failed and/or refused to obey Rule 64(d) of the Rules of the National Assembly, by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with, or impeded the exercise or performance by the House of its authority and functions.

Charge 4

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 64(d) of the Rules of the National Assembly by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with the performance by the Minister of Public Enterprises of his functions as a Member of Parliament.

Charge 5

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament

and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(e) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- a. deliberately engaging in conduct that created serious disorder or disruption in the House;*
- b. repeatedly undermining the authority of the presiding officer; repeatedly refusing to obey rulings of the presiding officer and repeatedly disrespecting and interrupting the presiding officer whilst she was addressing the House; and*
- c. persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, which was grossly disorderly, you created and took part in a disturbance during a meeting of the House within the Parliamentary precinct.

Charge 6

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- a. deliberately engaging in conduct that created serious disorder or disruption in the House;*
- b. repeatedly undermining the authority of the presiding officer; repeatedly refusing to obey rulings of the presiding officer and repeatedly disrespecting and interrupting the presiding officer whilst she was addressing the House; and*

- c. *persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, you improperly interfered with the exercise or performance by the House of its authority and functions.

Charge 7

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- a. *deliberately engaging in conduct that created serious disorder or disruption in the House;*

- b. repeatedly undermining the authority of the presiding officer; repeatedly refusing to obey rulings of the presiding officer and repeatedly disrespecting and interrupting the presiding officer whilst she was addressing the House; and*
- c. persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, you improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member.”

25. The following 13 members; i.e., Honourable Ceza; Chabangu; Langa; Madlingozi; Mohlala; Montwedi; Msane; Mthenjani; Paulsen; Shembeni; Siwisa; Sonti; and Tito were all charged with charges identical to charges 3, 4, 5, 6 and 7 of the above charges against Honourable Matiase.
26. These 13 members therefore faced 5 charges each.
27. Honourable Hlonyana and Komane were charged with same charges as follows:

Charge 1

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament

and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249 for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 64(d) of the Rules of the National Assembly, by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with, or impeded the exercise or performance by the House of its authority and functions.

Charge 2

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 64(d) of the Rules of the National Assembly by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with the performance by the Minister of Public Enterprises of his functions as a Member of Parliament.

Charge 3

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(e) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(b), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- d. deliberately engaging in conduct that created serious disorder or disruption in the House, when you crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House;*
- e. physically intervening, preventing, obstructing or hindering the removal of other members, including yourself, from the House when the presiding officer had ordered such removal from the House;*

- f. *undermining the authority of the presiding officer, refusing to obey rulings of the presiding officer, and interrupting the presiding officer while she was addressing the House;*
- g. *persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, which was grossly disorderly, you created and took part in a disturbance during a meeting of the House within the Parliamentary precinct.

Charge 4

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(b), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- a. *deliberately engaging in conduct that created serious disorder or disruption in the House, when you crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House;*
- b. *physically intervening, preventing, obstructing or hindering the removal of other members, including yourself, from the House when the presiding officer had ordered such removal from the House;*
- c. *undermining the authority of the presiding officer, refusing to obey rulings of the presiding officer, and interrupting the presiding officer while she was addressing the House;*
- d. *persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, you improperly interfered with the exercise or performance by the House of its authority and functions.

Charge 5

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(b), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by:

- a. deliberately engaging in conduct that created serious disorder or disruption in the House, when you crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House;*
- b. physically intervening, preventing, obstructing or hindering the removal of other members, including yourself, from the House when the presiding officer had ordered such removal from the House;*

- c. *undermining the authority of the presiding officer, refusing to obey rulings of the presiding officer, and interrupting the presiding officer while she was addressing the House;*
- d. *persisting in making serious allegations against the Minister of Public Enterprises without adequate substantiation or following the correct procedure.*

By engaging in such conduct, you improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member.

Charge 6

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened in Committee Room E249 on 11 July 2019 for the purposes of holding a Debate on Budget Vote 9: Public Enterprises, you contravened section 7(a) of the Act when you wilfully refused and/or failed to obey Rule 92(8), Rule 92(9) and Rule 92(11), read together, by raising, again as a point of order, the same matter which the Presiding Officer, whose ruling was final and binding, had ruled was not a point of order.

This conduct disrupted the proceedings and thereby improperly interfered with, or impeded the ability of the House to exercise its authority or functions, and continuing with the business of the day.

Charge 7

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened in Committee Room E249 on 11 July 2019 for the purposes of holding a Debate on Budget Vote 9: Public Enterprises, you contravened section 7(b) of the Act when you wilfully refused and/or failed to obey Rule 92(8), Rule 92(9) and Rule 92(11), read together, by raising, again as a point of order, the same matter which the Presiding Officer, whose ruling was final and binding, had ruled was not a point of order.

This conduct interfered, improperly, with the performance by the Minister of Public Enterprises with his function as a Member of Parliament."

28. I return to these charges further in these submissions.

Pleading to the charges

29. As empowered by the Schedule to the Rules of the National Assembly, the Chairperson entered a plea of not guilty on behalf of each of the affected members.
30. The Committee then proceeded to hearing the evidence against the affected members.

Evidence before the CommitteeWitnesses

31. **Mr Collen Mahlangu:** The Initiator led the evidence before the Committee by way of oral evidence provided by Mr Collen Mahlangu with reference to the video footage of the incident from which the allegations arose. In their questions to Mr Mahlangu, some members of the Committee referred Mr Mahlangu to the minutes of the events of the day.
32. Mr Mahlangu's evidence was factual and objective and was corroborated by the record.
33. Mr Mahlangu confirmed that on 11 July 2019 he was present in Committee Room E249 during the mini-plenary session of the National Assembly convened

for the purposes of holding a Debate on Vote 9: Public Enterprises. He indicated that as Undersecretary to the NA, he was fulfilling his regular duties as an officer of the House to provide support to the House and to ensure that the House functioned smoothly from a procedural and administrative point of view. In his position, he is a manager responsible for the sittings of the NA.

34. Mr Mahlangu was in a position to testify to all the charges as they were framed. He was able to identify all the affected members with reference to the video footage and an excerpt from a Photobook of Members of the National Assembly, which contained photographs and names of each affected member.⁴
35. **House Chairperson Ms M G Boroto:** She testified that she was the presiding officer of the sitting on 11 July 2019. She confirmed that the Hansard transcript was a fair reflection of the events of the day, and her evidence was with reference to that record.
36. She testified that Mr Matiase, Mrs Hlonyana and Mrs Komane ignored her rulings regarding the points of orders they had raised. Her evidence further was that when Mrs Hlonyana said pointedly *'This man is not going to speak here today'*, to her that was a threat. It was a threat to the Minister and to the House.

⁴ Record p. 491

37. When the members crossed the floor and approached the Minister, she called the Serjeant-at-Arms in quick succession because they were charging and she was uncertain as to what was going to happen. She did not know what their intentions were, whether they would stab him, or beat him, against the threat that had been made that this man is not going to speak here.
38. It quickly became clear to her that the Serjeant-at-Arms would not be able to handle the situation on his own, and she then called Parliamentary Protection Services.
39. As for the other members who also came onto the floor, such as members Mazzone, Papo, Steenhuisen, Khaya Magaxa, her evidence was that she did not know why they came onto the floor. But her thinking was that a threat had been made to the Minister and they reacted to that; but as she watched these members they merely stood there, they were not interfering with the business of the day. They did not disrupt the proceedings at all, and they went back to their seats after the affected members were removed.
40. After Parliamentary Protection Services came and removed the affected members, the business of the day proceeded. She testified that she has witnessed some disruptions in Parliamentary proceedings before, but this one was special or different. To charge at a member standing at the podium like

that, to go directly to a member at the podium and disregard everything else is something she had not seen before.

41. **Mr Tebello Maleema:** He is employed as the Deputy Serjeant-at-Arms, but is now the Acting Serjeant-at-Arms.
42. He testified that he was on duty on 11 July 2019 in Committee Room E249, and observed the proceedings from when they began until the affected members were removed from the House.
43. He was aware whom the Presiding Officer was referring to when she asked for the assistance of the Serjeant-at-Arms, and then Parliamentary Protection Services in removing the affected members from the House.
44. He testified that after the Presiding Officer called for the assistance of the Serjeant-at-Arms, he got up from his seat and was approaching when the Presiding Officer changed her call to Parliamentary Protection Services. This then forced him to turn back to call Parliamentary Protection Services members who were stationed outside the door, just outside the Chamber.
45. He testified that when he saw the affected members approach the podium, he was shocked. It all happened very quickly and was shocking.

Affidavits presented to the Committee

46. As part of the evidence presented to the Committee, the following affidavits were presented.
47. **Ms Sinovuyo Tshomela** employed by Parliament as a vision mixer / camera operator in the Broadcasting and Audio Visual Technical Support division of its Corporate Services Department. On 11 July 2019 she was working in the broadcasting and audio visual control room at the Committee Room E249 ('the Control Room') and was responsible for controlling various cameras from the Control Room which were recording video footage in Committee Room E249 ('the Chamber'). The video footage which the various cameras recorded on 11 July 2019 was downloaded onto a compact disk and USB receptacle ('the USB'). She confirmed that the video footage that was presented to the Committee was recorded inside the Chamber on 11 July 2019, and is a true recording of events that transpired on 11 July 2019 in the Chamber between approximately 16h43 and 17h15.
48. **Mr Zonwabele Mngese** is a technician employed by Parliament and on duty in Committee Room E249. He recorded the events that occurred on 11 July 2019.
49. **Ms Lesley Anne Brian**, a Control Editor in the Hansard Reporting Unit, transcribed the audio recordings of the proceedings held in Committee Room

E249 on 11 July 2019. The Hansard transcript was created by her based on the recording provided to her of the proceedings in Committee Room E249. The transcript was not edited or altered in any way, is authentic and reliable and truly reflects what it purports to reflect.

50. I turn now to deal with the specific charges against the affected members.

Points of Order

51. Three members are charged with what I shall refer to as points of order breaches. They are Honourable Matiase; Hlonyana and Komane.

52. Points of Order are regulated in Rule 92 of the Rules of the National Assembly.

53. Rule 92(1) states that a member may raise a point of order at any time during the proceedings of the House, in terms of the procedure prescribed in Rule 66, by stating that he or she is rising on a point of order.

54. Rule 92(2) stipulates that a point of order must be confined only to a matter of parliamentary procedure or practice, or a matter relating to unparliamentary conduct, as defined, and must be raised immediately when the alleged breach of order occurs.

55. Rule 92(5) states that the presiding officer must give a ruling, and may give her ruling or decision on the point of order immediately, or defer the decision to the earliest opportunity thereafter by way of a considered ruling.
56. Rule 92(11) states that the presiding officer's ruling on a point of order is final and binding, and may not be challenged or questioned in the house.
57. In terms of Rule 92(8), no member may raise a point of order again or a similar point of order if the presiding officer has ruled that it is not a point of order or that the matter is out of order.
58. Rule 92(9) states that members may not disrupt proceedings by raising points of order that do not comply with Rule 92.
59. Section 7 of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') sets out acts that are prohibited in respect of Parliament and members.
60. In terms of section 7(a), a person may not improperly interfere with or impede the exercise or performance by Parliament or a House or committee of its authority or functions.

61. Section 7(b) states that no person may improperly interfere with the performance by a member of his or her functions as a member.
62. Section 7(e) prohibits a person, from creating or taking part in any disturbance within the precincts while Parliament or a House or committee is meeting. The Act goes so far as to define what a disturbance is for the purposes of these provisions.
63. A disturbance means any act which interferes with or disrupts or which is likely to interfere with or disrupt the proceedings of Parliament or a House or committee. A disturbance does not include an act committed by a member in the exercise of his or her privilege.
64. Section 13 of the Act makes it clear that the prohibited acts set out in section 7 and other sections, if these acts are committed constitutes contempt.
65. The section states that a member is guilty of contempt of Parliament if the member:
 - 65.1. contravenes section 7; s13(a)

65.2. wilfully fails or refuses to obey any rule, order or resolution of a House or the Houses; s13(c)

66. I turn now to deal with the conduct of the members who committed the points of order breaches.

Mr Matiase

67. He rose on what he said was a point of order.

68. He did so well enough in accordance with the terms of Rule 92(1).

69. After allowing him to speak, the Presiding Officer gave a ruling, stating that that was not a point of order but was rather a point of debate.⁵

70. If Mr Matiase intended to comply with the Rules by which he was bound, the matter ought to have ended there, because Rule 92(11) is clear that the presiding officer's ruling on a point of order is final and binding.

71. But it did not end there. Mr Matiase had no intention of complying with the Rules of the National Assembly.

⁵ Hansard, record p. 8

72. As will be seen from the record as well as the video footage, he continued as if the presiding officer had not ruled at all. He continued with his speech.
73. The presiding over ruled a second time. She said: *'I am not going to listen to you anymore because that is not a point of order.'*⁶
74. Mr Matiase was unstoppable. He said the Minister's failure to respect the remedial actions of the Public Protector had rendered him a constitutional delinquent.⁷ Mr Matiase and the Presiding Officer were talking at the same time and often over each other.
75. This was in clear breach of Rule 92(9) which states that members may not disrupt proceedings by raising points of order that do not comply with the Rule.
76. The reason that the point of order did not comply with the Rule was that it was not confined to a matter of parliamentary procedure or practice, or a matter relating to unparliamentary conduct. It simply did not comply with Rule 92(2).
77. Mr Matiase's repeated raising of it, his continuation with his so-called point of order in spite of the presiding officer's rulings was intended to disrupt the proceedings of the House. He succeeded in doing so.

⁶ Hansard, record p. 8

⁷ Hansard, record p. 8 to 9

78. By engaging in this conduct, Mr Matiase was also breaching another rule, i.e., Rule 69 that deals with grossly disorderly conduct.
79. In terms of Rule 69 (a), 69(c) and 69(d) members may not engage in grossly disorderly conduct in the House and its forum, including:
- 79.1. Deliberately creating serious disorder or disruption;
- 79.2. 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 she is addressing the House;
- 79.3. Persisting in making serious allegations against a member without adequate substantiation or following the correct procedure.
80. There is a set procedure for raising issues of the nature that Mr Matiase was raising. Mr Mahlangu in his evidence referred this Committee to Rule 85(2) which states that 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.

81. Therefore, Mr Matiase was not without remedy. And Rule 85(2) was not his only remedy.
82. If he was aggrieved by the Presiding Officer's ruling on his point of order, Mr Matiase could have subsequently written to the Speaker and requested that the principle or subject matter of the presiding officer's ruling be referred to the Rules Committee. This is in terms of Rule 92(12)(a).
83. Mr Matiase did not invoke any of these remedies, choosing instead to engage in conduct that was grossly disorderly.
84. Returning to the Hansard transcript, the Presiding Officer ruled again – for the third time. She implored Mr Matiase to take his seat and said, yet again, that is not a point of order.⁸
85. She ruled a fourth time.⁹
86. He simply refused to accept her ruling as final or binding on him, instead complaining that his point of order had not been heard out.¹⁰ When he had been speaking the entire time.
87. He in fact continued to make his constitutional delinquency point yet again.¹¹

⁸ Hansard, record p. 9

⁹ Hansard record p. 10

¹⁰ Hansard record p. 10

88. The Presiding Officer instructed him to take his seat or leave the House. He elected to take his seat.
89. Mr Matiase's conduct was in clear breach of Rules 92(8), 92(9), 92(11), 69(a), 69(c), 69(d).
90. His conduct:
- 90.1. Interfered and impeded the exercise by the Presiding Officer of her functions in contravention of section 7(a) of the Act;
- 90.2. Interfered with and impeded her ability to exercise her authority in contravention of section 7(a) of the Act;
- 90.3. Interfered, and improperly so, with the performance by the Minister of his functions in contravention of section 7(b) of the Act;
91. Mr Matiase in fact created and took part in a disturbance while the House was meeting, in contravention of section 7(e) of the Act.
92. Mr Matiase's conduct constitutes contempt of Parliament in terms of section 13(a) and (c) of the Act.

¹¹ Hansard record p. 11

93. For all these reasons Mr Matiase is guilty of conduct alleged in charges 1, 2, 5, 6 and 7.
94. I turn now to the other members implicated in the point of order breaches, i.e., Mrs Hlonyana and Mrs Komane.

Mrs Hlonyana

95. She first entered the scene of Parliamentary contempt after Mr Matiase elected to take his seat. She rose on a point of order.¹²
96. After the Presiding Officer asked her: *'What is your point of order? Please state the Rule on which you want to raise your point of order.'*¹³ Her response made it clear that she was rising on the same point of order raised by Mr Matiase and already ruled upon, more than four times, by the Presiding Officer. Mrs Hlonyana was doing this in breach of Rule 92(8).
97. In addition, this point of order was ruled not to be a point of order in terms of Rule 92(2). Mrs Hlonyana's raising of it again was disruptive of the proceedings, in breach of Rule 92(9).

¹² Hansard record p. 11

¹³ Hansard record p. 11

98. Mrs Hlonyana begins by saying: *'Member Matiase has raised that Rule, and you, Chairperson, are not listening. You did not even allow him to speak and finnish...'*¹⁴
99. This response further puts it beyond any doubt that she has not accepted the Presiding Officer's ruling as final and binding on her, regardless of the terms of Rule 92(11).
100. Mrs Hlonyana did not stop there. Her intention to disrupt, obstruct and by any means necessary prevent the business of the day from proceeding was made clear by the words: *'This man is not going to speak today. It is not going to happen. ..It is not going to happen. And we are not going to leave the house. We are not leaving the House and he is not going to speak today. He is not going to speak'*¹⁵.
101. Her conduct fell foul of Rule 69 which prohibits members from engaging in grossly disorderly conduct by:
- 101.1. Deliberately creating serious disorder or disruption;

¹⁴ Hansard record p. 12

¹⁵ Hansard record p. 12

- 101.2. Repeatedly undermining the authority of the presiding officer or repeatedly refusing to obey ruling of the Presiding Officer or repeatedly disrespecting her.; and
- 101.3. Persisting in making serious allegations against a member without adequate substantiation or following the correct procedure.
102. When Parliamentary Protection Services were removing the affected members from the House, Mrs Hlonyana could be seen in the video footage, as identified by Mr Mahlangu, engaging in a further form of grossly disorderly conduct in breach of Rule 69(b) which provides that members may not in any manner whatsoever physically intervene, prevent or obstruct or hinder the removal of a member from the house who has been ordered to leave the house. Mrs Hlonyana made herself very busy pushing against the movement of members towards the exit, thereby physically intervening, obstructing or hindering their removal from the House.
103. Mrs Hlonyana, by her conduct:
- 103.1. Improperly interfered with and impeded the performance by the Presiding Officer or her functions and authority;

103.2. Improperly interfered with the performance by the Minister of his functions;

103.3. Created and took part in a disturbance while the House was meeting.

104. Mrs Hlonyana is guilty of contempt of Parliament in terms of section 13(a) and (c) of the Act, and a finding of guilty is justified for charges 3, 4, 5, 6 and 7 as set out in the notice.

105. I turn now to deal with the third member whose misconduct arises from the points of order.

Mrs Komane

106. She rose on the same point of order as raised by Mr Matiase.

107. This was in breach of Rule 92(8).¹⁶

108. When instructed by the presiding Officer to take her seat, she flatly refused, and responded: 'No'. She continued speaking.¹⁷

¹⁶ Hansard record p. 13

¹⁷ Hansard record p. 13

109. The Presiding Officer once again instructed her to take her seat. She ignored this and continued speaking.¹⁸ The Presiding Officer told her to take her seat for a third time, and received the same response.¹⁹

110. Mrs Komane:

110.1. Raised a point of order again after the Presiding Officer had made a final ruling, which was binding on Mrs Komane and which Mrs Komane ignored;

110.2. She disrupted the proceedings by raising a point of order that did not comply with Rule 92;

110.3. She deliberately created serious disorder and disruption;

110.4. She repeatedly undermined the authority of the Presiding Officer; refused to obey her rulings and repeatedly disrespected and interrupted her.

111. By engaging in such conduct, Mrs Komane:

111.1. took part in a disturbance during a meeting of the House, which was grossly disorderly;

¹⁸ Hansard record p. 14

¹⁹ Hansard record p. 14

111.2. improperly interfered with the exercise or performance by the House of its authority or function;

111.3. Improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member.

112. Mrs Komane made herself guilty of contempt of Parliament in terms of section 13(a) and 13(c) of the Act. A finding of guilty is therefore fitting in relation to the allegations made in charges 3, 4, 5, 6 and 7.

113. I turn to deal with the charges relating to crossing the floor. All the remaining members are charged with the identical charges in this regard which read as follows:

“Charge 1

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 (‘the Act’) in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249 for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule

64(d) of the Rules of the National Assembly, by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with, or impeded the exercise or performance by the House of its authority and functions.

Charge 2

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 64(d) of the Rules of the National Assembly by crossing the floor of the House in front of the benches during the proceedings.

Such conduct improperly interfered with the performance by the Minister of Public Enterprises of his functions as a Member of Parliament.

Charge 3

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(e) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a) of the Rules of the National Assembly by deliberately engaging in conduct that created serious disorder or disruption in the House, when you crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House.

By engaging in such conduct, which was grossly disorderly, you created and took part in a disturbance during a meeting of the House within the Parliamentary precinct.

Charge 4

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of

holding a Debate on Vote 9: Public Enterprises, you contravened section 7(a) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a), Rule 69(c) and Rule 69(d) of the Rules of the National Assembly by deliberately engaging in conduct that created serious disorder or disruption in the House when you crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House.

By engaging in such conduct, you improperly interfered with the exercise or performance by the House of its authority and functions.

Charge 5

It is alleged that you are guilty of conduct constituting contempt of Parliament in terms of section 13(a) of the Powers, Privileges and Immunities of Parliament and Provincial Legislatures Act 4 of 2004 ('the Act') in that, as a Member of Parliament and during a mini-plenary session of the National Assembly convened on 11 July 2019 in Committee Room E249, for the purposes of holding a Debate on Vote 9: Public Enterprises, you contravened section 7(b) of the Act when, during the proceedings, you wilfully failed and/or refused to obey Rule 69(a) of the Rules of the National Assembly by deliberately engaging in conduct that created serious disorder or disruption in the House when you

crossed the floor of the House in front of the benches during the proceedings; approached the podium and remained there until your removal from the House.

114. *By engaging in such conduct, you improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member.”*

Crossing the floor of the House

115. Chapter 5 of the Rules of the National Assembly regulates order in public meetings and sets out the rules of debate. It is in this Chapter that the conduct of members is dealt with; grossly disorderly conduct provisions are to be found; the removal of members from the Chamber and the precinct is dealt with as well as points of order.
116. Rule 64(d) provides that members must at all times accord the presiding officers of the National Assembly and members due respect and conduct themselves with dignity and in accordance with the decorum of the House and are required to not, during proceedings, pass between the Chair and the member who is speaking, nor between the Chair and the Table, nor to stand in any of the aisles or cross aisles, nor to cross the floor of the House in front of the benches.
117. All of the affected members did just that on 11 July 2019 – they crossed the floor of the House during the proceedings in front of the benches, contrary to

this Rule. By doing so the affected members failed to accord the presiding officer and other members due respect, and they failed to conduct themselves with dignity and in accordance with the decorum of the House.

118. On the evidence of the video footage and Mr Mahlangu, each one of the affected members can be seen, and was identified, crossing the floor in front of the benches, during the proceedings, and thereby:

118.1. Improperly interfering with or impeding the exercise or performance by the Presiding Officer of her authority and functions, in contravention of section 7(a) of the Act; and

118.2. Improperly interfering with the performance by the Minister of Public Enterprises of his functions as a Member of Parliament, in contravention of section 7(b) of the Act.

119. The charges in relation to breaching Rule 64(d) appear as charges 1 and 2 in the notices in respect of Mr Ceza; Mr Chabangu; Mrs Hlonyana; Mrs Komane; Mr Langa; Mr Madlingozi; Mrs Mohlala; Mr Montwedi; Mrs Msane; Mr Mthenjane; Mr Paulsen; Mr Shembeni; Ms Siwisa; Ms Sonti and Ms Tito.
120. The charges in respect of breaching Rule 64(d) appear in charges 3 and 4 in respect of Mr Matiase's notice.

121. In addition, the affected members' conduct implicated Rule 69 of the Rules of the National Assembly.
122. The charges in relation to Rule 69 appears in charges 3, 4 and 5 of the notice in respect of Mr Ceza; Mr Chabangu; Mr Langa; Mr Madlingozi; Mrs Mohlala; Mr Montwedi; Mrs Msane; Mr Mthenjane; Mr Paulsen; Mr Shembeni; Ms Siwisa; Ms Sonti; and Mrs Tito.
123. The charges in respect of breaches of Rule 69 appear in charges 5, 6 and 7 of Matiase's notice.
124. The affected members crossed the floor of the House during the proceedings; approached the podium where the Minister of Public Enterprises stood to speak and remained there until they were removed from the House. They deliberately created serious disorder and disruption. They undermined the authority of the presiding officer and disrespected her. Their conduct constituted contempt of Parliament in terms of section 13 (a) and section 13(c) of the Act, in that, it impeded or improperly interfered with the Minister's performance of his functions as a member and improperly interfered with and impeded the exercise by the Presiding Officer of her functions and authority.

Conclusion

125. The consequences of the affected members' conduct is that it impeded the House from performing its function and continuing with the business of the day; it interfered with the performance by the Minister of his functions; and it was a disturbance within the precinct whilst a House was meeting.
126. On a balance of probabilities, the evidence before the Committee proves all the charges against the affected members.
127. The evidence before the Committee has not been rebutted.
128. I submit that a proper case has been made out for a finding that each affected member:
- 128.1. Contravened the provisions of section 7(a), (b) and (e) of the Act; and accordingly
- 128.2. Is guilty of contempt of Parliament in terms of section 13(a) and 13(c) of the Act.
129. Section 12(5) of the Act stipulates that when a House finds a member guilty of contempt, the House may impose any one of the penalties set out there in addition to any other penalty.

130. I propose that the Committee deliberate, and if it finds that the members are found guilty as charged, they be invited to make representations regarding appropriate penalty, prior to the imposition of penalty.

NCUMISA MAYOSI

Cape Town

11 December 2020