

HEARING OF POWERS AND PRIVILEGES COMMITTEE
IN RELATION TO 16 HONOURABLE MEMBERS
ARISING FROM THE EVENTS OF 11 JULY 2019 IN COMMITTEE ROOM E249

INITIATOR'S SUBMISSIONS ON APPROPRIATE PENALTY

Introduction

1. On 4 March 2021, the Committee found each of the following Honourable Members (referred to hereunder, alternately, either as 'the named Honourable Members' or 'the affected Members') guilty of various charges of contempt of Parliament that were preferred against them:
 - 1.1. Honourable Member Ceza;
 - 1.2. Honourable Member Chabangu;
 - 1.3. Honourable Member Hlonyana;
 - 1.4. Honourable Member Komane;
 - 1.5. Honourable Member Langa;

- 1.6. Honourable Member Madlingozi;
 - 1.7. Honourable Member Matiase;
 - 1.8. Honourable Member Mohlala;
 - 1.9. Honourable Member Montwedi;
 - 1.10. Honourable Member Msane;
 - 1.11. Honourable Member Mthenjane;
 - 1.12. Honourable Member Paulsen;
 - 1.13. Honourable Member Shembeni;
 - 1.14. Honourable Member Siwisa;
 - 1.15. Honourable Member Sonti; and
 - 1.16. Honourable Member Tito.
2. The charges of contempt relate to the conduct of the named Honourable Members on 11 July 2019 during a mini-plenary session in Committee Room E249 when the Minister of Public Enterprises was delivering his speech on Budget Vote 9: Public Enterprises.

3. The charges of which the affected Members have been found guilty are all of a serious nature.
4. On 12 March 2021, the named Honourable Members were informed that the Committee had returned findings of guilt against them in relation to the charges set out in the charge sheets. In the same correspondence, they were invited to present to the Committee mitigating factors on appropriate penalty, either in writing or orally, before the Committee reports to the House regarding both its findings and the appropriate penalty to be recommended by it.¹
5. In correspondence addressed to the State Attorney on 17 March 2021, the attorneys of record of the affected Members requested that the sanctions hearing of which they were notified in the letter of 12 March 2021, be postponed until the outcome of the review proceedings instituted by them against, amongst others, the Committee on 11 December 2020.²
6. On 19 March 2021, the State Attorney responded by not acceding to their request to postpone this hearing.³ Further, the State Attorney notified the affected Members of the date of this hearing, and reminded them of the invitation earlier extended to them to submit their written representations, if any, by no later than 4pm on 19 March 2021; and further to indicate within that

¹ Annexure “A”.

² Annexure “B”.

³ Annexure “C”.

same time period if they wished to make oral representations to this Committee.

7. The affected Members have to date not taken up the opportunity to present mitigating factors.
8. I turn now to address the relevant provisions in the Powers, Privileges and Immunities of Parliaments and Provincial Legislatures Act 4 of 2004 ('the Act').

The provisions of the Act regarding any possible penalty or penalties

9. Section 12 of the Act reads as follows:

“Disciplinary action against members for contempt

12(1) Subject to this Act, a House has all the powers which are necessary for enquiring into and pronouncing 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.”

10. Section 12(3) of the Act reads as follows:

“12(3) Before a House may take any disciplinary action against a member in terms of sub-section 1, the standing committee must–

(a) enquire into the matter in accordance with a procedure that

is reasonable and procedurally fair; and

(b) table a report on its findings and recommendations in the House.”

11. Section 12(5) of the Act reads as follows:

“12(5) When a House finds a Member guilty of contempt, the House may, in addition to any other penalty to which the Member may be liable under this Act or any other law, impose anyone or more of the following penalties.

- (a) A formal warning;*
- (b) a reprimand;*
- (c) an order to apologise to Parliament or the House or any person, in a manner determined by the House;*
- (d) the withholding, for a specified period, of the member’s right to the use or the enjoyment of any specified facility provided to members by Parliament;*
- (e) the removal, or the suspension for a specified period, of the member from any Parliamentary position occupied by the member;*

- (f) *a fine not exceeding the equivalent of one month's salary and allowances payable to the member concerned by virtue of the Remuneration of Public Office Bearers Act, 1998 (Act No.20 of 1998);*
- (g) *the suspension of the member, with or without remuneration, for a period not exceeding 30 day, whether or not the House or any of its committees is scheduled to meet during that period."*

12. In terms of the Act, one or more of the penalties set out above may be imposed on any Member of Parliament who is found guilty of contempt of Parliament in terms of the Act, such as any of the named Honourable Members.

13. Section 12 (9) of the Act reads as follows:

"12(9) A member may not be suspended under sub-section (5)(g)

unless the House has found that –

- (a) the member is guilty of serious or repeated contempt; and***
- (b) none of the other penalties set out in sub-section (5) will be sufficient."***

Relevant considerations in respect of any possible penalty or penalties

14. A variety of considerations may be relevant when considering the presence of mitigating or aggravating factors and when determining what penalty or penalties should be imposed.

15. It is respectfully submitted that in the circumstances of this matter, the factors to be considered by the Committee in aggravation, or mitigation, in determining the appropriate penalty or penalties to be imposed on the named Honourable Members include the following:
 - 15.1. The seriousness of the charges of contempt of Parliament which the named Honourable Members have been found guilty of, as well as the nature and severity of the their conduct;

 - 15.2. Acknowledgement of wrongdoing and remorse on the part of the named Honourable Members, as well their co-operation with the work of the Committee;

 - 15.3. Any previous incidents involving the named Honourable Members; and

 - 15.4. The interests of Parliament.

16. Below I make my submissions in relation to each one of these factors insofar as they relate the named Honourable Members involved in the present proceedings.

The seriousness of the charges of contempt of Parliament which the named Honourable Members have been found guilty of, as well as the nature and severity of their conduct

17. As previously stated, the charges of contempt of Parliament which the named Honourable Members have been found guilty of are serious.
18. The charges of contempt which the Honourable Members have been found guilty of may be summarised as follows.
19. Honourable Members Matiase, Hlonyana and Komane were each found guilty of seven charges of contempt of Parliament. Two of the seven charges of which they were found guilty relate to their persistence in the raising of “points of order” in a manner that was contrary to the Rules, and further in a manner that was deliberately designed to, and did, disrupt the proceedings of the day.⁴
20. As a result of their conduct, these three Honourable Members were each found guilty of conduct constituting contempt of Parliament in terms of section 13(c) of the Act in that they improperly interfered with, or impeded the ability of the

⁴ Charges 6 and 7 in the charge sheets of Honourable Members Hlonyana and Komane; Charges 1 and 2 in the charge sheet of Honourable Member Matiase.

House to exercise its authority or functions, contrary to section 7(a) of the Act; and their conduct further contravened section 7(b) of the Act in that it improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member of Parliament.

21. Honourable Members Matiase, Hlonyana and Komane ignored the rulings of the House Chairperson Boroto, who presided over the proceedings, regarding the “points of order” that they had raised, and which they were repeatedly raising. According to House Chairperson Boroto, when Honourable Member Hlonyana said, pointedly: *‘This man is not going to speak here today’*, to her that was a threat to the Minister, and to the House.
22. These Honourable Members acted deliberately and wilfully when they refused to heed the presiding officer’s rulings, which were final and binding. Their conduct improperly interfered with and / or impeded the exercise of performance by the House of its authority and functions. Their conduct succeeded in disrupting the Minister’s attempts to perform his functions and fulfil his obligations to Parliament. This type of contempt of Parliament is very serious.
23. The remaining charges of which Honourable Members Matiase,⁵ Hlonyana⁶ and Komane⁷ were found guilty were for contempt of Parliament in terms of

⁵ Charges 3 to 7

⁶ Charges 1 to 5

section 13(c) of the Act in that by crossing the floor of the House, in contravention of the Rules – effectively charging towards the Minister of Public Enterprises - they:

23.1. Improperly interfered with and impeded the exercise or performance by the House of its authority and functions, contrary to section 7(a) of the Act;

23.2. Improperly interfered with the performance by the Minister of Public Enterprises of his functions as a member of Parliament, contrary to section 7(b); and

23.3. Created and took part in a disturbance within the Parliamentary precinct, whilst the House was meeting, in contravention of section 7(e) of the Act.

24. In addition to Honourable Members Matiase, Hlonyana and Komane, the Honourable Members that have been found guilty of these charges are: Honourable Ceza;⁸ Honourable Chabangu;⁹ Honourable Langa;¹⁰ Honourable Madlingozi;¹¹ Honourable Mohlala;¹² Honourable Montwedi;¹³ Honourable

⁷ Charges 1 to 5

⁸ Charges 1 to 5

⁹ Charges 1 to 5

¹⁰ Charges 1 to 5

¹¹ Charges 1 to 5

¹² Charges 1 to 5

¹³ Charges 1 to 5

Msane;¹⁴ Honourable Mthenjane;¹⁵ Honourable Paulsen;¹⁶ Honourable Shembeni;¹⁷ Honourable Siwisa;¹⁸ and Honourable Tito.¹⁹ Each one of these named Members faced five (5) charges arising from this conduct, and they were found guilty of all.

25. The affected Honourable Members engaged in conduct that required the invocation by the Presiding Officer, first, of Rule 70 ordering the named Members to leave the House, and thereafter of Rule 73 being the instruction to the Serjeant-at-Arms, and then Parliamentary Protection Services to remove the affected Members from the House immediately. The affected Members engaged in conduct that was grossly disorderly, in disregard of the Presiding Officer and which properly resulted in invoking Rules 70 and 73.
26. The said Honourable Members acted deliberately. They engaged in conduct that created serious disorder and disruption in the House. They undermined the authority of the Presiding Officer, refusing to obey her rulings and repeatedly interrupting her as she was addressing the House. Their conduct was so serious that it was appropriate and reasonable for the Presiding Officer to instruct the Serjeant-at-Arms and thereafter Parliamentary Protection Services to immediately remove the affected Members from the Chamber for

¹⁴ Charges 1 to 5

¹⁵ Charges 1 to 5

¹⁶ Charges 1 to 5

¹⁷ Charges 1 to 5

¹⁸ Charges 1 to 5

¹⁹ Charges 1 to 5

the remainder of the day's sitting. During their removal from the House, the affected Members were physically intervening, obstructing or hindering their own removal, when the Presiding Officer had ordered such removal.

Acknowledgment of wrongdoing and remorse on the part of the named Honourable Members, as well as their co-operation with the work of the Committee

27. The Chairperson entered a "not guilty" plea on behalf of each of the named Honourable Members in respect of each charge of contempt of Parliament that they had been charged with.
28. The named Honourable Members have not acknowledged any wrongdoing whatsoever. They have also not shown any remorse for their conduct.
29. The hearing commenced on Tuesday 24 November 2020, and was postponed to Wednesday 25 November 2020 at the request of the attorney of record of the Honourable Members.
30. When the hearings resumed on 25 November 2020, the named Honourable Members were not in attendance. Their attorney of record and counsel were in attendance.
31. The legal representatives of the named Honourable Members raised, on behalf of their clients, various substantive and procedural complaints in connection

with the conduct by the Committee of the proceedings. These were considered by the Committee.

32. 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. They have since launched legal proceedings in the Western Cape High Court seeking various forms of relief, none of which include interdicting and preventing the continuation of the present process.
33. The Committee decided to proceed with the hearing and a not guilty plea was entered on behalf of each of the named Honourable Members, in accordance with the provisions of the Act as read with the Rules of the National Assembly (9th Edition) ('the Rules').
34. The Committee continued with the hearing on 26 November, 27 November, 11 December 2020 and 4 March 2021 without the participation of the named Honourable Members.
35. Whilst the affected Honourable Members could not be compelled to remain and participate in the work of the Committee, one of the consequences of their election is that they have not presented any mitigating factors and circumstances.

36. The lack of acknowledgement of wrong doing, and the lack of remorse should appropriately inform the penalty or penalties imposed.

Any previous incidents involving the named Honourable Members

37. There are two Members in relation to whom previous findings of guilt for contempt of Parliament have been made, and in relation to whom penalties were imposed. Those Members are Honourable Matiase and Honourable Sonti in relation to their conduct in an incident that occurred on 21 August 2014 that involved 20 members of the National Assembly during Question Time to the President.

38. At the conclusion of the hearing that followed from that incident, Honourable Matiase was found guilty of two charges, namely:

- 38.1. Contravening section 13(a) read with section 7(e) of the Act by creating or taking part in a disturbance within the precinct of Parliament while the House was meeting by shouting, banging on tables or refusing to obey the Speaker's instructions or behaving in a grossly disorderly manner. It was found that Honourable Matiase's conduct interfered with or disrupted the proceedings of the House, forcing the Speaker to suspend proceedings temporarily and ultimately to adjourn the sitting.

- 38.2. Contravening section 13(a) read with section 7(a) of the Act in that he interfered with or impeded the performance of the House of its authority or functions by remaining in the House after the sitting had been suspended so that he could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequences of his refusal was that the House was adjourned before completing its business for that day.
39. The penalty that was imposed on Honourable Matiase was a suspension for 14 days without remuneration, in terms of section 12(g) of the Act.
40. Honourable Matiase has therefore previously been found guilty, and had a penalty imposed on him, of contempt of Parliament under section 13(a) for conduct contravening section 7(a) and (e) of the Act. He has been found guilty of contempt of Parliament for similar conduct in these proceedings.
41. Honourable Member Sonti was found guilty of contravening section 13(a) read with section 7(a) of the Act in that she interfered with or impeded the performance of the House or its authority or functions by remaining in the House after the sitting had been suspended so that she could leave or be removed from the Chamber in order for the House to continue with its business for that day. The consequence of her refusal was that the House was adjourned before completing its business for that day.

42. The penalty that was imposed on Honourable Sonti was an order to apologise as prescribed by the House and a fine equivalent of 14 days salary and allowances payable to her.
43. Honourable Sonti has once again in these proceedings, as a result of her conduct on 11 July 2019, been found guilty of contempt of Parliament for conduct contravening, inter alia, section 7(a). She has once again engaged in conduct that improperly interfered with and impeded the exercise or performance by the House of its functions and authority.
44. Whilst it is the case that the remaining affected Members had not, before 11 July 2019, conducted themselves in a similar fashion, it is respectfully submitted that this is outweighed by the serious nature and severity of their conduct. That conduct was intentional and deliberate.
45. It is further submitted that notwithstanding repeated cautions during the proceedings on 11 July 2019, and having had time to reconsider their conduct during the proceedings, the affected Members persisted with conduct that was grossly disorderly and contemptuous.
46. In addition to that, and in further aggravation I submit, the Members charged towards the Minister of Public Enterprises whilst he was in the process of delivering his speech, conduct which was itself unprecedented.

The interests of Parliament

47. The interests of Parliament (and the public) are advanced by orderly and robust debate and engagement. It is respectfully submitted that the conduct of the affected Members was destructive of orderly and robust debate and engagement. It is respectfully submitted that the conduct had about it the hallmarks of a designed, concerted and carefully coordinated effort to, *inter alia*, disrupt the proceedings of the House.

Further considerations

48. The Honourable Hlonyana stated the following to House Chairperson Boroto on 11 July 2019 - *“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.”*²⁰ This was an indication of the attitude and state of mind of the named Honourable Members, which state of mind was amply displayed by their conduct when they crossed the floor and charged at the Minister as he attempted to proceed with the business of the day.
49. The Presiding Officer, Mr Collen Mahlangu and the Serjeant-at-Arms Mr Maleema all testified that although they had witnessed disruptions of Parliamentary proceedings previously, a disruption of this type – that involved

²⁰ Hansard transcript, Bundle page 10

Members of Parliament crossing the floor of the House; charging towards another Member as he attempted to discharge his functions and the uncertainty that that situation, which was evolving fairly quickly, entailed – all of this was unprecedented and induced a sense of shock.

Conclusion - possible penalty or penalties to be imposed on the named Honourable Members

50. The Committee is now required to consider which penalty or penalties, if any, it will recommend should be imposed by the House on each of the Honourable Members.
51. In accordance with the provisions of clause 12(5) of the Act, the Committee may recommend the imposition of, and the House may impose, one or more of the penalties referred to in clauses 12(5)(a) to (g) of the Act. It is respectfully submitted that this course of action is appropriate in the circumstances.
52. Further, and in accordance with the provisions of clause 12(9) of the Act, the Committee may recommend the suspension of, and the House may impose the suspension of any of the named Honourable Members in terms of this section of the Act as they have been found guilty of serious, and in the case of two of them, repeated contempt by the Committee. It is respectfully submitted that this course of action is appropriate in relation to the two Honourable Members who were involved and were found guilty in the 2014 incident, as

none of the other penalties set out in clause 12(5) of the Act would be sufficient.

53. It is respectfully submitted that for the reasons as set out herein, the following penalties are appropriate penalties for the Committee to recommend in respect of the named Honourable Members.

Honourable Members Matiase and Sonti

54. In 2014, Honourable Members Matiase and Sonti were found guilty of contempt of Parliament after they improperly interfered with or impeded the exercise by Parliament of its authority or functions during that incident.
55. In the present proceedings, as a result of their conduct on 11 July 2019, they have been found guilty once again of the same charge. In the case of Honourable Matiase, the Committee found him guilty of seven (7) charges and Honourable Sonti has been found guilty of five (5) charges.
56. Each one of those charges and findings of contempt is serious. Taken together they warrant a penalty that is sufficiently serious.
57. It is submitted that the multiple and deliberate acts of serious contempt warrant an appropriately serious penalty. It is further submitted that anything short of a sufficiently serious penalty will signal that that Rules of the National Assembly, which Rules the Members of the House collectively impose upon themselves,

may be ignored, observed only in the breach and transgressed without fear or concern of serious consequence. It is respectfully submitted that such an approach is inappropriate and impermissible.

58. It is submitted that a sufficient penalty in respect of these Honourable Members should be a serious penalty or penalties.
59. It is the penalty set out in section 12(g) of the Act, i.e., suspension of the Honourable Members without remuneration for a period not exceeding 30 days, whether or not the House or any of its committees is scheduled to meeting during that period.
60. None of the other penalties set out in subsection (5) will be sufficient. The penalties that were imposed on Honourable Member Sonti as a result of the 2014 process were an order to apologise in terms of section 12(5)(c) of the Act; and a fine in terms of section 12(5)(f). Honourable Member Matiase was imposed the penalty set out in section 12(5)(g), i.e., suspension for 14 days without remuneration. These penalties did not deter them from engaging in grossly disorderly conduct in 2019, once again bringing the proceedings in the House to a halt as had occurred in 2014.

Honourable Members Ceza, Chabangu, Langa, Madlingozi, Mohlala, Montwedi, Msane, Mthenjane, Paulsen, Shembeni, Siwisa and Tito have each been found guilty of five (5) charges of contempt of Parliament. Honourable Members Hlonyana and Komane have each been found guilty of seven (7) charges of contempt of Parliament.

61. Taken individually, each one of these charges is serious.
62. Contempt in the form of creating or participating in a disturbance, of which these members have been found guilty, is in and of itself a very serious form of contempt and would warrant a sufficiently serious penalty or penalties.
63. Taken together with the further contempts of improperly interfering with or impeding the exercise or performance by the House of its authority or functions, and also of improperly interfering with the performance by the Minister of his functions, which further contempts the members have been found guilty of, the contempt of these members is very serious indeed.
64. It is submitted that an appropriately serious penalty is warranted in the circumstances. The members acted intentionally, deliberately and apparently in concert so as to disrupt the proceedings of the House. No amount of reasonable intervention had the effect of the members reconsidering their conduct.
65. It is submitted that a sufficient penalty in respect of these members is the

penalty set out in section 12(f) of the Act, i.e., a fine not exceeding the equivalent of one month's salary and allowances payable to each one of these Members by virtue of the Remuneration of Public Office Bearers Act, 20 of 1998.

NCUMISA MAYOSI

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26 March 2021