

**IN THE JUDICIAL CONDUCT COMMITTEE**

**Ref. No.**

In the matter between:

**AFRICA 4 PALESTINE**

Complainant

and

**CHIEF JUSTICE MOGOENG MOGOENG**

Respondent

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**THE RESPONSE**

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I, the undersigned,

**MOGOENG MOGOENG**

hereby affirm as set out below:

[1] I am a citizen of South Africa, a Christian who believes the Bible in its totality and have since 8 September 2011 been privileged to serve the Republic as Chief Justice.

[2] The contents of this affidavit are, unless the context otherwise suggests, within my personal knowledge and are to the best of my belief true and correct.

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### *Essential Context*

[3] Embracing, professing and ordering one's affairs in line with the Holy Bible is a fundamental human right entrenched in the supreme law of the Republic – the Constitution. And so is the free expression of one's opinion, belief or thought. These freedoms are doubly-guaranteed by sections 15 and 16 of the Constitution. Lest we forget, some of the injustices of our past alluded to in the Preamble to our Constitution took the form of thought control or manipulation, intimidation and **sustained and well-resourced smear campaigns whose never-disclosed historic objective is to discredit the target so badly as to leave it with no option but to retract or apologise**. These were integral parts of the over-arching strategy designed to achieve conformity by compulsion. Expression designed to lead to the attainment of any of these freedoms was extensively and severely circumscribed.

[4] These freedoms are therefore not to be lightly interfered with just because their exercise or enjoyment irritates or is at variance with the agendas or popularised views of some. Their exercise is not to be overly controversialised or weaponised to beat some citizens into "line" or force them to conform to the viewpoints of others like pressure groups, the media, analysts or Government. Nobody should thus be allowed to easily get away with campaigning or enforcing their project/agenda/world-outlook, which unconstitutionally<sup>1</sup> negates constitutional rights of others, into the national psyche so as to prime all, including would-be decision-makers, into a fear-induced acceptance of a popularised line of command to escape untold reputational damage or other conceivable risks that could otherwise eventuate. This is a free country – not a sophisticated dictatorship, comprising untouchables on the one side and "nobodies" on the other, who would do well to shut up and occupy their predetermined place of docility in a supposedly vibrant constitutional democracy.

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<sup>1</sup> Contrary to the provisions of section 36 of the Constitution.

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[5] Everyone has the right to criticise or wish Bible-based Christianity and aspects of the Holy Bible they don't like out of existence. But no one has the right to unduly controversialise, smear or systematically work the Bible and Christianity out of their constitutionally-ordained existence, under the guise of advancing unspecified human rights or constitutional values.

[6] The totality of what I said in the webinar conversation hosted by the Jerusalem Post, is absolutely essential in order to give proper context to determining whether I got myself involved in a proscribed "political controversy", an extra-judicial activity incompatible with judicial office and somehow lended undue support to Israel and adopted an oppositionist stance towards Palestine or acted in a way that reasonably suggests that I should have recused myself in the *Masuku* case, by reason of my jaundiced predisposition towards Palestine. The mainstay of the complaint is my alleged involvement in a political controversy. Sufficient attention must therefore be given to this concept, for its proper contextualisation and understanding.

[7] The Holy Bible is the spiritual manual by which every devoted, uncompromised or uncaptured Christian is required by God to live (Luke 4:4; Joshua 1:8). The mystery behind this Word of God, is that it is Jesus Christ Himself (John 1:1 and 14; and Revelation 19:13). That is why heaven and earth shall pass away but not the Word of God (Matthew 24:35). For, God cannot pass away together with His creation. The rejection of any part of the Word of God by me would be a rejection of Jesus Christ Himself. And love for God (which means obedience to God (John 14:23) and love for a fellow human being (meaning caring about the wellbeing of another) is the foundational or all-essential commandment for Christians (Matthew 22:37–40). The injunction not to curse is sourced from the Holy Bible (Genesis 12:1–3), and is therefore not an option for the heaven-bound.

[8] The contention that an opinion, a belief or thought grounded on the Holy Bible amounts to "expressions of support for and solidarity with Zionism and Zionists" and

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an anti-Palestine disposition, which ought inexorably to have resulted in my recusal from the *Masuku* case, is most concerning when put in its proper context. **Africa4Palestine** sees reliance on Genesis 12:1–3 and Psalm 122:6 and accepting certain Biblical principles as true and binding by any Christian, especially a Judge, as conduct that must be condemned and punished – conduct that must not be allowed in South Africa. It seems to view this kind of Bible-based Christianity as something to be frowned upon and highly controversialised – something to be fought against. This, in my view, smacks of deep intolerance of genuine and Word-based Christianity. The enjoyment of Bible-based Christianity ought not to be available subject to the approval or at the mercy of anyone, neither should our other constitutional rights.

[9] **Africa4Palestine**'s posture is worrisome. Crucial parts of my statement, that best contextualise my views on the webinar, have been tactfully or strategically left out. The first was on love and advance-forgiveness based on **Matthew 5:44** that says:

“But I say unto you, love your enemies, bless them that curse you, do good to them that hate you, and pray for them which despitefully use you and persecute you”.

It was in relation to this Biblical injunction that I also said that those who are planning or conspiring to destroy or kill me, I forgive them. Even those who would plot to do so in ten years to come are already forgiven. You can't have this conviction or belief and still harbour a jaundiced disposition towards anybody, including Palestine.

[10] Conveniently, **Africa4Palestine** also left the following remarks out of contention, presumably because they militate against their campaign against me:

“I love the Jews. I love Israel. **I love Palestine. I love the Palestinians. I love everybody.** One, because it is a commandment from the God in whom I believe, but also because **when you love, when you pursue peace with all human beings**, you allow yourself the opportunity to be a critical role player whenever there is a dispute”.

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[11] It was in this context and after referring to **Psalm 122:6** and **Genesis 12:1–3** in the Holy Bible that I said:

“I am under an obligation as a Christian to love Israel, **to pray** for the **peace** of Jerusalem, which actually means the peace of Israel. And I cannot, as a Christian, do anything other than love and **pray** for Israel, because I know hatred for Israel by me and for my nation can only attract unprecedented curses upon our nation. So what do I think should happen?”

“I think, as a citizen of this great country, that we are denying ourselves a wonderful opportunity of being a game changer in the Israeli-Palestinian situation. We know what it means to be at loggerheads; to be a nation at war with itself. And therefore the **forgiveness** that was demonstrated, the **understanding**, the **big heart** that was displayed by President Nelson Mandela, and we the people of SA following his leadership, **is an asset that we must use around the world to bring about peace where there is no peace, to mediate effectively based on our rich experience**”.

[12] Somehow **Africa4Palestine** has, in my view, found a way to build a case by taking these remarks completely out of their obvious context to achieve its goal of making an example of me to any who would ever dare to knowingly or unknowingly differ with them. **The love for all, the pursuit of peace, forgiveness, mediation and prayer are disregarded in the furtherance of their objective. Bible-based prayers for the peace of Jerusalem and the refusal to hate or curse are now being made out to look like a preference of Israel over Palestine**, as support for everything that the Israeli government has done, is doing or is yet to do, and the rejection of, if not hatred for Palestine. In sum, these are all being weaponised against me, and made to look like conduct so unbecoming of a Judge as to justify the imposition of some form of punishment on me. And all this, in the name of human rights.

[13] As citizens with fundamental rights and freedoms, Judges are not to be needlessly censored, gagged or muzzled. They ought to be free to continue to write articles or books, deliver public lectures or participate in radio or television programmes

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to share reflections on human rights, constitutionalism, policies or any other subject of public interest. They are not to be confined to judgment-writing responsibilities as some, either out of sheer ignorance, mischief-making or stone age conservatism, have consistently advocated for.

[14] What Judges are not to do is, for example, provided for in article 12(1) of the Code of Judicial Conduct. A Judge must not (a) **belong to any political party or secret organisation**; or (b) become involved in any political controversy or activity, **unless it is necessary for the discharge of judicial office**. And of course article 14(2) forbids the involvement of a Judge in extra-judicial activities, **including those embodied in their rights as citizens**,<sup>2</sup> if those activities are incompatible with confidence in or the impartiality or independence of a Judge. Article 4(a) demands of a Judge to uphold the independence and integrity of the Judiciary and the authority of the courts. And note 4(ii) thereto, in the same spirit of article 12(1)(a) and (b), says that “Judges **do not pay any heed to political parties or pressure groups** and perform all professional duties free from outside influence”.

[15] The context within which article 12’s reference to political controversy or activity must be understood is its explicit reference to membership of political parties as a starting point. Judges may not get involved in controversies or activities involving political parties but, on home ground. Why? Because pressure often comes from the political arena and party-politics is a high-litigation space that could easily give rise to disputes that are justiciable in our courts where our Judicial Officers serve. As note 4(ii) indicates, this is meant to help Judges not to “pay heed to political parties or pressure groups” and help them “perform all professional duties free from **outside influence**”. When Judges are members of political parties we can no longer talk about “outside” but “inside” influence. It is precisely because article 12 has in mind political controversies that are justiciable in South Africa that article 12(1)(b) is prefaced with “**unless it is necessary for the discharge of judicial office**”. This proviso undoubtedly

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<sup>2</sup> This is where section 36 of the Constitution finds application. Unsurprisingly because section 165 of the Constitution and the Judges’ oath and affirmation of office demand independence and impartiality from Judges.



envisages and applies to, issues that could reasonably be expected to come before our own courts for determination.

[16] Comments by a South African Judge on who between President Donald Trump or Senator Hillary Clinton or any other US politician could make a better President conceptually falls within the realm of “any political controversy”. The same could be said of who would do justice to the Presidency of the People’s Republic of China or the Russian Federation. To suggest that commentary on such political issues or controversies should lend a South African Judge in trouble on the basis that it reveals partiality, lack of independence and ought legitimately or reasonably to disrobe that Judge of public confidence, can only be a consequence of a superficial and less diligent reflection on the critical issues involved and the mischief sought to be nipped in the bud, through the article.

[17] For, those would be political issues or controversies so detached from what is justiciable in South African courts that, however much some might be inclined to frown upon a Judge’s involvement in them for whatever reason, they cannot rightly or justly be the basis for subjecting a Judge to discipline or censure. It must be highlighted that the reference in article 12(1)(a) to the fact of a Judge joining a political party provides the essential context for a proper understanding of what is proscribed. It is not just anything or any controversy that smacks of politics that ought to have a Judge hauled before the Judicial Conduct Committee. It is the involvement in home-soil political controversy that could bring the independence or impartiality of a Judge into question, that is potentially sanctionable. It bears repetition that the proviso “**unless it is necessary for the discharge of judicial office**” puts the essentiality of the potential justiciability of the political controversy in our courts beyond any **reasonable** doubt.

[18] And rightly so, because that involvement would compromise the independence and impartiality of that Judge. All other incidences of political commentary are peripheral to this central theme or foundational premise. Article 12 is about ensuring neutrality on justiciable issues – not a blind and purposeless banning order on Judges



from ever reflecting on foreign political controversies. Whether Palestine should be independent and how best to achieve peace in the middle-east, is a matter so unrelated to the operations of South African courts that commentary on it cannot justly and reasonably serve as the basis for hauling a Judge before the Judicial Conduct Committee based on an overly-liberal and uncontextualised interpretation of article 12(1)(b).

[19] Still on political controversies, it must be recalled that after sharing some reflections on how practical and committed we have to be in eradicating racism or injustice, on the webinar, I had this to say:

“I think, as a citizen of this great country, that we are denying ourselves a wonderful opportunity of being a game changer in the Israeli-Palestinian situation. We know what it means to be at loggerheads; to be a nation at war with itself. And therefore the **forgiveness** that was demonstrated, the understanding, **the big heart** that was displayed by President Nelson Mandela, and we the people of SA following his leadership, **is an asset that we must use around the world to bring about peace where there is no peace, to mediate effectively based on our rich experience**”.

[20] I went on to say:

“So, we’ve got to move from **a position of principle** here, we’ve got to have a broader perspective and say: we know what it means to suffer and to be made to suffer. But, we’ve always had this **spirit of generosity**, this **spirit of forgiveness**, this **spirit of building bridges** and together with those that did us harm, coming together and saying: well, we can’t forget what happened but we’re stuck together. **Our history forces us to come together and to look for how best to co-exist in a mutually beneficial way**”.

[21] This is no different from what my dear brother Justice Cameron<sup>3</sup> reportedly and correctly said in 2015:

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<sup>3</sup> I regretfully have to drag him into this just as much as I regret dragging Chief Justice Langa, of blessed memory, and Deputy Chief Justice Moseneke.

“A **just resolution** in **Israel/Palestine** is one of the pre-eminent **moral challenges**, not just for those who support Israel, but for the world at large. **We must live together** in this world with all of its caprice and **hatred** and cruel unpredictability. And our claims of it for ourselves must not contribute to its caprice and **hatred** and unpredictability”.

Again I say, the thrust of these remarks is on all fours with my appeal for a peaceful resolution of the Israel/Palestine problem or the possibility for their coexistence in a mutually-beneficial way and the **love** for both parties as opposed to **hatred** for any. It is well-known that **Africa4Palestine** did not lodge and is probably not planning to lodge a complaint against any of my colleagues on the basis of their understanding of articles 12(1)(b) and 14(2). I am their target. And I think this is so, largely because I quoted parts of the Bible they don't like, to express love for both Israel and Palestine and my scriptural obligation to **pray** for the peace of Jerusalem. I am pleased that Deputy Chief Justice Moseneke and Justice Cameron were, unlike me, not hauled before the JCC by the likes of **Africa4Palestine**. I would have been concerned had it happened. For, none of us did anything wrong.

[22] And policy must not be conflated with politics, even if it touches on political issues. Section 85(2)(b) of our Constitution empowers the Executive to develop and implement national policy. And this is how the SA-Israeli policy came into being. As I unequivocally stated during the overly uncontextualised and controversialised conversation, I regard that policy as binding on me because our government determined it in terms of its constitutional authority. And as a citizen and even as a Judge I am entitled to criticise the Constitution, the laws and even policies of my country although they are binding on me. This notwithstanding how popularised a particular narrative or understanding of them might be. For example, I am critical of the fact that a Deputy Minister is not yet constitutionally enabled to act when a Minister responsible for that portfolio is unavailable to serve or is absent. Instead a Minister who is less familiar, if familiar at all, with the portfolio than the Deputy Minister would be appointed to step in. I have experienced how it undermines efficiency and effectiveness. I think it is not right and I am entitled to say so. This to me is a constitutional or good governance issue, to some it is nothing but political controversy.



[23] During the conversation, I lamented my own country's policy stance towards Israel which in my opinion does not seem to be aligned to the possibility of us contributing towards the attainment of peace in that region. I cited key human rights related challenges that affect South Africa and Africa that were in my opinion given rise to by former colonial powers. I did so, not as political commentary but a human-rights, justice and peace-driven reflection. For to me, landlessness, homelessness, poverty in the ocean of wealth in our nation and continent, and multitudes that die at a younger age, are more of human rights issues than they are political. And it is not a trivial matter to me that in our own country and others in the continent landlessness, homelessness, poverty, indignity, sickness and disease abound when we are so well-endowed with land, mineral resources, natural resources like fauna and flora, richer potentials for tourism, water and super-fertile soil. If I understand the position of **Africa4Palestine** correctly, these are not human rights issues but self-evident political controversies – a forbidden territory for Judges if they still hope to enjoy public confidence. I disagree.

[24] I was pleading or arguing for our rich history and experience-based capacity to be peace-makers to be tapped into as a resource rather than excluding ourselves from that possibility. Why? Because as a Christian, who is also a citizen and a Judge, I am commanded by **Hebrews 12:14** and **1 John 4:20–21** to follow peace with all and to love all. Hence my love for both Israel and the Jews, Palestine and the Palestinians. I alluded to the “spirit of generosity”, the “spirit of forgiveness”, a realisation that tensions could be resolved on the basis that “**our history forces us to come together and to look for how best to coexist in a mutually beneficial way**”.

[25] On **Africa4Palestine**'s logic, and because the Code of Judicial Conduct applies even to retired Judges, former Deputy Chief Justice Dikgang Moseneke ought to be charged for accepting the appointment, by the President, to help defuse or resolve the undeniably highly sensitive political controversies in Lesotho. To be more precise his mandate was to “lead a team who would act as **mediators between key role players in**

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**Lesotho to assist in their search for a lasting and sustainable solution to their political and security challenges”**. According to the reasoning of **Africa4Palestine** former Chief Justice Pius Langa, of blessed memory, should also have been dragged to the JCC-equivalent for his involvement in the resolution of the Fiji Islands’ political controversies, at the instance of the Commonwealth. This would be so because none of them were involved in these political controversies because it was “necessary for the discharge of judicial office”.

[26] And it again bears emphasis that the only exemption to involvement in “any political controversy or activity” is when “it is necessary for the discharge of judicial office”. An assignment given to a Judge by a politician, a functionary in any of the political arms of the State or any political structure to get involved in “any political controversy or activity” does not constitute something “necessary for the discharge of judicial office”. “Judicial office” has to do only with the execution of the core functions of a Judge – adjudication of cases or disputes in a court of law to which a Judge has been appointed to serve. This then makes it abundantly clear that there is a very tight intertwinement between the potential justiciability in our courts of the political controversy a Judge is involved in and the article 12 proscription. If the political controversy or activity falls outside the realm of what is justiciable in our courts, then article 12 finds no application. Impartiality or independence stems from staying away from all local political parties and their controversies or activities. For, that is indispensable to the equitable and just adjudication of their disputes. This nails down the real mischief sought to be arrested by this principle.

[27] Additionally, it is public knowledge that a retired Constitutional Court Judge made common cause with political activists or parties, and immersed himself in what probably struck many objective people as an undisguised political controversy. He stood outside the Constitutional Court with other activists, addressing the media and calling for the removal of a sitting President – the most controversial political issue, championed by some political parties in South Africa, at the time. That in my opinion seems to be a textbook case of what article 12(1)(b) proscribes. Yet, **Africa4Palestine**

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did nothing about it. Why, if they are driven by a principle of ensuring that the Judiciary is impartial and independent?

[28] Hypocrisy is a vice we dare not institutionalise or normalise, formally or informally, knowingly or unknowingly. Openness or transparency and accountability are not only some of the values on which our constitutional democracy rests, but are also an absolutely necessary antidote for poor governance and corruption. Judges must therefore never be forced to pretend not to have strong views on the religions they subscribe to, human rights issues, matters of justice and peace or even policy directions taken by our country, when they in fact do. To do otherwise would be a highly hypocritical posture that must not be countenanced. It is illogical to insist on this secretive and hypocritical behaviour and yet proscribe membership of secret societies as we do in terms of article 12(1)(a) of the Code.

[29] The strong views Judicial Officers hold on any human rights, constitutional or any issue must be made known to the public. This way, the public would be able to assess our judgments with reference to our known views or dispositions be it to religion, sexual orientation, gender-based issues, femicide, landlessness, homelessness, poverty, peace, forgiveness or other issues. For, the public must never be left to think that we hold no strong views on any of the issues before us when we in fact do, only to be shocked when we unguardedly express our raw racist or tribalistic views. Otherwise, Judges could lie low and pretend not to feel strongly about issues they really feel strongly about only to pursue their undisclosed agendas under the guise of impartiality. The suppression-of-views school of thought probably explains why there is so much corruption in the Judiciaries of some countries. The approach of **Africa4Palestine** would inadvertently but certainly entrench hypocrisy and enable partiality and the attendant possibility to quietly push own or sectional agendas without detection.

[30] Mature democracies don't penalise Judges or disqualify candidates from 'appointability, for holding strong views on Christianity or any religion. They insist on transparency. That should and does apply to South Africa as well.

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[31] And the *Masuku* recusal issue really is a red-herring. It has got nothing to do with what I said. It is about hate speech. Mine was a love, forgiveness and peace speech. From 2009 when I was to be appointed as a Constitutional Court Judge even during the 2011 JSC interviews that culminated in my appointment to the position of Chief Justice, it became well-known that I was not only a committed Christian but also a Pastor. I even cited **Romans chapter 13**, in response to allegations against me as a nominee for Chief Justiceship, which was fully read out by Commissioner JP Fourie during the Sunday interview. In fact, some of the most vitriolic attacks levelled against me were precisely because I am a Christian and a Pastor. The worst mockery was triggered by my disclosure that God wanted me to be the Chief Justice. It became headline or breaking news material. Yet, where Christian principles conflict with the Constitution I have been demonstrably loyal to my oath of office.

[32] There is thus no merit in any of the allegations levelled against me.

*The more pointed response to the complaints*

*Ad paras 7 to 20*

[33] I stand by what I said in the April 2016 JSC interview of Advocate Michael Donen SC. Interviews for judgeship are about testing suitability for appointment on the basis of a candidate's knowledge and understanding of the law and its practical application. That is why I am correctly quoted as having said "**please let it be about the law now**". I also stand by my assertion that views on "**the demand for the existence of an independent state of Palestine are political and highly sensitive**". And those views can't help us determine a candidate's appointability precisely because of their political character and irrelevance to the issue at hand, unless perhaps previously expressed by a candidate and clarification is being sought. Even if Advocate Donen SC was asked about our policy as opposed to the politics of Palestine's independence, I would have objected by reason of the irrelevance of the question. **But, I never expressed any view on "the demand for the existence of an independent state of Palestine" during the conversation.** I was very careful to say that I would only be

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happy to deal with broad principles but not pointed issues. That was my approach even when asked about BDS, which I am told has since assumed the name of **Africa4Palestine**.

[34] Asked what I thought about its activities, I said in essence that people are entitled to take whatever action they consider appropriate to address whatever they consider to be an injustice. I alluded to the inadvisability of the apparent inconsistent application of the disinvestment policy and expressed a preference for a policy, not politics, that would enable us to facilitate a peaceful resolution of the conflict. The Israel/Palestine conflict is in any event not a “political controversy or activity” that could lend itself in our courts for adjudication. And nothing I said in the webinar constitutes an endangerment to our country or the reputation of our Judiciary in the eyes of any informed and reasonable person.

[35] To forbid the remarks I made about peace, landlessness, homelessness, poverty, colonialism, etc, would mean that a Judge is not even allowed to say anything about apartheid on the basis that doing so would amount to getting involved in political controversy or activity. But, this cannot be correct.

*Ad paras 21 to 30*

[36] I never expressed any view on Zionism. This, in my opinion, is a desperate twisting of what I said. My Biblical obligation to **pray** (ask God) for the peace of Jerusalem and not to hate or curse Israel cannot constitute a preference of Israel over Palestine. **Africa4Palestine** knows this. That is why they were in my opinion very deliberate and intentional in leaving out that portion of my statement that contains my confession or declaration of love for Palestine and the Palestinians. I turn now to the alleged lack of impartiality and independence and loss of confidence.

[37] As recently as last year, 2019, I wrote a judgment in *Freedom of Religion South Africa v Minister of Justice and Constitutional Development* [2019] ZACC 34 2020 (1) SACR 113 that goes against Biblical principles that God, and Bible-believing Christians

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holds dear. Principles that I also, together with many other loving, responsible and non-abusive parents including those who are not Christians, believe with all of my heart that properly applied they could do more good to instil and entrench discipline in a family setting and by extension in society. I was party to taking away the parental authority and entitlement to administer moderate and reasonable chastisement to children, contrary to the Biblical instruction in **Proverbs 13:24 and 23:13**. This I did because I believed that I was constitutionally and legally so enjoined. Integrity and the force of my oath of office always dictate that I do not contort the law or facts in order to enforce my beliefs, however deeply held. It is either I honour my oath of office or resign if the conflict between the Constitution and my faith becomes unbearable.

[38] If what **Africa4Palestine** says were correct, then I would have gone out of my way to disregard what in my view was the correct interpretation of the Constitution and the law and the weight to be attached to expert evidence to push my strongly-held Christian beliefs. For what it is worth, I perceived that I was going to come under severe criticism from many parents, even from Christians. And I was not spared, understandably so in my view. But, I had to honour my oath of office and decide according to my understanding of the law. I think **Africa4Palestine**, at least its lawyers, are alive to this much-talked-about judgment but it appears that this reality doesn't matter as long as they can achieve their goal.

[39] It is necessary to also cite *De Lange v Methodist Church* [2015] ZACC 35 2016 (2) SA 1 (CC). There, a Minister in the Methodist Church was charged with misconduct. She had announced her intention to marry her same-sex partner, which was against Church policy. She challenged the constitutionality of that policy on the basis that it amounted to unfair discrimination. The Constitutional Court panel comprised among others Mogoeng CJ and Cameron J. On the philosophy of **Africa4Palestine** the two of us should have recused ourselves because I was going to readily side with the Church and Justice Cameron would blindly side with the applicant by reason of his well-known and strong track record as a global LGBTQI+ activist.

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*Ad paras 31 to 38*

[40] As usual only the Constitution, the law and the facts will inform my decision in *Masuku*. The notion that being a leader of a court or the Judiciary coupled with “charisma” can somehow charm independent and self-respecting Judges into abandoning their crucial constitutional adjudicatory responsibilities and just follow you, can only be a consequence of lamentable ignorance about true judgeship. Judges are independent, oath-abiding and thoughtful decision-makers.

[41] This lack of understanding probably explains why **Africa4Palestine** believes that my beliefs in the Bible as a whole and devotion to my Christian faith undermines my impartiality or independence or informed public confidence. Unfortunately, it is not within the province of any Judge to prevent a self-induced and self-serving motions of no confidence from being expressed all over the public domain. And this happens from time to time. Some even accuse Judicial Officers of corruption without bothering to provide any evidence to back it up. Happily, there are clear legal principles for the determination of judicial impartiality or bias.

[42] On **Africa4Palestine**’s approach, Judges must never be allowed to sit for example in matters involving children or women’s rights if they had expressed strong views on these issues extra-judicially or are known to be passionate about them. This would mean that members of the International Women Judges Association which exists to ensure that gender equality becomes a practical reality particularly within the Judiciary, must always recuse themselves in cases involving gender equality. This would obviously extend to colleagues who are known LGBTQI+ activists. If they don’t have to recuse themselves, why should it be any different with a devoted and Bible-believing Christian? We would also do well to reflect on the superficiality of and irony behind the notion that it is fine for a Judge to consistently express strong views on certain issues in judgments. But when the same views are repeated extra-judicially by the same Judge, that ought to form a rational basis for recusal. It should not matter

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which highly regarded authority propounds this view. It is a highly irrational and intellectually deficient legal standpoint.

[43] **Africa4Palestine** must be very careful about their views on the *Masuku* matter. It is a pending matter. And, they could reasonably be understood to be seeking to bring pressure to bear, directly or indirectly, upon me and other Judges who sat in the matter to decide in a manner that would accord with their predictable preferences or obvious sense of what is a just and equitable outcome in that matter. They must rest assured that, in line with the sanctity of our oath or affirmation of office, justice will be done in *Masuku*. And the outcome, whether it is for or against Mr Masuku, will have nothing to do with what **Africa4Palestine** said or did not say.

[44] I don't have and never had any set or predetermined views about the *Masuku* matter.

*Ad paras 39 to 43*

[45] Not much turns on these unmeritorious contentions. They strike me as a desperation for an undeserved and objectively unnecessary killer-punch.

*Conclusion*

[46] What must be guarded against, is a desperation to enforce own or sectional agenda, by singling out a public figure to make an example of him or her, almost as if to say to all: "you better watch out. If we can deal with this one so viciously, just imagine what would become of you if you were to disagree with us".

[47] And it can never be scandalous or unbecoming of a Judicial Officer to believe the Biblical commandment to pray for the peace of Jerusalem, to embrace love for all rather than hatred, peace rather than war, the possibility for mediation rather than self-exclusion, a predictably principled stance towards all rather than a policy position whose relationship with principle or needful consistency is, in one's view, not so clear regard being had to the human rights track record of other nations we relate to, including

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those in the list of top ten alleged human rights violators. That is a strong policy, as opposed to political, stance. How this ought to attract disciplinary measures or punishment of whatever kind in an open and free society is unthinkable. It would, in my opinion, only make sense for these palpably innocent utterances to attract incidents of acute anger-management incapacity or unrestrained irrationality and vitriol, if they have inadvertently yet effectively dislodged or devastatingly undermined some undisclosed monumental agenda(s).

[48] If reliance on the Holy Bible could be allowed to be distorted and twisted as was my webinar reflections, how much of Bible-based Christianity would still be left to be enjoyed? Would freedom of religion, opinion, belief, thought and expression still be worth the constitutional space it occupies? Woe to our constitutional democracy and our freedoms if these narratives were to prevail. It would almost be as if Christians would in the future have to practice Christianity and obey Biblical commandments subject to the approval of the likes of **Africa4Palestine**. And this, in circumstances where **Africa4Palestine** does seem not be able to highlight any constitutional value or provision that I have violated, on the basis of which they want to take away my sections 15 and 16 constitutional rights.

[49] I believe that to some, my reliance on the Holy Bible and the next paragraph amounts to foolishness or sheer madness and the much-awaited lubricating material for the vilification or smear machinery. But to me and many others, particularly genuine, standing and uncaptured Bible-believers (those who believe the Bible in its totality) it is the necessary profession of faith and the power of God (Romans 1:16–17; 1 Corinthians 1:18–19 and 24–29; and Hebrews 4:12).

[50] The God of Abraham, Isaac and Jacob, Jehovahnissi (Exodus 17:15) Who has commanded me to love Him and all human beings including my persecutors (Matthew 22:37–40 and 5:44; Romans 13:10); the God Who has commanded me to forgive 490 times in one day (Matthew 18:22 and Mark 11:24–25); the God Who has commanded me to pursue peace with all human beings (Hebrews 12:14); the God Who still guides

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His own with great precision (Jeremiah 33:3; Daniel 2:17–23 and Romans 8:14) the God Who I dare not deny (Matthew 10:33; Romans 8:35–36 and 38–39); is the God for Whom this battle is (Exodus 14:14; Esther 7:10 and 2 Chronicles 20:1–25). He is the God who will never leave me nor forsake me (Hebrews 13:5) and to Whom all power (Psalm 62:11) and vengeance belongs (Psalm 94:1 and Romans 12:19). He is the God who will make me more than a conqueror through Jesus Christ who loves me (Romans 8:37) in Jesus Mighty Name, AMEN!

M Magoeng  
DEPONENT

The deponent has acknowledged that he knows and understands the contents of this affidavit, which was solemnly affirmed before me at MAHLICENG on this 27 day of July 2020.

Sebanda  
0520539-5  
**CAPT SEBANDA AG**

COMMISSIONER OF OATHS

<b>SOUTH AFRICAN POLICE SERVICE</b>
DIVISION: PROTECTION AND SECURITY SERVICES
<b>27 JUL 2020</b>
P.S.S. NW - STATIC PROTECTION
<b>SUID-AFRIKAANSE POLISIEDIENS</b>

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