IN THE HIGH COURT OF SOUTH AFRICA
(WESTERN CAPE DIVISION, CAPE TOWN)

JUDGMENT

Reportable

Case no: 2026- 119182

In the matter between:

MATAMELA CYRIL RAMAPHOSA	**APPLICANT**
and	
SANDILE NGCOBO N.O.	**FIRST RESPONDENT**
THOKOZILE MASIPA N.O.	**SECOND RESPONDENT**
MAHLAPE SELLO N.O.	**THIRD RESPONDENT**
SPEAKER OF THE NATIONAL ASSEMBLY	**FOURTH RESPONDENT**
VUYOLWETHU ZUNGULA	**FIFTH RESPONDENT**
THE ECONOMIC FREEDOM FIGHTERS	**SIXTH RESPONDENT**
AFRICAN TRANSFORMATION MOVEMENT	**SEVENTH RESPONDENT**
UMKHONTO WESIZWE PARTY	**EIGHTH RESPONDENT**
UNITED AFRICANS TRANSFORMATION	**NINTH RESPONDENT**

CORAM: **MABINDLA-BOQWANA JP and SHER and MAYOSI JJ**

Heard: 2 – 4 September 2026

Delivered: 25 November 2026

Summary: Section 89 of the Constitution – removal of the President – Rules of the National Assembly (NA Rules) – legality review – whether the Independent Panel appointed in terms of Rule 129D of the NA Rules misconstrued its mandate – sufficient evidence vis-à-vis prima facie evidence.

ORDER

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1. The report of the Independent Panel, comprising the first, second and third respondents, rendered in terms of Rule 129G(1)(b) of the Rules of the National Assembly, is declared unlawful, and is reviewed and set aside in its entirety.

2. Any steps taken by the National Assembly pursuant to the Report are reviewed, declared unlawful and set aside.

3. Each party is to pay their own costs of this application as well as that of the interdict application under case number 2026-138228 and the application for leave to appeal that followed.

JUDGMENT

THE COURT

Introduction

[1] The applicant, Mr Matamela Cyril Ramaphosa, is the President of the Republic of South Africa (the President). He seeks to review, declare as unlawful and set aside:

(a) the report of the Independent Panel (the Panel), comprising the first, second and third respondents, rendered in terms of Rule 129G of the Rules of the National Assembly (NA Rules/the Rules), and particularly the recommendations in paragraph 264 thereof (the Panel Report); and

(b) any steps taken by the National Assembly (Assembly) pursuant to the Panel Report.

[2] The first to third respondents, Justice Sandile Ngcobo, Justice Thokozile Masipa and Advocate Mahlape Sello SC, were members of the Panel that was established in terms of Rule 129D of the NA Rules, for the removal of the President from office in terms of section 89 of the Constitution. They are cited in their capacities as such. They were then tasked with conducting a preliminary enquiry on a motion that initiated the section 89 impeachment process.

[3] Justice Ngcobo is a retired former Chief Justice of South Africa, Justice Masipa is a retired Judge of South Africa, and Advocate Sello SC is a senior advocate in private practice. The members of the Panel delivered a notice to abide by this Court's decision.

[4] The fourth respondent is the Speaker of the Assembly, currently Ms Angela Thokozile Didiza (the Speaker). The Speaker also delivered a notice to abide by

the decision of this Court. Her notice was accompanied by an explanatory affidavit setting out the reasons for her stance in this litigation.

[5] The fifth respondent is Mr Vuyolwethu Zungula, a member of the Assembly who proposed the motion that triggered the Assembly's appointment of the Panel. Mr Zungula was the leader of the African Transformation Movement (ATM) when the motion was proposed. He opposes the application.

[6] The sixth respondent, the Economic Freedom Fighters (EFF), the seventh respondent, the ATM, the eighth respondent, Umkhonto weSizwe Party (MKP), and the ninth respondent, the United African Transformation (UAT), are all political parties registered with the Independent Electoral Commission and represented in the Assembly. The fifth to ninth respondents oppose the application.

Factual Background

[7] On 1 June 2022, the former Director-General of State Security and National Commissioner of Correctional Services, Mr Arthur Fraser, laid criminal charges against the President at the Rosebank Police Station in Johannesburg. In his affidavit supporting the criminal complaint, he alleged that trespassing and housebreaking occurred at a farmhouse on a wildlife farm in Bela-Bela, Limpopo, known as Phala Phala (the Farm), on 9 February 2020. The Tshivase Trust, the President's family trust, privately owns the Farm. Ntaba Nyoni Estates CC (Ntaba Nyoni) operates it, and the President is its sole member.

[8] Mr Fraser alleged that, during the burglary, large sums of undisclosed US Dollars, which were concealed in furniture in the main farmhouse and not declared to the South African Reserve Bank (SARB), were stolen. The amount stolen was speculated to be between 4 and 8 million US Dollars. Mr Fraser further

alleged that the incident was not officially reported to the police for investigation; that the President instructed the head of the Presidential Protection Unit (PPU) of the South African Police Service (SAPS), Major-General Wally Rhoode (General Rhoode), to immediately investigate the incident, apprehend the suspects and retrieve the stolen US Dollars; that General Rhoode unlawfully constituted a team to investigate the incident at the instance of the President; and that the President sought the assistance of the President of Namibia in apprehending the suspect in Namibia, as a consequence of which General Rhoode travelled to Namibia where the suspect was interviewed and stolen monies were retrieved from him. Mr Fraser further alleged that General Rhoode travelled to Namibia utilising official government resources and that he and his team, on the instruction of the President, paid those suspected of involvement in the incident in cash, to conceal the events that took place at the Farm.

[9] On 2 June 2022, the President, through a media statement, denied any criminal conduct on his part but confirmed that the 'robbery' took place at his Farm, where the proceeds of a sale of game were stolen while he was attending an African Union Summit in Addis Ababa. He further said that, upon being apprised of the incident, he reported it to General Rhoode for 'investigation'.

[10] On 18 July 2022, Mr Zungula submitted to the then Speaker, Ms Nosiviwe Mapisa-Nqakula, a motion in terms of Rule 129A of the Rules (the Motion) to initiate proceedings for the section 89 enquiry. The Motion laid four charges against the President. Charge 1 alleged that the President had performed paid work outside his duties as President in breach of section 96(2)*(a)* of the Constitution. This was based on a speech the President made to delegates at an African National Congress (ANC) conference in Limpopo. Charge 2 alleged that he failed to report a theft of monies in excess of R100 000 on his Farm to the Directorate for Priority Crime Investigation (DPCI) in violation of section 34(1)

of the Prevention and Combating of Corrupt Activities Act 12 of 2004 (PRECCA). Charge 3 alleged that he directed General Rhoode to deal with security issues on his Farm, thereby exposing himself to a conflict between his private interests and official responsibilities in violation of section 96(2)*(b)* of the Constitution. Charge 4 alleged that he unlawfully instructed General Rhoode to investigate the burglary on his Farm rather than reporting it in terms of the law, in breach of sections 96(2)*(b)* and 83*(b)* of the Constitution.

[11] On 14 September 2022, the Speaker appointed the Panel, with Justice Ngcobo as its Chairperson. The Speaker formally referred the Motion to the Panel in terms of Rule 129C(1). On 10 October 2022, the ATM submitted supplementary evidence on charges 1 and 3.

[12] Shortly after the referral of the Motion, the Panel issued a timetable for the preliminary enquiry, setting out the timelines for its work. In addition, the Panel issued a notice in terms of Rule 129G(1)(c)(i) inviting members of the Assembly to place information before it within six days of publication of such notice in its Announcements, Tablings and Committee Reports. The Panel received submissions from the ATM, the EFF and the United Democratic Movement (UDM) on 27 October 2022.

[13] Under cover of two letters dated 20 and 28 October 2022, the Panel provided the President with copies of the information before it, which consisted of documents running to 1627 pages and 10 video clips. In its letter of 28 October 2022, the Panel provided the President with the information it had received and invited him to respond, in writing, to the relevant allegations against him, in accordance with Rules 129G(1)(c)(ii) and (iii). The Panel gave the President 10 calendar days to respond, meaning he had to respond by 7 November 2022, which he did on 6 November 2022.

[14] On 30 November 2022, the Panel rendered its Report.[1] It concluded at paragraph 264 that the information placed before it disclosed, prima facie, that the President may have committed:

(a) a serious violation of section 96(2)*(a)* of the Constitution;

(b) a serious violation of section 34(1) of PRECCA;

(c) a serious misconduct in that the President violated section 96(2)*(b)* of the Constitution by acting in a way that is inconsistent with his office; and

(d) a serious misconduct in that the President violated section 96(2)*(b)* of the Constitution by exposing himself to a situation involving a conflict between his official responsibilities and private business.

[15] On 5 December 2022, the President lodged an application directly with the Constitutional Court to review and set aside the Report. In the application, he contended that the Panel misconstrued its mandate, relied on information provided by parties who had no knowledge of the facts, and failed to inquire whether he acted in bad faith.

[16] On 13 December 2022, the Report came before the Assembly in terms of Rule 129I(3) as the Rule then stood. The question before the Assembly was whether to proceed with the enquiry by referring the matter to the Impeachment Committee to be established for that purpose. The majority voted against the referral.

[17] On 10 January 2023, the EFF launched an application directly to the Constitutional Court to review and set aside the Assembly's decision. On 1 March 2023, the Constitutional Court dismissed both the President's and EFF's review

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[1] *Report of the Section 89 Independent Panel Appointed to Conduct a Preliminary Enquiry on the Motion proposing a Section 89 Enquiry* (30 November 2022) (Report).

applications. It held that the President's matter did not fall within its exclusive jurisdiction and failed to establish a case for direct access, and that the EFF also failed to make out a case for direct access.

[18] On 13 February 2024, the EFF launched another application in the Constitutional Court, challenging the validity of Rule 129I of the NA Rules and seeking to have the Assembly's 13 December 2022 decision, taken under that Rule, reviewed and set aside.

[19] On 8 May 2026, the Constitutional Court handed down its judgment, *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others*[2] (*EFF III*), declaring Rule 129I invalid, setting it aside, and amending it in the interim pending any amendment by the Assembly.

[20] On 26 May 2026, the President instituted the present application. Pursuant to *EFF III*, the Assembly established the Impeachment Committee and, on 26 May 2026, announced its membership. Thereafter, on 12 June 2026, the President launched an application in this Court for an interim interdict restraining the Committee from proceeding pending the outcome of this review. On 23 June 2026, the Assembly adopted the amended rules concerning section 89 enquiries to align the NA Rules with *EFF III*. The Impeachment Committee then began its work. However, on 24 July 2026, this Court granted the interim interdict restraining the Speaker and Impeachment Committee from proceeding with the impeachment hearings pending the review.[3]

[21] The newly adopted rules govern the section 89 proceedings that are before the Impeachment Committee. For completeness, Rule 129I now reads as follows:

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[2] *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others* [2026] ZACC 17; 2026 (8) BCLR 761; 2026 (5) SA 331 (CC) (*EFF III*).
[3] *Ramaphosa v Speaker of the National Assembly and Others* [2026] ZAWCHC 371; [2026] 3 All SA 705 (WCC) (*Interdict judgment*).

'129I Consideration and referral of panel report

(1) Once the panel has reported the Speaker must inform the Assembly of the report.

(2) The President must be provided with a copy of the report forthwith.

(3) In the event the panel concludes that sufficient evidence exists as contemplated in Rule 129G, the matter must be referred to the Impeachment Committee established by Rule 129J for a Section 89 enquiry.

(4) In the event the panel concludes that sufficient evidence does not exist as contemplated in Rule 129G, the Speaker must schedule the report for consideration by the Assembly; and in the event the Assembly nonetheless resolves that a Section 89 enquiry be proceeded with, the matter must be referred to the Impeachment Committee established by Rule 129J for a Section 89 enquiry.'

[22] At the hearing, we were informed that the Assembly also amended Rule 129P, which we refer to later in this judgment.

The constitutional and legislative framework

[23] Sections 1 and 2 of the Constitution establish, among other foundational values, the supremacy of the Constitution and the rule of law, and state that any law or conduct inconsistent with it is invalid, and that the obligations imposed by the Constitution must be fulfilled.

[24] Section 42(3) of the Constitution provides that the Assembly is elected to represent the people and to ensure government by the people under the Constitution. It does so by choosing the President from amongst its members (section 86), providing a national forum for public consideration of issues, passing legislation, and scrutinising and overseeing executive action.

[25] Section 55(2) of the Constitution requires the Assembly to provide mechanisms to ensure that all executive organs of state in the national sphere of government are accountable to it, and to maintain oversight of the exercise of national executive authority.

[26] Section 57(1) of the Constitution empowers the Assembly to determine and control its internal arrangements, proceedings, and procedures, and to make rules and orders concerning its business, with due regard to representative and participatory democracy, accountability, transparency, and public involvement.

[27] Section 83 of the Constitution requires the President to uphold, defend and respect the Constitution as the supreme law of the Republic, and promote the unity of the nation and that which will advance the Republic. The President is entrusted with enormous powers that are necessary to perform his functions.

[28] Section 89 of the Constitution provides for the removal of the President, while section 102 deals with motions of no confidence. These have been described as tools to hold the President accountable.[4] The present case concerns section 89(1), which states as follows:

'The National Assembly, by a resolution adopted with a supporting vote of at least two thirds of its members, may remove the President from office only on the grounds of –

(a) a serious violation of the Constitution or the law;

(b) serious misconduct; or

(c) inability to perform the functions of office.'

[29] Section 89 therefore creates an exceptional constitutional mechanism. It vests the removal power in the Assembly but limits its exercise to the grounds expressly stated in the Constitution and the supporting majority prescribed therein. If removed, the President will lose the benefits attached to the office and may not serve in any public office.

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[4] *EFF III* n 2 para 57.

The Rules of the Assembly

[30] On 22 November 2018, the Assembly adopted the *National Assembly Rules for the Removal of President from Office in terms of section 89 of the Constitution*.[5] This was the version of the rules that applied when the Panel delivered its report in 2022. As pointed out above, that version of the rules was amended in 2026, following the decision in *EFF III*.[6]

[31] Rules 129A to 129Q regulate the procedure for the removal of the President under section 89 of the Constitution. They regulate the content of any presidential impeachment motion and the procedures to be followed in relation to and pursuant to such a motion.

[32] Rule 129A regulates the initiation of a section 89 enquiry. It provides that any member of the Assembly may, by way of a substantive notice of motion, initiate proceedings for a section 89 enquiry, provided that the motion must be limited to *a clearly formulated and substantiated charge* on the grounds specified in section 89. The motion must prima facie show that the President: (i) committed a serious violation of the Constitution; (ii) committed a serious misconduct; or (iii) suffers from an inability to perform the functions of office. The motion must be supported by, and have attached to it, all the evidence that is relied upon in support of it. *The charges therein must relate to an action or conduct performed by the President in person*, and the motion must be consistent with the Constitution, the law and the Rules.

[33] The Speaker performs an initial screening function. Rule 129B provides that once a member has given notice of a motion to initiate section 89 proceedings,

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[5] As published in the Announcements, Tabling and Committee Report no. 123 on 11 September 2018.
[6] Fifth Report of the National Assembly Rules Committee for the Seventh Parliament *Rules Concerning Section 89 Enquiries* in Announcements, Tablings and Committees Parliamentary Report no.107, 19 June 2026 (Amended NA Rules).

the Speaker may consult the member to ensure that the motion is compliant with the criteria set out in Rule 129A.

[34] Rule 129C provides that when the motion is in order, the Speaker must immediately refer it, together with any supporting documentation, to an Independent Panel established for the purpose of conducting a preliminary enquiry into it and must inform the Assembly and the President of that referral without delay.

[35] Rules 129D to 129H regulate the establishment, composition, appointment, chairing, functions, powers and quorum of the Panel. Rule 129G(1)(a) provides that the Panel must be independent and is subject only to the Constitution, the law and the Rules, which it must apply impartially and without fear, favour or prejudice.

[36] The procedure of the Panel, as provided in Rule 129G(1)(c), is subject to the following:

(a) The Panel may afford members of the Assembly an opportunity to place relevant information before it.[7]

(b) The Panel must provide the President with all the information available to it.[8]

(c) The Panel must provide the President with a reasonable opportunity to respond, in writing, to all the relevant allegations against him.[9]

[37] Rule 129G(1)(b) further provides that the Panel must undertake a preliminary enquiry relating to a motion referred to it by the Speaker, and must make a recommendation to the Speaker, within 90 days (at the time it was 30 days), *whether sufficient evidence* exists to show that the President committed a

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[7] Rule 129G(1)(c)(i).
[8] Rule 129G(1)(c)(ii).
[9] Rule 129G(1)(c)(iii).

serious violation of the Constitution or the law, committed serious misconduct, or suffers from an inability to perform the functions of office.

[38] In the definitions section of the Rules, it is stated that for the purposes of a section 89(1) enquiry –

(a) serious misconduct means '*unlawful, dishonest or improper behaviour performed by the President in bad faith*'; and

(b) a serious violation of the Constitution or the law means behaviour by the President amounting to an *'intentional or malicious violation of the Constitution or the law performed in bad faith*'. (Emphasis added.)

[39] Rule 129I governs the consideration and referral of a Panel Report. Under the new Rule 129I(3), the matter must be referred to an Impeachment Committee if the Panel concludes that there is sufficient evidence of the kind contemplated by Rule 129G.

[40] Rules 129J to 129Q regulate the Impeachment Committee stage. They provide for the establishment, composition, appointment and chairing of the Impeachment Committee; require the Committee, where a section 89 enquiry proceeds, *to establish the veracity* and, where required, the seriousness of the charges; require the enquiry to be conducted in a reasonable and procedurally fair manner within a reasonable timeframe; afford the President the right to be heard and to be assisted by a legal practitioner or other expert of their choice; and provide for the Impeachment Committee's report to be considered by the Assembly.

[41] The Impeachment Committee reports to the Assembly in terms of Rule 129O. If the Committee's report recommends that the President be removed from

office, the question is put to the Assembly for a vote. The Assembly may adopt such a resolution only by a two-thirds majority of its members.

[42] Amended Rule 129P(2) provides that the Assembly is bound by a conclusion in the Panel's Report that sufficient evidence exists as contemplated in Rule 129G; and subrule (3) stipulates that the Assembly is bound by the findings of the Impeachment Committee regarding the charges in the motion calling for the removal of the President.

[43] Amended Rule 129P(4) provides that the Assembly is not bound by a recommendation in a report of the Impeachment Committee as to whether or not the President should be removed from office, provided that the Assembly may vote that the President be removed from office in terms of section 89(1) of the Constitution only if the relevant report of the Impeachment Committee finds that one or more of the charges in the motion calling for his or her removal is established.

[44] Before setting out the issues for determination and examining the merits, it is appropriate to frame the legal principles in terms of which the issues that arise must be determined.

The nature of these proceedings

[45] The President grounds this review application on the principle of legality, more specifically rationality. The starting point is therefore the rule of law, which requires all exercises of public power to remain within the bounds of the powers conferred and to satisfy the minimum constitutional standard of rationality.[10]

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[10] *Fedsure Life Assurance Ltd and Others v Greater Johannesburg Transitional Metropolitan Council and Others* 1999 (1) SA 374 (CC) paras 56–59; *Pharmaceutical Manufacturers Association of SA and Another: In re Ex Parte President of the Republic of South Africa and Others* 2000 (2) SA 674 (CC) paras 85 and 90.

[46] The seminal authority remains *Pharmaceutical Manufacturers Association and Another: In re Ex Parte President of the Republic of South Africa and Others*.[11] There, the Constitutional Court held that rationality 'is a minimum threshold requirement applicable to the exercise of all public power by members of the Executive and other functionaries'.[12] An exercise of public power which fails that threshold is inconsistent with the Constitution and unlawful.

[47] The rationality inquiry is objective. It asks whether there is a rational relationship between the exercise of the power and the purpose for which that power was conferred. The Court is therefore concerned with the existence of a rational connection, not with whether it would have exercised the power differently or reached a different conclusion on the issues concerned, in this case, the Panel's Report.

[48] The threshold is low. This Court is not permitted to substitute the Panel's decision with its own. Rationality is not, as the Constitutional Court held in *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others*, 'a master key that opens all doors, anytime, anyhow and judicial encroachment is permissible only where it is necessary and unavoidable to do so'.[13]

[49] Similarly, in *Bel Porto Governing Body v Premier, Western Cape, and Another,* the Constitutional Court held:

'The fact that there may be more than one rational way of dealing with a particular problem does not make the choice of one rather than the others an irrational decision. The making of such choices is within the domain of the Executive. Courts cannot interfere with rational decisions of the Executive that have been made lawfully, on the grounds that they consider that a different decision would have been preferable.'[14]

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[11] *Pharmaceutical Manufacturers* ibid.
[12] Ibid para 90.
[13] *Electronic Media Network Limited and Others v e.tv (Pty) Limited and Others* [2017] ZACC 17; 2017 (9) BCLR 1108 (CC) para 85.
[14] *Bel Porto Governing Body v Premier, Western Cape and Another* 2002 (3) SA 365 (CC) para 45.

[50] The Constitutional Court developed the same principle in *Democratic Alliance v President of the Republic of South Africa and Others*.[15] There, the Court stated:

'The reasoning in these cases shows that rationality review is really concerned with the evaluation of a relationship between means and ends: the relationship, connection or link (as it is variously referred to) between the means employed to achieve a particular purpose on the one hand and the purpose or end itself. The aim of the evaluation of the relationship is not to determine whether some means will achieve the purpose better than others but only whether the means employed are rationally related to the purpose for which the power was conferred. Once there is a rational relationship, an executive decision of the kind with which we are here concerned is constitutional.'[16]

[51] These principles apply with equal force to the Panel Report. A legality review is not an appeal merely because the President disputes the Panel's evaluation of particular material. Nor is this Court concerned with the President's innocence or guilt on the charges the Motion brought against him, in relation to which the Panel had to determine whether sufficient evidence existed. This Court must consider the existence of the alleged defects in the processes followed by the Panel and determine whether those defects establish unlawfulness within the applicable standard of review.

[52] The Court is not required to decide afresh what weight it would have attached to every item that was before the Panel or whether it would have drawn precisely the same inference or would have expressed the Panel's reasons in the same terms. Rather, the question is whether the Panel exercised the power conferred by Rule 129G lawfully and rationally.

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[15] *Democratic Alliance v President of the Republic of South Africa and Others* [2012] ZACC 24; 2013 (1) SA 248 (CC) (*Democratic Alliance*).
[16] Ibid para 32.

[53] This does not insulate factual reasoning from review. A conclusion which has no rational foundation in the material before the Panel may be vulnerable to legality review. Equally, an inference resting upon a material error concerning an objectively ascertainable fact may, depending upon its relationship to the decision, undermine the rationality of the result. Regardless, the threshold remains constitutional irrationality rather than mere disagreement over the preferable evaluation of the material.

[54] The standard must also be applied to the power which the Panel actually exercised. Rationality is necessarily relational: the connection is tested between the means adopted and the purpose of the power.[17] The Court must therefore assess the Panel's reasoning against the purpose of the preliminary enquiry that it was tasked to conduct.

[55] If the President is correct about Rule 129G, then the Panel's failure to perform its functions may amount to a material error concerning the limits of its mandate. If the opposing respondents' interpretations are correct, however, the legality of the Report cannot be tested by imposing upon the Panel obligations which Rule 129G did not confer. Accordingly, the content of the power must first be correctly identified before the lawfulness of its exercise can be assessed.

[56] The same discipline is required when considering the individual charges. The President's founding affidavit identifies numerous alleged deficiencies in the Panel's handling of particular facts and material. Each complaint must be examined to determine whether it establishes a reviewable defect. It is not sufficient merely to demonstrate that another or different assessment of the information was possible.

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[17] *Albutt v Centre for the Study of Violence and Reconciliation, and Others* [2010] ZACC 4; 2010 (3) SA 293 (CC) para 51; *Democratic Alliance* ibid paras 27–32.

[57] Nor is rationality concerned with whether the Panel's conclusions were ultimately correct in the sense in which that question might arise on appeal.[18] The Court is concerned with whether there is a rational basis upon which the Panel could reach the conclusions it did, when regard is had to the information that was before it and the ambit of the powers conferred upon it by Rule 129G. In all the circumstances, the Report must withstand the requirements of legality.

The issues

[58] The first ground of review submitted by the President is that the Panel misconstrued its mandate by merely determining whether there was prima facie evidence that he was guilty of a serious violation of the Constitution or law, or serious misconduct. This is because Rule 129G(1)(b) requires the Panel to determine whether *sufficient evidence* exists to show that the President committed a serious violation of the Constitution or law or serious misconduct.

[59] The second ground is that the Panel misdirected itself by failing to assess whether there was sufficient evidence to show that the President acted intentionally and in bad faith. By virtue of the definition in the Rules, bad faith is an element of each of the offences of which the President is charged. The Panel correctly found, so it is submitted, that a violation or misconduct committed in good faith does not fall within the grounds listed in section 89(1).

[60] The third ground of review is that the Panel failed to weigh, or ignored, the President's exculpatory evidence and relied on unfiltered information that did not constitute evidence in terms of Rule 129G(1)(b) and, in doing so, failed to determine whether sufficient evidence existed for each charge.

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[18] See *Commissioner, South African Revenue Service and Another v Richards Bay Coal Terminal (Pty) Ltd* [2025] ZACC 3; 2025 (6) BCLR 639 (CC); 2025 (5) SA 617 (CC) para 103.

[61] The fourth ground is that the Panel went beyond the charges by drawing inferences and focusing on information which did not relate to the charges. Such information, which the President was not afforded an opportunity to respond to, became the foundation of the Panel's findings. The President raised the issue of admissibility in his founding affidavit but did not materially advance it in his heads of argument or in oral argument.

[62] The respondents contend that the Panel understood and properly discharged its mandate, in that:

(a) there is no difference between the prima facie and sufficient evidence standards;

(b) unlike the Impeachment Committee, the Panel did not have the tools to test evidence; and

(c) the Panel did indeed have to inquire into the President's bad faith. It did so and found that the President had acted in bad faith.

[63] The respondents raised several preliminary points, which we address before we determine the merits.

Preliminary points raised by the respondents

[64] The MKP raises three jurisdictional points. First, it submits that the Constitutional Court, in *EFF III*, has already authoritatively determined whether the Panel applied the correct test. For this reason, so it argues, this Court has no power to undo, vary or bypass that determination.

[65] In this regard, it relies on the following passages in *EFF III*:[19]

'[139] There need not be a full-blown, exhaustive inquiry into every single impeachment motion that survives an initial sifting. However, *where the Panel concludes that sufficient*

[19] *EFF III* n 2.

evidence exists to disclose a prima facie case, its recommendation that a section 89 inquiry be proceeded with must be implemented through a referral to an Impeachment Committee, unless and until the Report is set aside on review. . . .

. . .

[141] In such an instance, if appropriately regulated by the NA Rules, the termination of the inquiry without a full-blown "trial" may well be justified. This possibility does not qualify the obligation of referral following a positive prima facie finding; it reflects, instead, the distinct institutional roles of the Panel and the Impeachment Committee - *the former determining whether there is a case to answer*, and *the latter determining whether that case can ultimately be sustained*. . . .

. . .

[323] The difficulty emanates from the placement of the impugned rule within the scheme of the NA Rules. Rule 129I is triggered immediately after the Panel has reported on whether sufficient evidence exists to warrant the commencement of an impeachment process. It thus operates before the Impeachment Committee has undertaken its investigative function. That investigation is not merely a formality. It is the mechanism through which allegations are tested, witnesses are heard and the factual basis for the exercise of the National Assembly's power is established.' (Emphasis added.) (Footnotes omitted)

[66] MKP asserts that paragraph 369 of the third judgment, by Majiedt J, puts the issue beyond doubt, where he states:

'. . . Where the Panel finds that there is not sufficient evidence, unlike the facts of the present matter, the National Assembly is not deciding in the air. It is making a determination, grounded in the *confirmed* absence of substantiating facts, that the threshold for impeachment has not been met.'[20] (Emphasis underlined.)

[67] This submission ignores what Majiedt J said in paragraph 310:

'. . . It is important to bear in mind that at this juncture the merits of the Report, on which much time was spent in both the written and oral submissions of the parties, is not the issue here. Instead, we are concerned with an anterior question, the constitutionality of the impugned rule.'

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[20] Ibid.

[68] Evidently, *EFF III* did not decide whether the Panel understood its mandate under Rule 129G nor was it called to interpret the meaning of that rule. Rather, the issue before the Constitutional Court concerned the constitutional validity of Rule 129I and the Assembly's vote to not refer the Panel's Report to the Impeachment Committee.

[69] As this Court stated in the *Interdict judgment* preceding this review, '[t]he point cannot be disposed of by simply borrowing the apex court's phrase and treating it as a ruling on that question'.[21] The passages relied on by the MKP did not constitute the Constitutional Court's *ratio decidendi*.[22] The Court simply recounted the various stages of the impeachment process as set out in the NA Rules. Reference to the Panel's findings was not an endorsement of how it construed its mandate. Plainly, the Court made no binding determination on this issue.

[70] Linked to this jurisdictional challenge is the contention that paragraph 7 of the order in *EFF III,* in which the Constitutional Court referred the Report to the Impeachment Committee (referral order), properly interpreted, presupposed that the condition precedent for such referral had been fulfilled. This condition is said to be the question '*whether sufficient evidence exists to show that the President committed the offence in the charge sheet*'. If that were not the case, it is argued, the Constitutional Court would not have referred the report to the Impeachment Committee.

[71] This submission was also rejected, and correctly so, by this Court in the *Interdict judgment*,[23] which stated as follows:

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[21] *Interdict judgment* n 3 para 32.
[22] See *Pretoria City Council v Levinson* 1949 (3) SA 305 (A) at 317; and *True Motives 84 (Pty) Ltd v Mahdi and Another* [2009] ZASCA 4; 2009 (4) SA 153 (SCA) para 105.
[23] *Interdict judgment* n 3 para 22.

'... This Court is not asked to set aside the referral order, to declare it wrong, or to sit in appeal over the apex court. It is asked to review the Panel report, a competence the Constitutional Court did not exercise and expressly preserved. The Court said that where the Panel concludes that sufficient evidence exists to disclose a *prima facie* case, its recommendation that an enquiry proceed must be implemented through a referral to an Impeachment Committee, unless and until the report is set aside on review. Those words assume that the report may be reviewed and set aside. The review is therefore a competent proceeding in this Court, and interim relief ancillary to a competent review is, in principle, within this Court's power to grant.'

[72] In the referral order, the Constitutional Court gave effect to the remedy it granted in paragraph 3 of its order, in which it invalidated the original rule and replaced it with a newly worded one. The new rule made the referral of the matter to the Impeachment Committee mandatory upon the Panel's finding of sufficient evidence. That is the context of paragraph 7 of the order.

[73] As Maya CJ explained in the first judgment of *EFF III*, the relief did not seek to displace the Assembly's constitutional role, nor entrench judicial supervision beyond what was necessary. It aimed to restore constitutional accountability by removing the impermissible procedural hurdle, while the Assembly retained the substance of the exercise of power.[24]

[74] Thus, the referral by the Constitutional Court itself (as opposed to referral by the Assembly) directly to the Impeachment Committee did not validate the Report and close the lid on the review. Nor did it mean the Rubicon had been crossed, making it impossible to return to the Report. It made no pronouncement on the Report's validity and cannot be presumed to have done so. The Court plainly proceeded on the basis that the Report had not been reviewed and set aside; as such, it was valid unless and until that occurred.[25] At that stage, that had

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[24] *EFF III n 2* para 169.
[25] Ibid para 139.

not happened. Thus, it is incorrect to suggest that the President may not challenge the Report on review.

[75] The MKP's further string in the bow on jurisdiction was that the application is within the Constitutional Court's exclusive jurisdiction because the review concerns the alleged failure of the Assembly (via its Panel) to discharge its constitutional obligation to determine whether sufficient evidence exists. Section 167(4)*(e)* of the Constitution gives only the Constitutional Court the power to decide on whether there has been a failure to fulfil a constitutional obligation by Parliament or the President.

[76] In numerous cases, the Constitutional Court has explained the meaning of this section and why it should be construed carefully and narrowly. This narrow construction seeks to affirm the roles of the Supreme Court of Appeal and the High Court, including their power to make orders on the constitutional validity of an Act of Parliament, a provincial Act, or any conduct of the President.[26] This was confirmed in *EFF III*, where the Court repeated that more is required than an assertion that Parliament or the President has failed to fulfil a constitutional obligation.[27] The obligation must be specifically imposed on Parliament or the President for the Constitutional Court to exercise its exclusive jurisdiction.[28] Exclusive jurisdiction does not apply in every case involving Parliament.

[77] Contrary to the MKP's assertion, *EFF III* does not support its argument. In *EFF III*, the challenge to Rule 129I concerned the Assembly's duty to put effective mechanisms in place which triggered its obligations to hold the

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[26] *President of the Republic of South Africa and Others v South African Rugby Football Union and Others* [1998] ZACC 21; 1999 (2) SA 14 (CC); 1999 (2) BCLR 175 (CC) para 25; *Doctors for Life International v Speaker of the National Assembly and Others* [2006] ZACC 11; 2006 (12) BCLR 1399 (CC); 2006 (6) SA 416 (CC) para 15.
[27] *EFF III* n 2 para 37.
[28] Ibid para 41.

President accountable.[29] The review application before us is not directed at what the Assembly did or failed to do. Rather, it is concerned with the Panel's exercise of its power and whether it, and not Parliament, failed to fulfil its obligations in terms of the Rules. The mere fact that this review involves a consideration of Parliament's work does not engage section 167(4)*(e)* of the Constitution.[30]

[78] The Panel's independence is accentuated by Rule 129G(1), which states that the Panel is subject only to the Constitution, the law and the Rules, which it must apply impartially and without fear, favour or prejudice. It does not perform delegated functions on behalf of the Assembly, nor is it its committee.

[79] The Constitutional Court's dismissal of the President's initial review application in 2023, challenging the Report on the same facts and basis, reinforces this view. The Court dismissed the application because the President had not made out a case for exclusive jurisdiction or direct access. *EFF III* simply revived the basis for relaunching the dispute. Accordingly, this jurisdictional ground must also fail.

[80] The MKP also contends that the review was unduly delayed. This submission is not sustainable. The Panel submitted its report to the Speaker on 30 November 2022. On 5 December 2022, the President applied to the Constitutional Court to have it reviewed and set aside. On 13 December 2022, the Assembly voted against proceeding with a section 89(1) enquiry.

[81] Following the Assembly's vote, there was no point in pursuing review proceedings. The Report, insofar as the impeachment process was concerned, had no practical effect. However, when *EFF III* was handed down on 8 May 2026,

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[29] Ibid para 76.
[30] *Umkhonto Wesizwe Party and Another v Ramaphosa and Others* (*Leave to Appeal*) [2026] ZAWCHC 454; [2026] ZAWCHC 284 (WCC) para 39.

which invalidated Rule 129I and referred the Report to the Impeachment Committee, the President brought the review application on 26 May 2026. This delay is not unreasonable.

[82] We turn to the point raised by all the respondents that the review application was brought *in medias res* (in the middle of things or midstream). The respondents submit that the review cannot be entertained because no decision on culpability has been made. To advance this argument, the respondents rely heavily on *Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another* (*Viking Pony*),[31] where the Constitutional Court stated that 'it is unlikely that a decision to investigate and the process of preliminary investigation, which excludes a determination of culpability, could itself adversely affect the rights of any person, in a manner that has a direct and external legal effect'.

[83] Neither *Viking Pony* nor the decisions that followed it bar midstream reviews. The position is simply this: courts must be slow to exercise their review power when proceedings are incomplete. This principle is especially significant in criminal trial proceedings where challenges of preliminary rulings are made before conviction. Intervention by a higher court is undesirable in these instances because it would delay case completion as trial courts make a myriad of rulings that parties may wish to challenge as irregular. Some rulings may be revisited or remedied on appeal or review once proceedings have been finalised.[32] The same may also be said of tribunals and other adjudicative or quasi-adjudicative bodies that have not yet concluded their proceedings. However, each case must be

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[31] *Viking Pony Africa Pumps (Pty) Ltd t/a Tricom Africa v Hidro-Tech Systems (Pty) Ltd and Another* [2010] ZACC 21; 2011 (1) SA 327 (CC); 2011 (2) BCLR 207 (CC) (*Viking Pony*) para 38.
[32] *Wahlhaus and Others v Additional Magistrate, Johannesburg and Another* 1959 (3) SA 113 (A) at 120B-G.

decided on its own facts and with due regard to the salutary general rule that matters should not be entertained piecemeal.[33]

[84] An allegation of irregularity does not, without more, entitle a party to the relief sought on review. The proceedings must have been irremediably tainted, resulting in grave injustice that a court, an adjudicative tribunal, or the like would not be able to correct in due course.[34] The present case must be weighed against a further principle that courts should not readily interfere with functions allotted to the other arms of state unless reasons justify such intervention.[35]

[85] These principles were underscored by this Court in *Public Protector of South Africa v Chairperson: Section 194(1) Committee and Others* (*Public Protector*).[36] The respondents argue that we must follow that judgment, alongside other judgments in matters brought by the previous Public Protector. In the *Public Protector* case, the applicant sought to review decisions that dismissed recusal applications and allowed the Section 194 Committee to continue its proceedings.

[86] Having set out the principles, the Court refused the application on the basis that the applicant failed to show that exceptional circumstances, grave injustice, or irreversible harm would ensue if the Committee continued its work; thus, a piecemeal review of proceedings was not permissible.[37] Crucially, the Court criticised the Public Protector for failing to engage with her allegation of gross irregularity.

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[33] Ibid at 120E; *Residents of Industry House, 5 Davies Street, New Doornfontein, Johannesburg and Others v Minister of Police and Others* [2021] ZACC 37; 2022 (1) BCLR 46 (CC); 2023 (3) SA 329 (CC) para 32; *MV "Tai harmony" and Another v Sure Success Steamship SA and Another* [2026] ZASCA 60; [2026] 2 All SA 460 (SCA); 2026 (5) SA 117 (SCA) para 73.

[34] *Public Protector of South Africa v Chairperson: Section 194(1) Committee and Others* [2023] ZAWCHC 73; [2023] 2 All SA 818 (WCC) (*Public Protector*) para 44.

[35] *Economic Freedom Fighters v Speaker of the National Assembly and Others; Democratic Alliance v Speaker of the National Assembly and Others* [2016] ZACC 11; 2016 (5) BCLR 618 (CC); 2016 (3) SA 580 (CC) (*EFF I*) para 93.

[36] *Public Protector* n 34.

[37] Ibid paras 49-50.

[87] The nature of the decision impugned in this case differs from that in *Public Protector*. That case concerned the review of a refusal of a recusal application, an irregularity the courts would often refrain from entertaining on appeal or review midstream. The present case challenges a report that sets in motion an impeachment process.

[88] Notably, in the recent matter of *Zuma and Another v Chairperson of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases and Others* (*Zuma*),[38] the Constitutional Court entertained the merits of a review application relating to the refusal of a recusal application. There, the respondents had also argued that as the review was sought mid-stream, as the Commission was still ongoing, the applicants should wait until the Commission concluded its work before launching review proceedings.[39]

[89] The Constitutional Court was not persuaded by the applicants' argument in this regard. The first judgment, penned by Theron J,[40] held that a complaint of actual or reasonable apprehension of bias differed from challenges raised in relation to other irregularities. The irregularity at hand went to the core of the proceedings and was akin to saying that, by virtue of its tainted composition, the Commission lacked jurisdiction. It further held that a decision on the competency of a forum must be regarded 'as radical or definitive and not merely interlocutory'.[41]

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[38] *Zuma and Another v Chairperson of the Judicial Commission of Inquiry into Allegations Regarding Efforts or Attempts Having Been Made to Stop the Investigation or Prosecution of Truth and Reconciliation Commission Cases and Others* (*Zuma*) [2026] ZACC 34.
[39] Ibid para 76.
[40] While Theron J's judgment formed the minority judgment, the two majority judgments did not differ with her on this point.
[41] *Zuma* n 38 para 76.

[90] Among other cases, it placed reliance on the decision of *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service,*[42] wherein the court, relying on Corbet CJ's remarks in *Council of Review, South African Defence Force, and Others v Mönnig and Others,*[43] held:

'The irregularity committed by proceeding with the trial was fundamental and irreparable. Accordingly there was no basis upon which the council of review could validate what had gone before. The only way the council of review could have cured the proceedings before the court martial would have been to set them aside.' [44]

[91] While the Panel's competence is not in issue here, its Report is definitive. It forms the basis for progressing with the impeachment process. A complaint about the Panel's misconstrual of its mandate is profound. If the Panel proceeded from an incorrect premise, its Report will be standing on a fundamentally flawed foundation, tainting the whole process.

[92] The Assembly, in its wisdom, decided to establish an Independent Panel constituted of lawyers, within the scheme of the section 89 enquiry, which may include a judge(s). This was not only to underscore the seriousness of the task of removing a President, but also to provide a safeguard: if the process had to proceed to the Impeachment Committee, legal experts would have first sieved it and needed to find sufficient evidence before that next crucial stage could follow.

[93] The Panel's prominence is reinforced by new Rule 129I, ordered by the Constitutional Court in *EFF III*, which mandates that the Report go directly to the Impeachment Committee once sufficient evidence exists. As such, the Report

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[42] *Moch v Nedtravel (Pty) Ltd t/a American Express Travel Service* [1996] ZASCA 2; 1996 (3) SA 1 (A).
[43] *Council of Review, South African Defence Force, and Others v Mönnig and Others* [1992] ZASCA 64; [1992] 4 All SA 691 (AD); 1992 (3) SA 482 (A) at 495A-D.
[44] *Moch* n 42 at 10D.

triggers an impeachment. Thus, the Report determines whether an impeachment hearing will take place.

[94] Much of the debate turned on the contention that the Impeachment Committee may always correct the Panel's wrongs. This argument misses the point. First, the Impeachment Committee cannot review a Panel's report based on a material error of law. Its function is to establish the veracity of the charges. It may possibly 'cure' wrong conclusions on questions of fact made by the Panel, but if it transpires at the Impeachment Committee stage that there was insufficient evidence to start with, there will be no basis on which to continue the impeachment enquiry.

[95] Second, the argument not only disregards the momentous nature of removing a President, and thus the high bar set by section 89 of the Constitution and the Rules giving effect to it, but it also suggests that we should ignore the roles prescribed to the respective bodies by the NA Rules. The Panel and the Impeachment Committee have distinct institutional roles.[45] The Panel Report stems from a process described as 'the independent sifting mechanism'.[46]

[96] The President says the Panel serves as a buffer, which the EFF submits is artificial because the new Rule 129I allows the Assembly to refer the President to the Impeachment Committee even if the Panel finds insufficient evidence. In that scenario, however, the Assembly determines the outcome; the Report does not automatically go to the Impeachment Committee. The political process based on the Assembly vote will determine the President's fate. The new Rule does not diminish the Panel's importance.

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[45] *EFF III* n 2 para 141.
[46] Ibid para 140.

[97] The respondents also rely on old Rule 129P, which provides that the Assembly makes a final and binding decision as to whether the President should be removed. That Rule equally does not change the fact that a finding of sufficient evidence in the Report activates impeachment proceedings.

[98] Some respondents seem to accept that the Panel's Report may be reviewable, having regard to paragraph 139 of *EFF III*, in which Maya CJ said:

'[139] . . .[W]here the Panel concludes that sufficient evidence exists to disclose a prima facie case, its recommendation that a section 89 inquiry be proceeded with must be implemented through a referral to an Impeachment Committee, unless and until the Report is set aside on review.'

They, however, submit that this would be exceptional and requires pleading grave injustice, which was not done in this case. In this connection, they contend that the pleading of humiliation by the President in his replying papers is insufficient to qualify as an exception.

[99] This concern is less about embarrassment to the President if he were to appear in impeachment proceedings and more about the impact to his office. There is force in the argument that the President's office requires him to lead by example as the nation's number one citizen. Indeed, the Constitution imposes on him, personally, the obligation to uphold, defend, and respect the Constitution as the supreme law of the Republic. As the UAT contended, he must uphold and promote the laws and Rules of Parliament that seek to hold him accountable. That, however, does not mean he should face an impeachment 'trial' even if the process is defective, and be deprived of the protection the Rules provide.

[100] The prejudice that the President stands to suffer is not overstated. He will have to engage extensively in the process including with regard to calling witnesses, consulting, and giving testimony, which will, arguably, take him away

from his official duties for a lengthy period. This may destabilise the country's effective governance. In recognising the momentous nature of its enquiry the Panel said:

'We think that the purpose in interposing the Panel in the scheme of the impeachment process and entrusting it with the power to conduct a preliminary enquiry into the Motion, was intended to ensure that the President is not required to undergo a full-scale section 89 impeachment enquiry in circumstances where the President has no case to answer. That step must never be taken lightly. It is a momentous act, justified only when sufficient evidence exists to show that the President has a case to answer for his conduct. The Panel therefore functions as a filter to ensure that only a Motion which establishes, *prima facie*, that the President has a case to answer, is considered by the Impeachment Committee.'[47] (Emphasis underlined.)

[101] In sum, the protection which is provided by the Rules is not a claim that is attached to this President; it is designed to ensure that, before a punitive process of such ignominy ensues, the Panel has reviewed the material and found sufficient evidence exists. Proceeding with an ineffectual report defeats that purpose.

[102] This is not to say the President should not have to undergo an impeachment process. What is being stated is that, given the far-reaching consequences of the process, it must proceed from a lawful basis. For the reasons stated above, it is absurd to suggest that the President must wait until the impeachment process runs its course before he may challenge the Report. By that time, the harm that will be suffered may be irremediable. We are therefore persuaded to entertain the review.

The mandate of the Panel

[103] The central question is whether the Panel properly discharged its functions, in terms of the Rules that govern it, in a rational manner. In terms of Rule 129G(1)(b), the Panel was required to recommend to the Assembly whether

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[47] Panel Report n 1 para 76.

sufficient evidence existed to show that the President committed a serious violation of the Constitution or the law, or a serious misconduct.

[104] The contestation centres around the requirement of 'sufficient evidence'. In this regard, the President contends that the Panel incorrectly adopted a *prima facie* 'case to answer' test instead of a '*sufficient evidence*' test, which required a 'qualitative assessment', and that it asked itself the wrong question.[48] In doing so, it adopted an incriminatory rather than an evaluative approach, by considering only the information put before it by members of the Assembly to substantiate the Motion and failing to have regard to the evidence put forward by the President.

[105] The President points out that the Rules provide for both a prima facie and a sufficient evidence standard which are to be applied at different stages. In order to initiate the process, a member is required to lodge a motion with the Speaker which contains a clearly formulated and substantiated charge, on grounds specified in section 89 of the Constitution, which need only show prima facie that the President has committed a serious violation or serious misconduct, as defined in the Rules.[49] Once this standard has been satisfied, the motion will be in order and the Speaker must refer it to the Panel.[50]

[106] In contrast, for the matter to progress from the Panel to the Impeachment Committee, the Panel must determine that 'sufficient evidence' exists.[51] The President contends that this is a qualitatively different and higher threshold.

[107] The President notes that the Assembly's use of two distinct standards of proof for a presidential impeachment differs from the single standard that applies

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[48] In *Hira and Another v Booysen and Another* [1992] ZASCA 112; 1992 (4) SA 69 (A); [1992] 2 All SA 344 (A) at 93H-J, it was held that a tribunal will have made a material and reviewable error of law if, when evaluating a matter, it asked itself 'the wrong question' or applied the wrong legal test.
[49] Rules 129A(1)(a)(i)-(ii).
[50] Rule 129C(1).
[51] Rule 129G(1)(b).

to the impeachment of the head of a Chapter 9 institution. In this regard, the rules, which were adopted a year after those formulated for a presidential impeachment, require only a prima facie standard at both equivalent stages of the process. Consequently, so the President contends, this is a clear indication that the Assembly was of the view that the invocation of a prima facie standard in the enquiry which the Panel is to conduct is insufficient, as it would otherwise have expressly adopted this standard.

[108] The respondents, on the other hand, contend that the Panel adopted the correct test and asked itself the correct question, namely, whether sufficient evidence existed to show that the President had 'a case to answer' and should therefore go to an impeachment enquiry. They contend that the Panel did not apply the incorrect legal standard by asking whether the President had a prima facie 'case to answer' and that this is the standard which was endorsed by the Constitutional Court in *EFF III*.[52]

[109] They point out that in her judgment in *EFF III*, Maya CJ held that the Panel and the Impeachment Committee fulfil distinct institutional roles – the former is required to determine whether there is 'a case to answer' whereas the latter is required to determine whether that case can ultimately be sustained.[53]

[110] As the CJ explained, so it is argued, the Panel only carries out a preliminary enquiry which acts as a 'sifting mechanism' to determine whether there is 'a case' for the President 'to answer'.[54] Its primary purpose is to determine whether an impeachment ground listed in section 89 of the Constitution exists.[55] The function

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[52] *EFF III* n 2 para 139.
[53] Ibid para 141.
[54] Para 130.
[55] Ibid.

of its enquiry is to make a prima facie finding as to whether the evidential basis which underpins the motion is 'substantiated and credible'.[56]

[111] Consequently, the CJ held that where the Panel concludes that 'sufficient evidence exists to disclose a prima facie case', its recommendation to this effect is binding and must be implemented by referral to the Impeachment Committee.[57] Thus, the respondents contend that the sufficient evidence test requires only a prima facie standard to be satisfied. In the circumstances, they submit that the Court should adopt a robust approach when assessing the matter, by simply enquiring whether the evidence which served before the Panel was prima facie sufficient to justify the President having to go before the Impeachment Committee.

The interpretive exercise

[112] Determining whether the Panel properly discharged its mandate requires us to interpret the proper meaning of the phrase 'sufficient evidence'. This unitary exercise requires us to consider, holistically, the language used, its context, and the purpose the Assembly sought to achieve.[58] It is not a 'regimented' or 'compartmentalised' analysis of the provision.[59]

The language

[113] It is trite that the 'starting point' is the language which was used,[60] and words are to be given their ordinary grammatical meaning unless doing so would result in an absurdity.[61] A sensible meaning is to be preferred over one that will

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[56] Ibid para 140.
[57] Ibid para 139.
[58] *Natal Joint Municipal Pension Fund v Endumeni Municipality* [2012] ZASCA 13; [2012] 2 All SA 262 (SCA); 2012 (4) SA 593 (SCA) (*Endumeni*) para 18.
[59] *Afriforum and Another v University of the Free State* [2017] ZACC 48; 2018 (2) SA 185 (CC); 2018 (4) BCLR 387 (CC) (*AfriForum*) para 44.
[60] *Endumeni* n 58 para 18.
[61] *Cool Ideas 1186 CC v Hubbard and Another* [2014] ZACC 16; 2014 (4) SA 474 (CC); 2014 (8) BCLR 869 (CC) para 28.

lead to an insensible, impractical or unworkable result or oppressive consequences, or which may undermine the purpose of the instrument concerned and stultify the operation of the legislative process.[62] Where more than one meaning is possible, each possibility must be weighed in light of all relevant factors, and the court must select the proper meaning by having regard to the purpose of the provision in the context in which it occurs.

[114] The terms in issue ('prima facie' and 'sufficient evidence') both have several possible ordinary meanings, depending on their usage. Both feature prominently in our legal terminology. The term 'prima facie' is a Latin term which is used both in a legal sense and in everyday speech. In today's colloquial English, it means 'at first sight' or 'at first appearance or impression'. It is also used to mean 'on the face of it'. In the legal sense, the term is used as both an adjective and an adverb. 'Sufficient', on the other hand, can mean 'enough' (a quantitative expression), or 'adequate' or 'satisfactory' for a particular purpose or reason (a qualitative expression).

[115] Even in the legal setting, 'prima facie' can have two senses, as has been held in other jurisdictions. In the first sense, it denotes production of evidence by the plaintiff to render reasonable the conclusions that they assert. In the American system, it could mean the '*plaintiff's evidence is sufficient to allow his case to go to the jury*'. In this sense, a plaintiff also presents a prima facie case when he or she has produced sufficient evidence, regardless of its weight, to withstand a motion for a 'directed' verdict.[63]

[116] In the second sense, it means not only that the plaintiff's evidence would reasonably allow the conclusion that the plaintiff seeks, but also that the plaintiff's

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[62] *Endumeni* n 58 paras 18 and 26; *Bertie Van Zyl (Pty) Ltd and Another v Minister for Safety and Security and Others* [2009] ZACC 11; 2010 (2) SA 181 (CC) para 21.

[63] See Georg Nils Herlitz 'The Meaning of the Term "Prima Facie" (1994) 55(*2*) *Louisiana Law Review* 391 at 397, for a consideration of the use of 'prima facie' in terms of Louisiana law in the United States.

evidence compels '*such a conclusion if the defendant produces no evidence to rebut it*'.[64] Used in this sense, 'prima facie' switches the 'burden of proof' or onus from the party who has made the 'prima facie' showing to their opponent.[65]

[117] In the South African adjudicative setting (ie judicial or quasi-judicial proceedings where legal findings or determinations have to be made), the terms 'prima facie' and 'sufficient evidence' are also commonly used in relation to an onus or 'burden of proof' or an 'evidentiary burden'. The former is understood to be the obligation which is fixed, as an instance of law, on a particular party to prove their claim or case by persuading a trier of fact, by the end of the case, of the veracity and reliability of the evidence they have put up in support thereof. The latter refers to the shifting burden which falls on a party from time to time, during a case, to adduce evidence 'sufficient' to require a response from the other, or the duty to adduce evidence to rebut or combat a '*prima facie* case' put up by an opponent.[66]

[118] In criminal matters, the State will have discharged its burden of proof if the evidence which it has tendered is sufficient to establish the guilt of an accused beyond a reasonable doubt. In a civil case, the party on whom the onus lies will have tendered sufficient evidence if it establishes the elements of its claim or defence, as the case may be, on a balance of probabilities.

[119] The terms are also frequently used in relation to the quantity, status or weight of evidence put up, and the standard of proof that may apply in adjudicative settings. In this context, 'prima facie evidence' can mean evidence which establishes certain facts on a first view or impression, that is, 'on the face of it'.

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[64] Ibid at 395.
[65] Ibid at 397.
[66] *South Cape Corporation (Pty) Ltd v Engineering Management Services (Pty) Ltd* 1977 (3) SA 534 (A) at 548; PJ Schwikkard and TB Mosaka *Principles of Evidence* 5 ed (2023) (Schwikkard and Mosaka) at Ch 31.2-32.2.

[120] It can also mean evidence which constitutes prima facie proof of an issue in respect of which the onus/burden of proof rests on the party tendering it[67] and which, in the absence of contrary evidence, will become conclusive (similar to the American jurisprudence discussed above).[68] In that form of usage, the determination of whether evidence, which was adduced by the onus-bearing party, constitutes a 'prima facie case' is undertaken purely on a consideration of the evidence which was put up by it, without regard for any evidence which may be, or which has been, presented in rebuttal by the other party.[69] It is in this setting that the phrase 'a case to answer' has its origins.

[121] As was said by Stratford JA in *Ex parte the Minister of Justice: In re R v Jacobson & Levy* (*Jacobson*):[70]

'If the party, on whom lies the burden of proof, goes as far as he reasonably can in producing evidence and that evidence "calls for an answer" then, in such case, he has produced *prima facie* proof, and, in the absence of an answer from the other side, it becomes conclusive proof and he completely discharges his *onus* of proof.'

[122] Thus, 'prima facie evidence' or proof can mean that, 'at face value', there is 'sufficient evidence' to support or sustain a claim. And axiomatically a 'prima facie case' is one which has been made out, at the point of assessment, by way of 'sufficient' evidence. In *Osman and Another v Attorney-General, Transvaal* (*Osman*),[71] the Constitutional Court held, regarding the statutory offence of the possession of goods in respect of which there is a reasonable suspicion that they

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[67] For example in terms of section 212 of the Criminal Procedure Act 51 of 1977, there are several instances where the presentation of an affidavit which attests to the existence of certain facts and conclusions which are established by a process which requires skill or proficiency in certain scientific fields, such as biology, chemistry, physics, computer science, ballistics, and fingerprints or bodily samples (DNA), will constitute prima facie proof of such facts or conclusions which, in the absence of contradictory or rebutting evidence on behalf of the accused, will become conclusive.

[68] Schwikkard and Mosaka n 71 at Ch 2.6; *S v Alex Carriers (Pty) Ltd en 'n Ander* 1985 (3) SA 79 (T) at 88I-89D.

[69] *Kalil v Decotex (Pty) Ltd and Another* [1987] ZASCA 156; 1988 (1) SA 943 (A) at 976E-H; *S v Veldthuizen* 1982 (3) SA 413 (A) at 416G-H.

[70] *Ex parte The Minister of Justice: In re Rex v Jacobson & Levy* 1931 AD 466 (*Jacobson*) at 479.

[71] *Osman and Another v Attorney-General, Transvaal* 1998 (2) SACR 493 (CC) (*Osman*) paras 22-23.

are stolen and for which the accused is unable to give a satisfactory explanation,[72] that once the State has produced evidence 'sufficient to establish a *prima facie* case', an accused who fails to produce evidence to rebut that case runs the risk of it being 'sufficient' to prove the offence.

[123] From this it will be apparent that a 'sufficient evidence' test may not necessarily be qualitatively higher or different from a 'prima facie' test and may even, depending on the context, mean the same thing. In certain instances, including in non-adjudicative settings, the terms may be synonymous: prima facie evidence or proof may constitute 'sufficient' evidence or proof.[73]

Context and purpose

[124] Context becomes relevant where the ordinary grammatical meaning is not 'particularly helpful or conclusive', and a contextual interpretation requires regard be had to the setting of the words or provisions which are to be interpreted, with reference to the words, phrases or 'expressions' around them.[74] This exercise may require that consideration be given to sections other than the one in which the words or provisions are located, or the instrument as a whole.[75]

[125] In the broader constitutional context, this case lies at the intersection of two arms of state: the executive and the legislature. The President is the head of State and the national executive. In the memorable words of Mogoeng CJ in *Economic Freedom Fighters and Another v Speaker of the National Assembly and Others* (*EFF I*),[76] he is 'a constitutional being by design' who holds 'the highest calling to the highest office in the land'. Out of all the public office bearers, it is on the

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[72] Section 36 of the General Law Amendment Act 62 of 1955.

[73] Thus, sufficient evidence to avoid a ruling of absolution at the end of a plaintiff's case is often referred to as prima facie evidence, prima facie proof, or a prima facie case. See Erasmus *Superior Court Practice* RS 27 (2025) D1 Rule 39-15 to 39-16.

[74] *Afriforum* n 59 para 43.

[75] Ibid.

[76] *EFF I* n 35 para 20.

President that the Constitution imposes the obligation to uphold, defend, and respect it as the supreme law of the Republic.[77]

[126] As far as the Assembly is concerned, in the discharge of its constitutional duty as the embodiment of the will of the people,[78] it has a responsibility to exercise oversight over the executive and the President, as its head, and ensure they comply with their constitutional obligations.[79] To do so, it must provide mechanisms to ensure that these organs are accountable to it[80] and which allow it to maintain its oversight over the exercise of their authority.[81]

[127] In *EFF III*, Majiedt J observed that section 89 of the Constitution is one of the key provisions with which the Assembly can fulfil the purpose of acting as a check on presidential power and hold the President accountable to Parliament.[82] As stated earlier, the section provides that the Assembly may remove the President from office by a supermajority vote of at least two-thirds of its members, on the grounds of a serious violation of the Constitution or the law[83] or serious misconduct.[84]

[128] The Assembly adopted the Rules setting out the mechanisms and processes by which a President may be impeached on 11 September 2018, in response to directions made by the Constitutional Court in *EFF II*.[85] At that time, a member of the Assembly could initiate an impeachment process by lodging an ordinary motion requesting that a parliamentary ad hoc committee be established to

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[77] Ibid, with reference to section 83 of the Constitution.
[78] Section 42(3) of the Constitution provides that the National Assembly is elected to represent the people and to ensure government by them under the Constitution.
[79] *EFF I* n 35 para 22.
[80] Section 55(2)*(a)* of the Constitution.
[81] Ibid section 55(2)*(b)*.
[82] *EFF III* n 2 para 305.
[83] Section 89 (1)*(a)* of the Constitution.
[84] Ibid section 89(1)*(b)*. It may also do so in the event of an inability of the President to perform the functions of his office, in terms of section 89(1)*(c)*.
[85] *Economic Freedom Fighters and Others v Speaker of the National Assembly and Another* [2017] ZACC 47; 2018 (3) BCLR 259 (CC); 2018 (2) SA 571 (CC) (*EFF II*).

investigate and recommend whether the President should be removed from office. There were no parliamentary rules specifically regulating such a process.

[129] The Constitutional Court noted[86] that this allowed for a partisan procedure, as membership of such a committee was proportional to the representation enjoyed by political parties in the Assembly and a decision of the majority on the committee could prevent the process from proceeding, shielding a President who was the leader of the majority party.[87] The process also lacked an initial 'sifting mechanism' which could determine whether there was 'a case' for the President 'to answer'.[88] The Constitutional Court held that section 89(1) of the Constitution implicitly imposed an obligation on the Assembly to make rules specifically tailored to a presidential impeachment process and accordingly directed it to do so.[89]

[130] Turning to the purpose of the NA Rules. The first and somewhat obvious point to make is that, as is apparent from their heading, the NA Rules set out the procedure and processes which are to be followed for the 'removal' of a President from office on the grounds listed in section 89(1) of the Constitution.

[131] Whilst it is so that removing a President for a serious violation or misconduct enables the Assembly to ultimately hold them accountable for their misdeeds, the principal purpose of the Rules is not aimed at getting the President to *account to* the Assembly, as the representative of the people, by compelling them to provide an account of such misdeeds. Rather, it is to impose a sanction of removal from office for those misdeeds.[90]

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[86] Ibid as per Jafta J.
[87] Ibid para 192.
[88] Ibid para 189.
[89] Ibid para 196.
[90] In *EFF III* n 2 paras 204-207, Kollapen J (minority judgment) pointed out that section 89 does not make any reference to the terms 'accountable' or 'accountability' and, whilst it is a 'tool' of accountability in that when invoked it could lead to the removal of a President, which is the ultimate form of accountability, it does not create a constitutional obligation to hold the President accountable.

[132] We point this out because the fundamental tenor of the respondents' submissions was that the President has a case to answer and has a duty to the public to explain the many unsatisfactory and dubious aspects of his version of what took place at the Farm and the subsequent events that occurred. The contention is that the President can and should discharge this duty before the Impeachment Committee.

[133] There can be no quibble with the constitutionally entrenched principle that the President has a duty to account to the public and the Assembly, given the position that he occupies. However, the primary purpose of the Rules is a punitive one. It is to remove the President from office if, at the conclusion of the various processes provided for in the Rules, it is established that they committed a serious violation of the Constitution or the law, or serious misconduct, and the Assembly is moved to vote that they be discharged from office.

[134] When one considers the scheme set out in the Rules, it is evident that it encompasses five stages or phases, during which various role players must make separate determinations. Each of these sub-processes is founded upon, and relies on the validity of, the preceding one. Thus, if one fails or is defective, the next cannot take place.

[135] The first determinative stage occurs when the Speaker screens the motion lodged in terms of Rule 129A(1) and the charges set out therein, which must be 'clearly formulated' and substantiated, for formal compliance with the criteria in that Rule.[91] This exercise is performed by having regard solely to the motion as well as the 'evidence' submitted in support thereof.[92]

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[91] *EFF III* n 2 para 122. Rule 129B.
[92] Rule 129A(1)(b).

[136] Thereafter, in the event that the motion and charges in it are found to be in order, it proceeds to an Independent Panel, constituted by the Speaker, for a preliminary enquiry, which the Constitutional Court held constitutes an assessment as to the 'sufficiency and merit' of the charges.[93]

[137] In performing its functions, the Panel may afford any member of the Assembly an opportunity to place 'relevant' written or recorded information before it,[94] and must provide the President with a copy thereof and a reasonable opportunity to respond, in writing, to all 'relevant allegations' which are made against him.[95] The Panel must then, on that basis, reach a determination and make a recommendation to the Speaker within a severely constrained period.[96] In doing so, it is expressly limited to the information provided to it and may not hold a hearing.[97]

[138] From there, provided the Panel finds that the requirements of Rule 129G(1)(b) have been met, the matter must be referred to an Impeachment Committee, which must 'examine the motion'[98] by proceeding to establish 'the veracity' and, where required, seriousness 'of the charges'.[99] The Impeachment Committee must then report to the Assembly, which must consider and deliberate on the report and, if it recommends that the President be removed, vote on it.[100] The Impeachment Committee has a wide range of powers, including the power to subpoena witnesses, compel testimony, and require the production of documents.[101]

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[93] *EFF III* n 2 para 122.
[94] Rule 129G(1)(c)(i).
[95] Rule 129G(1)(c)((iii).
[96] Rule 129G(1)(b). At the time this was 30 days. In the reformulated NA Rules (n 6), this period is extended to 90 days.
[97] Rule 129G(1)(c)(iv).
[98] Rule 129I. *EFF III* n 2 para 122.
[99] Rules 129I(3) and 129M(1).
[100] Rules 129O(3) and (4).
[101] Rule 129M(4) read with Rules 167(a)-(b) of the NA Rules.

[139] In its form, the process which the Assembly has devised for the removal of a President is not an 'inherently and exclusively democratic one', but an 'inquisitorial, factual and legal exercise',[102] which bears similarities to what the law follows when dealing with other alleged forms of misconduct, such as in the workplace or in criminal law.

[140] To this end, in the case of an errant employee or an alleged criminal offender, the process commences with the formulation and presentation of a particularised accusation, that is, a 'charge-sheet'. This sets out particulars of the alleged misconduct with reference to any applicable code of conduct or law in respect of which information has been or is then, gathered. This is followed by a proceeding in which the evidence supporting the accusations/charges is presented and established. The 'offender' has the right to contest such evidence and be heard. Once this process concludes and the decision goes against the offender, an applicable sanction is imposed.

[141] As noted in *EFF III*,[103] impeachment is a punitive measure. If the President is removed, he may no longer receive any benefits of office and may be barred from holding any public office in the future.[104] Additionally, as noted above, at least during the Impeachment Committee stage, a President may be subjected to the ignominy and humiliation of political opprobrium, public embarrassment, and disgrace.

[142] Several implications flow from this, which affect the interpretive exercise we must undertake. In the first instance, section 39(2) of the Constitution adjures a court, when interpreting any legislative instrument, to favour an interpretation which promotes the spirit, purport and objects of the Bill of Rights, of which the

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[102] *EFF III* n 2 para 132.
[103] Ibid para 312.
[104] Section 89(2) of the Constitution.

right to dignity is a cornerstone. Thus, insofar as the impeachment process may impact on the President's right to dignity, the interpretation arrived at should be the one that least infringes that right.

[143] Secondly, in accordance with the long-standing canon of interpretation, punitive provisions which may be ambiguous or unclear are to be interpreted strictly or narrowly, and in favour of the person against whom they have been invoked, rather than broadly or expansively.[105]

[144] At the same time, the interpretation we arrive at must also give effect to the Assembly's constitutional power to remove a delinquent President, where justified, in a manner that promotes dealing with impeachment motions as 'efficiently and thoroughly' as possible.[106]

[145] A cardinal feature of the impeachment process is that it is predicated upon and governed by the charges which are lodged against the President. Every determination, whether by the Speaker, the Panel, the Impeachment Committee or the Assembly, must be made with reference to the charges. Thus, as has already been pointed out, to be satisfied that the motion is 'in order' the Speaker must ensure that: (a) it is one which is limited to *clearly formulated and substantiated charges* on grounds specified in section 89; (b) it *prima facie* shows that the President has committed a serious violation; serious misconduct or suffers from an inability to perform the functions of office; (c) *all* evidence supporting it is attached thereto; (d) the charge relates to an action or conduct performed by the President in person; and (e) it is consistent with the Constitution, the law and the Rules.

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[105] *S v Majola* 1975 (2) SA 727 (A) at 732D-E; *Vereeniging Refractories Ltd v Building, Construction and Allied Workers' Union* 1989 (2) SA 506 (W) at 508C; *S v Mailula* 1998 (1) SACR 649 (T) at 652B-E; Hoexter, Cowling et al 'The Interpretation of Penal Statutes' in *South African Criminal Law and Procedure* - Vol III, RS 7 Ch1-30.
[106] *EFF III* n 2 para 127.

[146] The Panel must then conduct a preliminary assessment of the sufficiency of evidence and merit of the motion, as defined by *the charges*. If it concludes that sufficient evidence exists to show the President committed a serious violation or serious misconduct *on the grounds specified in the charges,* the matter must proceed, in terms of the amended Rules, to the Impeachment Committee. The Impeachment Committee must establish the veracity and, if necessary, the seriousness of *the charges* and report thereon to the Assembly.

[147] In the amended Rules, the Impeachment Committee's report will have to set out its findings *'regarding the charge(s)'*[107] and the Assembly will only be able to vote for the removal of the President if the report of the Impeachment Committee finds that one or more of *the charges* in the motion calling for his removal have been established.[108]

[148] Under the Rules in force when the Panel rendered its report, neither its recommendation nor the Impeachment Committee's, nor any decision made by the Speaker, was final and binding on the Assembly.[109] The amendments mean that the Assembly will be bound by these findings insofar as they pertain to the charges.

[149] Finally, one further important rider bears repeating. Under Rule 129A(1), the charges lodged, and, as we have pointed out, considered at every stage of the process, must relate to an action or conduct performed by the President 'in person', that is, personally.

[150] The Rules are not to be construed as permitting a Panel or Impeachment Committee to conduct an unrestrained and unfettered inquisition on any possible issue or line of inquiry which may implicate the President in some possible

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[107] Amended Rule 129O(2).
[108] Amended Rule 129P(4).
[109] Rule 129P(2).

irregularity or wrongdoing. The Panel's mandate is limited to the charges, upon which the President may then be called to account for.

Meaning to be ascribed to 'sufficient evidence'

[151] What then is the proper meaning to be afforded to the term 'sufficient evidence' in Rule 129G(1)(b)? Starting with its ordinary grammatical meaning, it refers to evidence which is adequate or satisfactory for the purpose required by the subrule.

[152] As explained, the Panel performs a preliminary, evaluative assessment, not an adjudicative one, as would be the case in a court or tribunal or another entity performing a quasi-judicial function, such as an arbitration. It is not required to determine whether any party has discharged a burden of proof to a particular standard, or even an evidentiary burden, as there is no such burden on any of the parties who participate in the enquiry before it.

[153] That it performs a non-adjudicative function is borne out by the requirement that it need only find that sufficient evidence exists to 'show', and not 'prove', that the President committed a serious violation or serious misconduct.

[154] The Panel performs its functions after the Speaker has screened the motion for formal compliance with the requirements of Rule 129A. This requires the Speaker merely to determine that the motion sets out clearly formulated and substantiated charges which 'prima facie show' that the President committed a serious violation or serious misconduct as defined in the Rules.

[155] As the Speaker's function is clearly not adjudicative, in this setting the term 'prima facie' is not used as an incidence of discharging a burden of proof. Rather,

it is used in a colloquial or loose sense, simply meaning that the charges as set out in the motion must 'on the face of it' show (not prove) that the President contravened section 89 of the Constitution by means of conduct that amounts to a serious violation or serious misconduct. The term 'prima facie' is not used here to mean evidence which, if not rebutted, will become conclusive.

[156] The second aspect relevant to the exercise is that the Panel is required to determine and make a recommendation to the Speaker whether sufficient *evidence*, and not sufficient *information,* exists. Whereas members of the Assembly may be permitted to place any written or recorded *information* before the Panel, it is required to inform the Speaker whether sufficient *evidence* exists, after considering such information and the material tendered in substantiation of the motion, and that which was put forward by the President in response thereto. In our view, the distinction is important. Whilst all evidence is information, not all information is evidence.

[157] '*Evidence*' has a particular connotation and is traditionally understood in legal proceedings to mean material that is admissible and relevant,[110] and which has probative value, that is, which will serve to prove or disprove allegations or issues that are pertinent to the proceedings. It is distinguishable from material which is generally inadmissible or which has little or no probative value in legal proceedings, such as evidence which has been unlawfully obtained in violation of a person's fundamental rights,[111] or which constitutes hearsay evidence[112] (being

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[110] The basic rule is that material which is relevant is admissible.

[111] In terms of section 35(3) of the Constitution, evidence which has been obtained in a manner that violates any right in the Bill of Rights must be excluded if its admission would render the trial unfair or otherwise be detrimental to the administration of justice.

[112] In terms of section 3(1) of the Law of Evidence Amendment Act 45 of 1988, hearsay evidence shall not be admitted as evidence at criminal or civil proceedings, unless the party against whom the evidence is to be adduced agrees thereto (section 3(1)*(a)*); the person on whose credibility the probative value of the evidence depends testifies (section 3(1)*(b)*); or the court is of the opinion that it should be admitted in the interests of justice, having regard to: the nature of the proceedings and the evidence and the purpose for which it is tendered, its probative value, and any prejudice which may ensue (section 3(1)*(c)*((i)-(vii)).

evidence the probative value of which depends on the credibility of someone else), or which amounts to no more than uncorroborated and disputed say-so, conjecture or speculation.

[158] Merely alleging that information is within the personal knowledge of the deponent to a statement would be of little value without some indication, at least from the context, of how that knowledge/information was acquired. If knowledge of the occurrence of an event has come about because of the witness' or deponent's personal observation, evidence of it would be admissible to prove that the event occurred. If that knowledge was acquired from another person, a proper basis must be laid for having it admitted as hearsay evidence or enabling its weight to be determined. If the alleged knowledge was acquired 'only by inference', then it does not constitute evidential material at all.[113]

[159] We are acutely aware that the Panel's duty is to inquire whether there is sufficient evidence of an impeachable act or conduct to warrant proceeding to the Impeachment Committee. It is not the trier of fact itself. The National Prosecuting Authority (NPA) was referenced as the closest comparator to the Panel by the President and some of the respondents in argument. The National Prosecuting Authority's Prosecution Policy[114] (NPA Policy) stipulates:

'In deciding whether or not to institute criminal proceedings against an accused person, prosecutors must assess whether there is *sufficient and admissible evidence* to provide a reasonable prospect of a successful prosecution. There must indeed be a reasonable prospect of a conviction, otherwise the prosecution should not be commenced or continued.'[115] (Emphasis added.)

[160] The NPA Policy requires an evaluative process when deciding whether to prosecute. In doing so, prosecutors must consider all the relevant factors,

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[113] *The President of the Republic of South Africa and Others v M&G Media Ltd* [2010] ZASCA 177; 2011 (2) SA 1 (SCA) paras 37-38.
[114] National Prosecuting Authority of South Africa, *Prosecution Policy* (2013) (NPA Policy).
[115] Ibid at 5.

including: (i) how strong the evidence for the state is; (ii) whether the evidence will be admissible; (iii) whether the state witnesses will be credible; (iv) whether the evidence will be reliable; (v) if the evidence is available; and (vi) how strong is the case for the defence is.[116]

[161] The NPA Policy is a useful example of what is assessed in considering whether there is a reasonable prospect of a successful prosecution. As is evident, the question asked is whether there is *sufficient and admissible evidence* to proceed to a trial. While the relevant factors listed in the preceding paragraph are useful, caution must be exercised. Although the NPA and the Panel ask similar questions in evaluating evidence, the processes are not the same. Unlike the Panel, the NPA does not approach the accused, give them a copy of the whole docket and ask them to provide their version, if they wish, before deciding whether to charge them. The accused is only given an opportunity to provide a warning statement as to the charges and does not get the docket before doing so or in order to do so. More appears to be required of the Panel, at least in this respect.

[162] The Panel would undoubtedly have been alive to the distinction between, and the weight to be afforded to, circumstantial evidence, as opposed to direct evidence. It would also have been mindful of the principle that before an inference can be drawn from any material submitted in this regard, it is necessary to ensure that it is consistent with the established facts and not based on speculation, conjecture, or mere suggestion. As will be shown below, it erred in not adhering to these considerations.

[163] Against this background, in our view the proper meaning to ascribe to the term 'sufficient evidence' is enough material that, on the face of it, is admissible and relevant and which, if the Impeachment Committee finds to be true, would

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[116] Ibid at 6.

establish that, in terms of the charges filed in the motion, the President had personally and in bad faith committed either: (i) a serious violation of the Constitution or the law (by intentionally or maliciously violating either); or (ii) a serious misconduct (by acting in an unlawful, dishonest or improper manner).

[164] The Panel's assessment requires it to consider and evaluate the information in the motion, as well as that which may be provided by members of the Assembly and the President.[117] It must then determine whether the motion has merit in that there is *sufficient evidence* amongst this material, which has probative value, as it shows, on the face of it, that the President committed the contraventions alleged in the charges, and which, if established to be true by the Impeachment Committee, may result in a finding by it (the Impeachment Committee) to this effect.

[165] As the Panel is unable to determine the veracity of the evidence, its finding of sufficient evidence can only be one which is made 'on the face of it', in other words prima facie. It is in this sense that the remark by Maya CJ in *EFF III,*[118] must be understood, where she states that if the Panel concludes that 'sufficient evidence exists to disclose a prima facie case', its recommendation falls within the ambit of the Rule and must be given effect to. Contrary to the respondents' contentions, the remark is not to be understood in the sense of a prima facie case that requires an answer; or prima facie proof that requires a rebuttal, in the absence of which it will become conclusive, as one finds in cases dealing with an onus or burden of proof such as *Jacobson*[119] and *Osman.*[120]

[166] The exercise that the Panel must undertake requires consideration of the President's version and response, which unlike the exercise the Speaker engages

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[117] Rules 129G(1)(b) and (c)(i)-(iii).
[118] *EFF III* n 2 para 139.
[119] *Jacobson* n 70.
[120] *Osman* n 71.

in, must afford him an opportunity to respond to all relevant allegations against him. This further adds to the reason why 'prima facie' cannot be understood in the sense argued for by the respondents.

[167] We now turn to the test that was adopted by the Panel and its application thereof.

The test adopted by the Panel

[168] Contrary to the express requirements of the Rules, at no point in its Report did the Panel ever state that there was '*sufficient evidence*' before it which showed that the President had committed a serious violation or serious misconduct. Instead, and at repeated places in its Report, the Panel stated only that the information before it '*prima facie*' disclosed or established that the President had 'a case to answer' or that a certain state of affairs existed.

[169] This formulation was not confined to the charges and was one used in relation to a range of ancillary issues that did not directly form the subject of the charges. For example, the Panel held that the information before it established prima facie that: (i) more foreign currency was concealed in the sofa than was referred to in the receipt issued for it; [121] (ii) the money that was stolen was probably more than USD 580 000;[122] (iii) the President sought the assistance of the President of Namibia to apprehend a suspect;[123] (iv) following this request, General Rhoode's team proceeded to Namibia as part of their investigation;[124] (v) there was a deliberate intention not to investigate the robbery and theft

[121] Panel Report n 1 para 263.5.
[122] Ibid para 258.
[123] Ibid paras 171.6, 224, 236.1 and 263.4.
[124] Ibid para 228.

'openly';[125] and (vi) there was a deliberate decision to keep the investigation secret.[126]

[170] The reason why the Panel repeatedly expressed itself in the way that it did, in terms of prima facie findings and a prima facie 'case to answer' standard or test, can be traced to its understanding of its mandate which it set out in Chapter 9 of its Report.[127] In this regard, its reasoning was based principally on two pillars.

[171] In the first place, the Panel noted that whereas the rules relating to the removal of the head of a Chapter 9 institution, also made provision for a preliminary enquiry to be conducted by an independent panel, when it was sought to remove the head of that institution, such as the Public Protector, such a panel was required only to determine whether there was *prima facie*, and not *sufficient, evidence,* to show that the office holder concerned was 'guilty' of any of a number of listed grounds of misconduct.[128]

[172] The difference in the language used did not, in its opinion, detract from the essential nature and scope of the enquiry which was to be carried out by either panel. In its view, in each case the panel's function was simply to conduct a preliminary assessment of the motion and make a recommendation as to whether the relevant office-bearer concerned had 'a case to answer'.[129]

[173] It observed, given that impeachment was a momentous act, which was not to be taken lightly, the Panel functioned as a filter to ensure that only a motion that established prima facie that the President had a 'case to answer' should be considered by the Impeachment Committee.[130] Thus, in essence, it construed there

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[125] Ibid para 263.1.
[126] Ibid para 171.2.
[127] Ibid paras 67-77.
[128] Section 194 of the Constitution.
[129] Panel Report n 1 para 73.
[130] Ibid para 76.

to be no difference as to the proper meaning to be ascribed to the different terms used in the different rules. It also equated the 'sufficient evidence' requirement in Rule 129G(1)(b), which applied to it, as meaning '*prima facie* evidence'. It gave no reasons for these findings, based on the requisite and trite canon of interpretation that a term in a rule or statute is to be interpreted contextually and purposively.

[174] In the second place, the Panel was of the view that the use of the word 'evidence' instead of 'information' in its terms of reference, as provided for by Rule 129G(1)(b), did not matter.[131] This was because, in terms of Rule 129G(1)(c)(iv), its enquiry was limited to the written and recorded 'information' that was placed before it by the member who submitted the motion,[132] those members who took up the invitation to submit information to it[133] and the President.[134] Thus, it is apparent that, in its view, it was simply required to determine whether there was *prima facie* information before it, on which the President had a 'case to answer', irrespective of the merit or sufficiency of that information.

[175] In our view, the Panel made material errors of law on both of these aspects. As we previously pointed out, whether 'prima facie evidence' can be understood to mean 'sufficient evidence' in a particular instance depends on a careful analysis of the triad of text, context and purpose, in the setting in which the term appears. The 'case to answer' standard or test, as we also pointed out, is one traditionally used in an adjudicative setting where a burden of proof or evidentiary burden comes into play. In that setting it is understood to refer to the situation where, as

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[131] Ibid para 74.
[132] In terms of Rule 129A(1)(b).
[133] In accordance with Rule 129G(1)(c)(i).
[134] In terms of Rule 129G(1)(c)(iii).

a matter of law, a person is required to rebut a case which has been put up by the State or an opponent.

[176] As was pointed out by the President's counsel, applying such a standard or test effectively amounts to imposing a burden on a party. In that setting, the determination of whether the onus or evidentiary burden-bearing party, as the case may be, has a prima facie 'case to answer' is one made without having regard for the case which may be put up by the opposing or other party. There is no indication that the Panel recognised this distinction and its import on the fact that it was not sitting as an adjudicative body, but only as a sifting one.

[177] From its analysis it is indubitably clear that the Panel postulated a prima facie 'case to answer' test of the kind that applies in legal proceedings where an assessment is arrived at without due or proper regard for evidence which has been, or may be, put up by the opposing party. In doing so, it clearly erred.

[178] The test it was required to perform was to assess whether, having regard for *all* the information which was before it, there was, on balance, sufficient *evidence* (ie enough admissible and relevant material with probative value) to show that, on the face of it, the President committed a serious violation or serious misconduct as alleged in the charges. The test was not whether, having regard to the material put up in support of the Motion by a member of the Assembly, there was, on the face of it, a 'case' for the President 'to answer' as there was no burden of proof or evidentiary burden on any party.

[179] As is evident from the record, the Panel was swamped by a deluge of material comprising thousands of pages, which included the Motion and the information filed in substantiation thereof, statements (sworn and unsworn), transcripts, newspaper articles (which referred to both identified and unnamed sources), press statements/media releases, police reports, photographs, reports of

the Public Protector, various judgments, and submissions by members of the Assembly.[135] Among this lot of material were hard, corroborated facts and information, as well as material which amounted to no more than allegation, speculation, conjecture, opinion, rumour or suggestion.

[180] Applying 'a prima facie case to answer' standard allowed the Panel to find that the President had to answer to an Impeachment Committee on charges which it would otherwise have found, if properly weighed on all the available evidence, to not be *sufficiently* established, as opposed to being merely *prima facie* established.

[181] Furthermore, the prima facie standard allowed the Panel to ignore or gloss over the numerous material deficiencies which it pointed out existed in relation to the information that was before it. In this regard, it commented that although the information converged at certain points, it diverged sharply on 'material' ones, was 'vague in some respects', and left 'revealing gaps at crucial points'. [136] It also pointed out that the 'evidence' contained in Mr Fraser's statements, in particular that which was *based on undisclosed sources*, was 'full of hearsay'.[137] In addition, it noted that it had not been placed in possession of all the information that was available from several other investigations that had been carried out, or which were underway, by eight other State entities. Consequently, it believed the truth of what really happened lay beneath the unanswered questions it had before it.[138]

[182] Ultimately, however, notwithstanding these serious deficiencies the Panel was of the view that it could make findings as there was 'some other independent information' which supported the hearsay and which could play a role in resolving

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[135] It was also provided with 10 audio and video files.
[136] Panel Report n 1 para 78.
[137] Ibid para 83.
[138] Ibid paras 80-81.

the factual disputes, and given the inherent probabilities and improbabilities.[139] It noted that it was simply seized with a preliminary enquiry 'into a motion to determine whether the President had a case to answer'.[140]

[183] Therefore, in summary the test which the Panel wrongly adopted was simply whether, on the information that was before it, there were issues or aspects on which the President was required to answer or account for, instead of whether there was sufficient evidence, on the face of it, to show that the President committed any one or more of the violations or misconduct alleged in the charges.

[184] In postulating this test, the Panel wholly and fundamentally misconceived its functions, the nature of the enquiry it was to conduct, and the recommendation it was required to make to Parliament. On this basis, the process the Panel engaged in, and the conclusions it came to, were not rationally related to the object of Rule 129G(1)(b) or the power and duty that it was required to exercise in terms thereof, and fell to be reviewed and set aside.[141]

The proceedings and findings of the Panel

[185] Based on the charges lodged on 18 July 2022, the Panel was required to determine whether sufficient evidence existed to show that the President committed a serious violation of the Constitution or the law or serious misconduct.

[186] Although it ultimately pronounced on the charges,[142] in discharging its mandate the Panel went well beyond them and made findings on a range of issues

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[139] Ibid para 84.
[140] Ibid.
[141] *Hira* n 48 at 93H-I; *Afriforum NPC v Minister of Tourism and Others; Solidarity Trade Union v Minister of Small Business Development and Others* [2021] ZASCA 121; [2022] All SA 1 (SCA); 2022 (1) SA 359 (SCA) para 53; *Corruption Watch and Another v Arms Procurement Commission and Others* [2019] ZAGPPHC 351; [2019] 4 All SA 53 (GP); 2019 (10) BCLR 1218 (GP); 2020 (2) SA 165 (GP) paras 68-70.
[142] Panel Report n 1 at 59-78.

and aspects that it was not required to address. In paragraph 66 of its Report, it noted that there was 'some issue' as to the scope of its mandate – the EFF and ATM had adopted the stance that the Panel was required to determine simply whether the President had a 'case to answer', whereas the UDM suggested that it should investigate the veracity of the information which had been provided and Mr Fraser's allegations. Notably, the Panel did not set out what the President's contention was as to its mandate, ie that it was limited to an enquiry as to whether there was *sufficient evidence* in relation only to the charges.

[187] As will be evident, the Panel adopted the broad 'case to answer' approach advocated for by the EFF and ATM. Consequently, it held that the President had a 'case to answer' not only on the four charges, but on a host of other issues raised by the respondents based on the information they submitted.

The 'supplementary evidence'

[188] As previously stated, the ATM furnished additional information on two occasions. Although this material was ostensibly tendered to supplement and strengthen the evidential basis of the charges, in some instances it strayed far beyond that which formed the core complaint of each charge as set out in the Motion.

[189] On 10 October 2022, it submitted 'supplementary evidence' to the Speaker in relation to charges 1 and 3. In relation to charge 1, it contended that although the President had admitted that a certain amount of dollars had been stolen, he had been evasive about the exact amount and how this foreign currency had entered the country. In addition to this 'irregularity', the money constituted 'concrete evidence' of payment for the work or business which the President conducted on his Farm.

[190] In relation to charge 3, it contended it was evident that the President had acted in bad faith and had been involved in a conflict of interest, as he had suspended the former Public Protector who had been investigating what happened on the Farm. It referred to a judgment which was handed down by a Full Court of this Division in September 2022,[143] where the Public Protector obtained an order reviewing and setting aside her suspension. That judgment was subsequently reversed on appeal.[144]

[191] On the documents before us, there is no indication that the Speaker considered this additional information (either against the charges or at all – to the extent they were meant to supplement a charge) and made any decision in respect thereof. It appears simply to have been passed on to the Panel.

[192] In its submission to the Panel on 27 October 2022, the ATM again sought to furnish supplementary evidence in relation to charges 1, 3 and 4. In relation to charge 1, it contended that the President had also violated the Constitution, read with foreign exchange laws, by failing to inform the SARB when he brought foreign currency into the country, for which the SARB had sought answers as to its origins and the underlying transaction.

[193] This, the ATM said, constituted tax evasion by the President as the necessary declarations in respect of the currency had not been made to the South African Revenue Service (SARS). In this regard, it referenced an audio clip in which an NPA official allegedly claimed that the stolen money amounted to USD 20 million. It also referred to a letter Mr Fraser sent to the DPCI on 23 June 2022, after the charges he had laid were referred to it for investigation, and after he met with high-ranking DPCI officials. In the letter, Mr Fraser alleged that the

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[143] *Public Protector of South Africa v Speaker of the National Assembly and Others* [2022] ZAWCHC 180; [2022] 4 All SA 417 (WCC).
[144] *Democratic Alliance and Another v Public Protector of South Africa and Others* [2023] ZACC 25; 2024 (3) SA 1 (CC).

President's adviser, Mr Chauke, had moved USD 20 million to South Africa for himself and the President 'for safekeeping' and directed the DPCI to take certain investigative steps.

[194] In relation to charge 3, the ATM again made reference to the President's suspension of the Public Protector and the judgment of the Full Court which, it said, constituted irrefutable evidence that the President had put himself in a position of conflict between his private interests and his official responsibilities.

[195] Regarding charge 4, the ATM referred to statements General Rhoode made to the Public Protector in his July 2022 affidavit, and to activities he allegedly carried out in Namibia which, according to the ATM, were evident from a Namibian police media release. It enclosed a series of photographs of suspects who had been apprehended and copies of the entire 2019/2020 and 2020/2021 SAPS Annual Reports which, it alleged, showed that the rendering of protection services to the President on his Farm had not been authorised and General Rhoode's operation had constituted 'unlawful undercover work' for, and at the instance of, the President.

[196] In the concluding paragraph of its submission, the ATM averred that the supplementary information showed that the President was guilty of corruption, and General Rhoode and his team had engaged in a series of criminal transgressions, including kidnapping, the unlawful interrogation of suspects and the 'non-submission' of evidence in relation to the break-in on the Farm.

[197] In its submission, the EFF referred to much of the same material, as well as certain answers that had been given by the President in the Assembly. It contended that the President failed to uphold, defend, and respect the Constitution by failing to declare foreign currency and report the break-in and theft. It asked the Panel to find that the President had a 'case to answer' about his 'paid work'

or farming activities. It further submitted that the Panel should seek evidence in relation to a range of questions which it posed, including how much money was stolen and why the President failed to declare it, and whether he had attempted to conceal offences of money laundering, corruption and fraud.

[198] It is the filing of these submissions and supplementary materials by the EFF and ATM that appear to have led the Panel to pronounce on the additional issues that were raised in them, such as the source of the foreign currency (to which the entire Chapter 12 of the Report was devoted)[145] and the exploits of General Rhoode in Cape Town and Namibia (which were traversed at some length in Parts B and C of Chapter 13 of the Report). These additional issues fell outside of the conduct complained of in the charges filed in the Motion.

[199] In this regard, the Panel set out a lengthy analysis of the information it received regarding the foreign currency. It also set out the events and circumstances pertaining to the transaction, which allegedly took place for the purchase of buffalo. In this respect, it posed a detailed series of questions, issues and difficulties it had with the explanation and version put forward by the President, much as the EFF and ATM had done in their submissions, and commented on the probabilities thereof. In its conclusion on these aspects, the Panel set out reasons for why it was in 'substantial doubt' as to whether the 'stolen foreign currency' was the proceeds of a sale.[146]

[200] Notably, the Panel's handling of these aspects preceded its discussion of the charges lodged against the President, which it addressed only in Chapter 14 of the Report and onwards, together with its findings on them.

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[145] See Panel Report n 1 para 104, where the Panel said it was raising the issue of how the money entered the country because the ATM had raised the issue in its papers.
[146] Ibid para 136.

[201] As pointed out, some of the additional issues and allegations that were raised in the supplementary evidence and submissions fell outside of, and were accordingly unrelated to, the conduct complained of in the charges, the evidence for which they purported to supplement.

[202] It seems doubtful that the submission of supplementary evidence can have the effect of amending or varying a motion that is already before the Panel. This is so because the Rules require a motion initiating a section 89 enquiry to be limited to clearly formulated and substantiated charges, that must be vetted by the Speaker for compliance before it is referred by the Speaker to the Panel. The Rules do not expressly make provision for an amendment or addition to be made to the charges in the motion. However, we do not need to decide this issue because the purpose of the supplementation was expressly stated as being to strengthen the evidential basis of the specified charges.

[203] The Panel allowed its attention to be diverted by the additional issues raised in the supplementary submissions, notwithstanding that, in his submission, the President alerted it to the fact that some of the additional submissions and 'supplementary evidence' put forward constituted an irregular attempt to broaden the motion that had been accepted by the Speaker, and which was published by the Assembly. In addition, he stated that he was only obliged to respond to allegations that were relevant to the charges as they had been lodged.

[204] This diversion resulted in the Panel focusing on issues that the President was not charged for. As a consequence, it found that the President had a 'case to answer' on the origin of the stolen foreign currency and its underlying transaction.[147] It came to this conclusion even though these aspects were not the immediate subject of any of the charges and was a finding the Panel arrived at

[147] Ibid para 138.

even before considering the charges and making findings in respect of them. In this regard, the Panel wrongly described the source of the foreign currency as one of two central issues which formed the 'foundation' of the charges.[148]

[205] On the charges as lodged in the Motion this was not so. The accusation, in charge 1, was that the President was farming and trading in cattle and game animals for profit and this constituted a breach of the prohibition against engaging in other paid work, in section 96(2)*(a)* of the Constitution. It was immaterial and irrelevant to this charge, as lodged, whether the alleged payment for a transaction involving buffalo was in foreign currency, and irrelevant and unnecessary to determine the exact or true amount it entailed. Any amount would suffice to constitute a breach of section 96(2)*(a)*. Of course, while these aspects could possibly be relevant to charges pertaining to exchange control contraventions, 'money laundering', tax-related offences and the like, they were not the charges which the President was facing. The source of the foreign currency was also wholly irrelevant to charges 2 to 4.

The Panel's assessment of the information before it

[206] Because of its misconception of the functions it was supposed to perform and its adoption of the incorrect standard/test, the Panel also erred materially in evaluating the information before it and in the conclusions it reached, on all four charges. It also made several material errors of law. As it simply focused on whether prima facie, or on the face of it, there were aspects in the mass of material before it that required an explanation, the Panel did not conduct the qualitative, comparative evidential assessment that it was required to.

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[148] Ibid para 87.

The material submitted in support of the Motion

[207] It is appropriate to cite the charges against the President, as set out in the Motion:

'Charge 1: Serious Violation of the Constitution – Violation of section 96(2)(a), read with section 83(b) of the Constitution

'The President is guilty of serious violation of section 96(2)(a) of the Constitution, which provides that members of the Cabinet and Deputy Ministers may not undertake any other paid work, in that:

(a) He, in response to allegations by Mr Arthur Fraser, told delegates to a Conference of the African National Congress in Limpopo that "I'm a farmer, I am in the cattle business and the game business…I buy and sell animals…" This that is being reported was a clear business transaction of selling animals;

(b) The statement by the President confirms that he is actively running his farming business and this also means the President misled the nation when in 2014, on assuming office as Deputy President, he said that all his business interests would be managed by a blind trust; and

(c) By violating section 96(2)(a) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.

. . .

Charge 2: Serious Violation of the Law – Violation of section 34(1) of the Prevention and Combatting of Corrupt Activities Act 2004 (Act No 12 of 2004), read with the South African Police Service Amendment Act, 2012 (Act No 10 of 2012) violation of the [PRECCA]

The President is guilty of serious violation of section 34(1) of the [PRECCA], which places a duty on any person to report corrupt transactions to any police official, in that:

(a) The President failed to report the theft on his farm to any police official as required by the Act;

(b) Reporting the matter to General Wally Rhoode, a member of the Presidential Protection Unit, is not in compliance with the South African Police Service Amendment Act, 2012 (Act

No 10 of 2012) which directs that reporting should be made to the police official in the Directorate for Priority Crime Investigation in terms of Section 34(1) of the [PRECCA]; and

(c) The fact that there is no case number to date is proof that the manner in which the purported reporting was made was irregular and unlawful.

. . .

Charge 3: Serious Misconduct – Violation of section 96(2)(b) read with section 83(b) of the Constitution

The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that members of the Cabinet and Deputy Ministers may not, inter alia, expose themselves to any situation involving the risk of a conflict between their official responsibilities and private interests, in that:

(a) A member of the Presidential Protection unit, General Wally Rhoode, was directed to deal with security issues in the private farm (of the President) in violation of the provisions of section 96(2)(b) of the Constitution;

(b) President Ramaphosa's life and limb was not threatened by the burglary and thus General Wally Rhoode had no business to be investigating anything at the Phala farm as unlawfully directed by the President; and

(c) By violating section 96(2)(b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.

. . .

Charge 4: Serious Misconduct – Violation of section 96(2)(b) read with section 83(b) of the Constitution

The President is guilty of serious misconduct by violating section 96(2)(b) of the Constitution, which provides that members of the Cabinet and Deputy Ministers may not, inter alia, act in a way that is inconsistent with their office, in that:

(a) The President gave an unlawful instruction to General Wally Rhoode, a member of the Presidential Protection Unit, to investigate the burglary in his private farm and the instruction to investigate rather than to report the matter in terms of the law shows dishonesty and constitutes misconduct and unlawfulness on the part of the President; and

(b) By violating section 96(2)(b) of the Constitution, he failed to uphold, defend and respect the Constitution as the supreme law of the Republic, as required of him by section 83(b) of the Constitution.'

[208] Charges 2 to 4 arose from averments made in the affidavit which Mr Fraser lodged with the police in June 2022. The charges before the Panel were not the same as those lodged by Mr Fraser. In his affidavit, Mr Fraser requested an investigation into whether the President, General Rhoode, and others' conduct amounted to 'money laundering' and corruption.[149]

[209] The Panel failed to bear in mind the distinction between the charges it was required to deal with and pronounce on, and those which Mr Fraser lodged with the SAPS. As a result, it failed to appreciate that much of what Mr Fraser included in his affidavit, although relevant to the charges he lodged, was irrelevant to the charges in issue before the Panel. As such, it relied heavily on the material in Mr Fraser's affidavit and other statements made by him and based many of its material findings on them.

[210] Mr Fraser alleged that the fact that the President had large, undisclosed sums of foreign currency in his residence constituted *prima facie* proof of money laundering and the possession of suspected stolen goods, or contraventions of various fiscal, currency, exchange control and customs and excise laws and regulations. In addition, the payments he alleged were made to suspects by General Rhoode and his team, on the instruction of the President, amounted to corruption.

[211] In support of his assertions, Mr Fraser attached a topographical image of the Farm, photographs and CCTV footage of unlawful entry points, photographs

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[149] Ibid para 26.

of the suspects and their identity documents and the vehicles they had acquired, sundry screenshots of text and WhatsApp messages that were retrieved from the suspects' and related persons' cellphones, and the entire 2019/2020 and 2020/2021 SAPS Annual Reports. Some of this material, he said, was obtained from police sources or contacts in General Rhoode's team or circle.

[212] The material that Mr Fraser supplied confirmed that there had been a housebreaking and possible theft of monies from the President's Farm on 9 February 2020 and a subsequent investigation of sorts. It did not substantiate or confirm the President's alleged misconduct in relation thereto. The sources of his serious allegations in this regard, if any, were not identified or revealed, and as was pointed out by the President's counsel, the allegations he made were either hearsay or mere 'say-so'. This was so as Mr Fraser had no personal knowledge of the incident that took place on 9 February 2020, or the events that gave rise to it.

[213] The Panel also referred to a letter that Mr Fraser addressed to DPCI officials on 23 June 2022, as well as a letter to the Public Protector on 26 September 2022 and the annexures attached to it that it considered to be 'particularly important'.[150] The latter set out Mr Fraser's responses to a series of questions that had been posed to him by the Public Protector.

[214] In the letter he addressed to the DPCI on 23 June 2022, Mr Fraser sought to supplement his 'complaint'. He alleged that the money which had been stolen was part of a large quantity of US dollars that had been brought into the country illegally by the President's advisor, Mr Bejani Chauke, on his return from trips he undertook on behalf of the President to various countries in the Middle East and Africa. Mr Chauke was 'said' to have concealed the money in one of the couches at his residence in Hyde Park, which he caused to be transported to the

[150] Ibid para 85.2.

President's farm with the assistance of General Rhoode, with the 'full knowledge and acquiescence' of the President. Mr Chauke was 'said' to have 'moved' USD 20 million in cash to a certain Mr Vallie for 'safekeeping' for himself and the President some three weeks earlier. Mr Fraser referred to a crime intelligence report from the Namibian police dated 21 June 2020, which he had furnished to DPCI investigators on 15 June 2022.

[215] According to the report, Mr Fraser alleged that in June 2020, General Rhoode held a meeting on the South African/Namibian border with Namibian police officials, handed over certain information to them, and advised them that, due to the sensitivity of the matter, it should be handled 'with discretion'. The report set out details of a Namibian police investigation and questioning of a suspect in connection with the incident and noted that 'discussions were allegedly ongoing' between the Presidents of South Africa and Namibia. Mr Fraser's letter also disclosed further details of the investigation carried out by General Rhoode's team in Cape Town.

[216] It will be apparent from this, that the contents of the letter were also based on hearsay and say-so, and Mr Fraser had no personal knowledge of what he alleged therein. As far as the letter that Mr Fraser addressed to the Public Protector is concerned, in response to a request that he provide details of the sources of his information so that her investigators could do away with having to deal with hearsay and 'secondary' evidence, Mr Fraser said that he was not at liberty to do so as it might compromise the DPCI investigation. In response to the Public Protector's requests for supporting information or evidence, he referred her to what he had already provided and suggested that the President be asked to respond. He referred again to the confidential crime intelligence report of the Namibian police.

[217] Once again, as in his previous letter, the contents of this letter were also based on hearsay and say-so as Mr Fraser had no personal knowledge of what he alleged therein. More importantly the sources of these allegations were not disclosed.

The material submitted on behalf of the President

[218] In response to the Motion and charges therein, the President submitted affidavits from himself, General Rhoode and Mr Chauke. In his affidavit, the President explained that the Farm was owned by the Tshivhase Trust, a family trust. Ntaba Nyoni, a close corporation of which he was the sole member, conducted game and cattle farming on the Farm. Ntaba Nyoni's operations were managed and run by employees, with Mr von Wielligh as its General Manager. The Farm was also used for educational camps, workshops and meetings, and family gatherings.

[219] Late in 2019, the President had discussions with Mr von Wielligh about disposing of substandard buffalo that were a financial drain on the Farm's operations. He advised Mr von Wielligh that potential buyers existed in the Middle East and Africa.

[220] On his arrival at the Farm on 26 December 2019, the Lodge Manager, Mr Ndlovu, informed him that the previous day a Mr Mustafa Hazim had arrived at the Farm and asked to view buffalo. Mr Hazim decided to purchase some of those he saw and made payment in cash in the amount of USD 580 000. Mr Ndlovu gave Mr Hazim an acknowledgment of receipt and locked the cash in a safe in an office on the Farm. The receipt reflected that the payment was for 20 buffalo in Camp 6.

[221] As the President was heading to Cape Town for the remainder of the festive season and Mr von Wielligh was away, he told Mr Ndlovu to keep the money on the Farm until Mr von Wielligh had the opportunity to process matters relating to the transaction and could bank the money.

[222] Mr Ndlovu was due to go on leave on 30 December 2019 and felt uncomfortable about leaving the money in the safe, as several staff members had access to it. He decided that the safest place to store it was inside the President's residence. He placed the money below the cushions of a couch, which was in a spare bedroom that was hardly ever used.

[223] On 10 February 2020, the day after the housebreaking and theft, Mr von Wielligh contacted the President and informed him of a security breach on the Farm. The President was chairing an AU Assembly summit meeting in Addis Ababa at the time. Mr von Wielligh sent him CCTV footage which showed intruders attempting to gain entry into the main residence. The President then summonsed General Rhoode, informed him there had been a breach of security and requested him to attend to it and report back to him. Soon thereafter, Mr Ndlovu contacted him and told him that the money which he had stored in the house had been stolen.

[224] On his return from Addis Ababa, the President had to attend a Cabinet meeting in Cape Town and prepare and deliver his State of the Nation Address (SONA). As soon as his schedule allowed, later in February 2020, he visited the Farm so he could be briefed on what had happened and confirm that money had been stolen.

[225] On his return a few days later, at the end of February/beginning of March 2020, the President requested General Rhoode to meet him at his residence in Hyde Park, where he told him that the money from the sale of game had been

stolen. They agreed that General Rhoode would confer with his superiors and revert on the way forward. He trusted that General Rhoode would take the necessary steps, from a security point of view, regarding his safety, as well as any other steps required, to report and deal with the information he had imparted to him. He reported the housebreaking and theft to General Rhoode as he was the head of the PPU and responsible for ensuring his safety and security.

[226] The President expected General Rhoode to do all that was necessary and take the steps required in response to the information imparted to him. He requested General Rhoode to attend to the incident insofar as it was within his role and responsibilities to do so.

[227] The President was subsequently told by General Rhoode that he had been instructed by the Deputy National Commissioner of the SAPS, Lieutenant-General Mfazi (General Mfazi), to conduct a preliminary investigation with a focus on the President's safety and possible threats thereto and to report back to him, whereafter the Deputy National Commissioner would take over the case.

[228] With reference to charge 3, the President provided the Panel with a copy of The Presidential Handbook which outlines the services, support and benefits afforded to the President and Deputy President, their spouses and former Presidents and Deputy Presidents and their spouses.

[229] The Presidential Handbook provides that the SAPS takes full responsibility for the protection and security of the President and Deputy President at all times during their term of office. This includes static protection at all official and private residences. SAPS does this through its PPU which falls under the command and control of the National Commissioner of SAPS. The mandate of the PPU includes the President's protection and that of his immediate family.

[230] The President told the Panel that there could therefore be no violation of the Constitution when the PPU was fulfilling its assigned mandate. He disagreed with the assertion that unknown persons gaining access to his private space could not pose a potential threat to his life and limb. He expressed the view that the fact of unknown persons gaining access to his private residence was inevitably an indication of a possible threat to him personally, as breaking into his house gives them an opportunity to do all manner of things, some of which can be dangerous, such as planting a device of whatever nature that may pose a threat to his safety and security upon his return to his residence.

[231] He explained that the security of his private residence was intrinsically linked to his position as the President of the Republic and any security breaches he experienced should properly be reported to General Rhoode as head of the PPU. The President drew the Panel's attention to the fact that the PPU was not providing such security at the Farm at the time of the housebreaking and theft. This was because the Farm was not his primary residence and he felt it would be a waste of State resources to do so. Since the housebreaking and theft, however, and as late as 2020, physical security had begun to be provided at the Farm.

[232] The reporting of the security breach to General Rhoode was to ensure that he could properly fulfil his functions and was not in any way an instruction to investigate the matter beyond what was required of him to do, with regard to making a determination for the President's safety and security and that of his private residence and his family.

[233] Turning to charge 4, the President denied that he gave General Rhoode any unlawful instructions. By reporting the breach of security and theft to General Rhoode and requesting him to attend to the matter, he (the President) clearly had no intention of concealing crimes from the police. He did not instruct General

Rhoode to recover the money which had been stolen or to hunt for any perpetrators, and knew nothing of any attempts to do so, by whom these might have been made, or how they may have gone about it. He had no knowledge of the arrest of any suspects or of any illegal investigations which were conducted by General Rhoode and a 'team'. No money was paid over to anyone at his instance, or that of any employee of Ntaba Nyoni or General Rhoode to conceal the crimes.

[234] The President contended that some of the submissions made constituted an impermissible attempt to broaden the Motion that had been accepted by the Speaker and published by Parliament, and he was not going to respond to allegations which were not relevant to the charges he was called upon to answer. The reference to the suspension of the Public Protector and the judgment of the Full Court in relation thereto, for example, was an unauthorised attempt to add to the charges that had been approved by the Speaker and referred to the Panel.

[235] In the same vein, the reference to money being brought into the country unlawfully was not the subject of any of the charges. The President denied that the money which had been stolen was brought into the country unlawfully, at his instance, by Mr Chauke. Further, the allegation that he had failed to declare foreign currency was also not included in any of the charges. He stated that he was co-operating with a SARB enquiry that was underway in relation to this and had never engaged in any tax evasion. Ntaba Nyoni was a tax registered and compliant entity which also had never engaged in any evasion of tax.

[236] The President submitted that the charges were largely based on Mr Fraser's hearsay. No evidence, let alone sufficient evidence, had been presented to show that he had committed any violation of the Constitution or the law, or any misconduct.

[237] As far as charge 2 was concerned, the President understood that the object of section 34(1) of PRECCA was to compel persons to report corruption and offences related to it to the DPCI and did not intend for every single corruption-unrelated act of theft of an amount in excess of R100 000 to be reported to the DPCI. In addition, it could not have been intended to place a duty to report such an offence on a person simply because they occupied a position of authority but did not fall within the 'sphere of a relationship' with the person committing the offence.

[238] To this end, the President submitted that the intention was to compel persons in authority to report instances of corruption, and crimes related to them, in respect of persons with whom they had a relationship relevant to that position of authority. He pointed out that the only reason why the section was of possible application to him was because he was a member of Ntaba Nyoni. However, Ntaba Nyoni was engaged in the business of trading in game and cattle, which was managed by a General Manager, and any obligation to report any offence in terms of section 34(1) of PRECCA therefore fell upon the General Manager.

[239] In any event, and if he was wrong in that regard, the President had taken steps to ensure that the matter was reported, by reporting it to General Rhoode. Properly read, all that was required in terms of section 34(1) was that reasonable steps be taken to ensure that the matter was reported or caused to be reported to an official of the DPCI, and by reporting it to General Rhoode he had substantially complied with any obligation that may have fallen on him. Any misinterpretation of section 34(1) on his part was not in bad faith.

[240] As for charge 1, the President pointed out that the constitutional prohibition in section 96(2)*(a)* of the Constitution, which forbids Cabinet members[151] from undertaking any other paid work, was echoed in the Executive Members Ethics Act 82 of 1998 (the EMEA),[152] and the Executive Code which was promulgated[153] to give effect to it (the Code). The EMEA also provided that the Code was to contain provisions requiring Cabinet members to make a disclosure of their financial or business interests, upon assuming office, and any such interests they might acquire thereafter, including any benefits of a material nature which were received by them.[154] Such a disclosure is to be made on an annual basis to the Cabinet Secretary and kept in a register which is accessible to the public in part and confidential in part.

[241] Clause 2.3(g) of the Code stipulates that Cabinet members may not receive remuneration for any 'work or service' other than for performing their functions as members of the executive. Clause 3.6 provides that where a Cabinet member holds any financial or business interests in a company, corporate entity or 'profit-making enterprise' which may give rise to a potential conflict of interest with their official duties or responsibilities, they must either dispose of them or place the administration thereof under the control of an independent and professional person or agency, within a period of two months. Included amongst the financial or business interests in corporate entities which are to be disclosed are the number, nature and nominal value of any shareholding, and the nature and value of any other financial interests which are held in such an entity. Members of Cabinet are accordingly entitled to hold financial interests that do not pose a risk of a conflict of interest, provided these are disclosed.

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[151] As well as Deputy Ministers and Members of the Executive Council (MECs).
[152] Section 2(2)*(b)*(ii).
[153] On 28 July 2000.
[154] Section 2(2)*(c)*(i) of the EMEA.

[242] The President has duly and consistently complied with his obligations under the EMEA and the Code. On his appointment as Deputy-President on 26 May 2014, he announced that he would be disposing of his interests in the Shanduka Group of companies and, pending finalisation thereof, his interests would be held in blind trusts.

[243] On 24 July 2014, he submitted a declaration of his financial interests to the Cabinet Secretary and requested then President Zuma to extend the two-month deadline for the disposal of assets which could give rise to any possible conflict of interest, in terms of Clause 3.6 of the Code. On 15 August 2014, President Zuma extended the period by four months. On 25 November 2014, he notified President Zuma that, pending the required regulatory approvals, he had disposed of his shareholding in the Shanduka Group and the remainder of his business interests were being placed in a trust to be managed by independent and professional persons. On 26 November 2014, Shanduka formally announced his divestment from the Group.

[244] The President is the sole member of Ntaba Nyoni. It was never part of the Shanduka Group. He has annually declared his interest in it together with his other financial interests, including his property holdings, to the Secretary of Cabinet as required. His membership of Ntaba Nyoni does not give rise to any conflict of interest between his official responsibilities and private interests. He does not work for Ntaba Nyoni and receives no remuneration from it.

[245] He further stated that his interest as a member in Ntaba Nyoni places him in the same position as a shareholder in a company. From its formation in or around 2001, he has invested his own and his family's money in Ntaba Nyoni, from time to time, to fund its operations, which have largely run at a loss. He does not undertake paid work on or through the Farm. He does not receive any remuneration for work or services other than for the discharge of his functions as

President. He is not on any entity's payroll. The ATM's contention in relation to the first charge was, accordingly, misconceived and based on an error of law as to the interpretation to be given to section 96(2)*(a)* of the Constitution, read with the EMEA.

[246] In the affidavit he submitted to the Public Protector in July 2022, General Rhoode confirmed that, as head of the PPU, he was with the President in Addis Ababa on 10 February 2020, when the President summoned and informed him that there had been a breach of security on the Farm. He was then requested to attend to the matter and to report back to the President. Thereafter, General Rhoode requested a colleague to arrange for the deployment of PPU members from the Pretoria office to the Farm and to find out what had happened. Although he was entitled, as head of state, to PPU protection on the Farm, the President had not used their services there before the incident. General Rhoode was later informed that two cameras had been tampered with and a window to one of the bedrooms of the President's residence had been partially opened. As the house was locked, members of the SAPS did not enter it. At that stage they were not aware that anything had been stolen.

[247] General Rhoode then returned with the President to Cape Town, where he had various commitments and duties. On 2 March 2020, he was asked to meet the President at his residence in Hyde Park, Johannesburg, where he was informed that money from the sale of animals had been taken during the incident. He informed the President that, given the seriousness of the incident, he would report it to his superiors and revert to him regarding the course of action to be followed. He consulted General Mfazi, the Deputy National Commissioner, who told him to gather information on potential suspects to determine whether there was a threat to the President and his family, after which General Mfazi would institute a full investigation. It was beyond the scope of General Rhoode's duties and

responsibilities to be allocated criminal dockets and conduct formal criminal investigations.

[248] General Rhoode proceeded to the Farm with a team he assembled, where employees were interviewed after being warned of their rights. The information which was obtained from them was then submitted to General Mfazi, whom he assumed would follow prescribed processes as part of a full-scale investigation, including opening a criminal docket if appropriate.

[249] On 25 June 2020, some four months after the incident, General Rhoode accompanied the President's advisor, Mr Chauke, on an official trip to Namibia. His trip was authorised by the National Commissioner. To his knowledge, the trip was not connected to the housebreaking and theft. Due to the COVID-19 lockdown and inability to fly, they drove to the border post where they were collected by helicopter and taken to Windhoek. While Mr Chauke met with the President of Namibia, General Rhoode did not attend the meeting and did not know what was discussed.

[250] In his affidavit to the Panel in November 2022, General Rhoode repeated that his investigation concerned whether there was a potential threat to the President and his family. He stated that he followed proper procedures in conducting this enquiry, which he was instructed by General Mfazi to undertake. While in Cape Town on 10 and 11 March 2020, he received a call from a member of the PPU, Sergeant Rekhoto, who informed him that he had learned that the perpetrators of the housebreaking and theft had bought new vehicles, one of which had been acquired from a local dealership. As he considered the information worthwhile in assessing whether there was a potential threat to the President and his family, they then went to the dealership to obtain details of the vehicle. Thereafter, Sergeant Rekhoto compiled a report and forwarded it to General Mfazi.

[251] In the affidavit he provided to the Panel in November 2022, Mr Chauke confirmed that he was employed as a special advisor to the President since 1 June 2019. He denied the allegations in Mr Fraser's letter to the DPCI dated 23 June 2022, which claimed that he had been involved in illegal activities. He further said he had never illegally brought foreign currency into South Africa, either for himself or the President. He also had never concealed any amount of cash of any 'denomination' (sic) in any couches or other furniture in his home or anywhere else and had never participated in the transfer of furniture to the President's private residence on the Farm. He travelled internationally as part of his work as a special envoy for the President. In this regard, the President had asked him to meet heads of state or their representatives on various occasions to discuss issues of national security and matters of a political nature. He had travelled to Chad, Namibia, Saudi Arabia, the Democratic Republic of Congo, the Central African Republic, Equatorial Guinea, Russia, Guinea Conakry, Togo, Kenya and Mozambique, as the President's envoy on state business.

The Panel's findings on the charges

[252] We now turn to the findings the Panel reached on the charges. On charge 1, the Panel noted that there was no definition in section 96(2)*(a)* of the Constitution of what doing 'paid work' entailed, nor was the phrase defined in the EMEA or the Code, and it had been unable to find any case law in the limited time at its disposal in which these words had been considered. It correctly pointed out that the words needed to be construed purposively to give proper effect to the constitutional provision.[155] It did not, as a starting point, attempt to set out the ordinary grammatical meaning of the phrase.

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[155] Panel Report n 1 para 187.

[253] It expressed the view that section 96(2)*(a)* put members of the Assembly to a choice: either they remained in business and did not become members of the Cabinet, or they were to relinquish their business interests for the time they were members of Cabinet.[156]

[254] It considered that the President had adopted an unduly 'narrow' view of the words 'paid work' and held that the words meant performing work for financial gain or reward, either as an employee or self-employed person, and included 'running a business'.[157] In support of this interpretation, it referred to the Directive that was applicable to employees in the public service, which defined 'other remunerative work' as including any 'business' which is carried out (which in turn includes any 'business, trade, occupation, profession, calling, industry or undertaking or activity' of any kind), or any services which are rendered by public service employees, for gain or personal benefit, outside of their employment.[158]

[255] It noted that at a conference in Limpopo, the President had told delegates that he was in the 'business' of cattle and game farming and that it was evident from: (a) his discussions with Mr von Wielligh as to the sale of buffalo to buyers from the Middle East and Africa; and (b) his directive to Mr Ndlovu that the money from the alleged transaction was to be kept on the Farm until Mr von Wielligh returned to work, that the President was actively involved in running the Farm.

[256] It rejected the President's statement that he did not engage in paid work as he received no remuneration for any work or service other than for his functions as President.[159] The Panel was of the view that the remuneration he received from

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[156] Ibid para 191.
[157] Ibid paras 193-195.
[158] Directive on Other Remunerative Work, issued by the Minister for Public Services and Administration in terms of section 30 of the Public Services Act 1994.
[159] Panel Report n 1 paras 201-203.

the farming business was what he was entitled to as a member of Ntaba Nyoni, such as dividends. Consequently, it was satisfied that the evidence disclosed *prima facie* that the President had violated section 96(2)*(a)* of the Constitution and had a 'case to answer' on charge 1.[160]

[257] In arriving at the conclusion it did, the Panel had no regard for clauses 2.3(g) and 3.6 of the Code, which seek to give effect to the terms of both section 96(2)*(a)* (which deals with the prohibition against paid work) and section 96(2)*(b)* of the Constitution (which deals with the prohibition against acting in a manner which is inconsistent with the office which a Cabinet member may occupy, or which may expose them to the risk of a conflict between their official responsibilities and their private interests). This was done, notwithstanding that the President made detailed reference thereto in his submission. It did not even mention these clauses in its discussion of charge 1.

[258] From the summary which we set out above, it will be apparent that, in terms of these clauses, members of Cabinet, Deputy Ministers and MECs are not prohibited, *per se*, from holding a financial or business interest in a corporate entity. They may do so provided it does not expose them to the risk of a conflict between their professional responsibilities and private interests, and they disclose such a financial or business interest. On this ground alone, therefore, the Panel made a material error of law in holding that Cabinet members could not hold any business interests while they were members of Cabinet. It also erred materially in applying the public service Directive, which applies to public servants, when the EMEA and the Code apply directly to Cabinet members and thus take precedence over it.

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[160] Ibid para 204.

[259] Clause 2.3(g) of the Code provides the necessary context to the prohibition in section 96(2)*(a)* of the Constitution, by stipulating that members of the executive may not be remunerated for any work or service other than that which they perform as members of the executive. This makes it clear that the remuneration which a Cabinet member may not receive is that which is provided in return or exchange for a work or service. It does not extend to any monies otherwise received by a member of Cabinet. Therefore, dividends received by a Cabinet member who holds shares in a company, or a contribution they receive in lieu of a profit share as a member of a close corporation, do not constitute remuneration in exchange, or return, for any work or service rendered by them.

[260] In his submission, the President made it clear that he did not perform any work for Ntaba Nyoni nor did he receive any remuneration for any work or service on, or in relation to, the Farm, or for any work or service other than that which he rendered in the performance of his functions and responsibilities as President. He also pointed out that the close corporation and the farm business which it operated were managed by a General Manager, a Lodge Manager and other staff.

[261] In the circumstances, although it is so that from time to time the President may have given directions to the General Manager as to Ntaba Nyoni's business operations, on balance there was not sufficient evidence before the Panel to show that he was performing work for, or effectively running the business of, Ntaba Nyoni or the Farm. Even if there was such evidence, it was not the subject of the prohibition contained in section 96(2)*(a)* of the Constitution, namely, the receipt of payment or remuneration in return for performance of work or a service. The Panel therefore could not rationally and reasonably have concluded that there was evidence before it which showed, even on a prima facie basis, that the President contravened section 96(2)*(a)*.

[262] As to the second charge, it was contended that the President was liable to report the theft to a DPCI official, as he was a member of Ntaba Nyoni. In terms of section 34(1)*(b)* of PRECCA, any person who holds a position of authority and who knows, or ought reasonably to have known, that any other person has committed the offence of theft involving an amount of R100 000 or more, is obliged to report that offence to an official of the DPCI.

[263] In terms of section 34(4), various persons are defined as persons of authority. These include a variety of persons in public and private service, such as Directors-General or heads of government departments; municipal managers; public officers in the Senior Management Service of a public body; and the Chief Executive Officer of any agency, authority, board, corporation or financial institution. In terms of section 34(4)*(e)*, the manager, secretary or director of a company is also such a person, as is a member of a close corporation. In addition, in terms of section 34(4)*(i)*, any person who is responsible for the overall management and control of the business of an employer is also a person in a position of authority.

[264] Given that, in the case of a company, a director or manager, who bears responsibility for the management and control of its business, bears the obligation to report, there is substance in the argument put forward by the President that, properly interpreted, where a close corporation is managed by a manager who is in control of its business, the obligation to report should primarily fall upon them as opposed to its member.

[265] However, even if a member of a close corporation is, unlike the shareholder of a company, responsible for reporting an offence, it does not necessarily follow that on the evidence before it, the Panel could find against the President. In this regard, mere non-compliance with the statutory provision was not enough. The

Panel was not required to determine whether there was information before it which *prima facie* disclosed that the President breached the provision in question,[161] but rather whether there was sufficient evidence to show that he had committed a serious violation of the law, by intentionally or maliciously violating section 34(1), in bad faith.

[266] We agree with the Panel that bad faith can be inferred from the nature and circumstances surrounding a violation of the Constitution or the law, and that the circumstances under which such a violation occurs are a relevant consideration in determining whether it is serious or not.[162]

[267] That being said, the Panel's treatment of the evidence on this charge gives no indication that it ever considered the required element of bad faith. Every indication is that it did not. In paragraph 251 of its Report, it held that it was common cause that the President had reported the housebreaking and theft to General Rhoode and expected him to act in accordance with the requisite police procedures. General Rhoode, in turn, reported the matter to General Mfazi, who instructed him to conduct a preliminary enquiry into the incident.

[268] The Panel rightly pointed out that, given the high ranks these police officers held in the police hierarchy, they must have known that they had to report the theft to the DPCI, yet they failed to do so. Notwithstanding this finding, it concluded that the information prima facie disclosed that the President had violated section 34(1), and that he accordingly had a 'case to answer' on charge 2.

[269] We are of the view that, given its own findings, and on a conspectus of the evidence as a whole, it could not be said that if the President breached section

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[161] Ibid para 253.
[162] Ibid para 63.

34(1), he did so either intentionally or maliciously and in bad faith. There was insufficient evidence to hold that he had committed a serious violation of the law, as envisaged in terms of Rule 129G(1)(b).

[270] That brings us to charge 3, which concerned the instructions the President gave to General Rhoode. The first error that the Panel committed in this regard was in dealing with charges 3 and 4 together, on the premise that the charges turned on findings which could be made in relation to the same facts. By doing this, the Panel lost sight of the fact that, though arising from the same facts, the charges themselves were distinguishable. Charge 3 concerned the investigation of security issues on the President's private property whilst charge 4 related to the investigation of the burglary and theft on the Farm.

[271] The Panel's combined assessment of charges 3 and 4 focused on charge 4, not charge 3. None of the information the President placed before the Panel in his response to charge 3 was disputed by any other information before the Panel.

[272] The Panel did not find that what the President said regarding this charge was not true. In fact, the Panel did not address what the President said in his response to charge 3 at all. There is no mention of the Presidential Handbook, and whether or not its provisions support the President's submissions regarding the PPU's mandate in relation to the Farm.

[273] Furthermore, the Panel made no factual findings in relation to the facts supporting charge 3, ie that there was sufficient evidence, or even prima facie evidence that: (1) General Rhoode's investigation of security issues on the President's Farm was a violation of section 96(2)*(b)* of the Constitution; and (2) General Rhoode had no business investigating anything at the Farm, as unlawfully 'directed' by the President, as the President's life and limb was not threatened by the burglary, as was alleged in the charge.

[274] The Panel came to the following conclusion in paragraph 239 of its Report, after its assessment of the evidence:

'In all of the circumstances, we think that the evidence presented to the Panel, *prima facie*, establishes that the President may be guilty of a serious violation of the sections 96(2) misconduct (sic) involving a violation of section 96(2)(a) as alleged in charge 1; and committing a serious misconduct by violating the provisions of section 96(2)(b) read with section 83(b) of the Constitution as alleged in [Charge 3]'

[275] This conclusion is irrational given the information that was before the Panel. To arrive at this conclusion, the Panel would have had to conclude that there was sufficient evidence before it, from the Motion, the ATM and EFF's supplementary representations, and the President, that it was impermissible for General Rhoode to carry out any investigation into security issues at the Farm. The objective evidence that was before the Panel did not support this conclusion.

[276] In addition, there was no evidence before the Panel to show or suggest that the President acted in bad faith in instructing General Rhoode to investigate security issues at the Farm. The Panel did not even consider this question.

[277] Turning to charge 4, here too the Panel did not directly consider whether the President acted in bad faith. In paragraphs 218-237 of its Report, the Panel set out the factual basis for its conclusion that the evidence established prima facie that the President placed himself in a situation where there was a conflict of interest between his official responsibilities and his private interests and acted in a manner that was inconsistent with his office.[163]

[278] The Panel pointed out that there were inconsistencies in certain aspects of the version which the President put up. In this regard, whereas in his submission

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[163] Ibid para 238.

to the Panel the President said that he told General Rhoode about the security breach (ie the housebreaking), when it was reported to him on 10 February 2020 and of the theft at the end of February/beginning of March 2020, in answer to a question in Parliament he said that soon after the incident he was informed of the *theft*, whereupon he immediately informed General Rhoode as they were in Addis Ababa at the time. The relevance or implication of these inconsistencies to the charges, as lodged, is unclear.

[279] On the evidence before the Panel, the President was first informed of the breach of security by Mr von Wielligh as it had been picked up on security cameras. At that time, no one was aware that access had been gained to his residence, as it was still locked, or that the monies which Mr Ndlovu had stashed in a couch had been stolen. It makes sense, therefore, that when the President first informed General Rhoode of the incident, he would have referred only to the breach of security.

[280] According to his affidavit to the Panel, the President said that soon after this he was contacted by Mr Ndlovu, who told him about the theft of the money. It thus also follows that General Rhoode would only have been informed of the theft at a later stage. In his affidavit, General Rhoode corroborated, under oath, the President's version that this occurred on 2 March 2020, after the President had gone to the Farm to establish for himself what had occurred and to confirm the circumstances of the theft.

[281] It is not clear on what basis the Panel chose to give more weight to what the President said in Parliament, in response to a question, than to what was said under oath in two affidavits. It could do so only if it found that both the President and General Rhoode had been untruthful in their affidavits, a finding it could not, and did not, make within the limits of its powers under Rule 129G(1)(c).

[282] In any event, it seems of no consequence to the charges whether General Rhoode was told about the theft in February in Addis Ababa or early March in South Africa (SA). The inconsistencies seem to be of no relevance or materiality to the charges.

[283] The Panel also erred in several other material respects in relation to its reasoning on these charges. It found that the President had instructed General Rhoode to 'investigate the matter' and report back to him, and because General Rhoode was not given instructions to report the matter to any SAPS police station, no case was registered and no docket opened.

[284] As pointed out in their affidavits, the President and General Rhoode confirmed that the incident was reported to General Rhoode and he, in turn, reported it to the Deputy National Commissioner, who instructed him to conduct a preliminary enquiry and report back to him, whereafter he would take over and institute a full investigation. Therefore, insofar as the information prima facie established that the investigation which General Rhoode carried out was one which was deliberately conducted outside of standard/normal 'procedures', there was no evidence which indicated this was done at the instance, or on the instruction, of the President.

[285] The Panel also erred in finding that the information before it established prima facie that the President had 'contacted' the Namibian President and sought his assistance in apprehending a suspect who was in Namibia at the time, as was alleged by Mr Fraser.[164] It based this finding on a media release which was issued by the Namibian Presidency on 10 June 2022,[165] a copy of which was provided by Mr Fraser to the Public Protector.

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[164] Ibid paras 171.6, 224 and 236.1.
[165] Pages 001-1565-1567 of the Caselines record.

[286] It pointed out that in the media release, the Namibian Presidency dismissed the 'slanderous' allegations which had been made about the Namibian President by individuals and media houses in SA, which it said were 'outrageous and unfortunate'. In this regard, the Namibian Presidency said, with particular reference to the averment to this effect in Mr Fraser's letter/statement in June 2022, there was absolutely no truth in the allegation that President Geingob had 'inappropriately used his office' to assist the SA President.

[287] After setting out certain extracts from the media release, the Panel said it was significant that it was not denied therein that the President had sought the Namibian President's assistance in apprehending a suspect, nor was it denied that the request had been acceded to. It noted that the media release simply denied that the Namibian President had acted 'inappropriately', and that the SA President had not issued a media statement refuting Mr Fraser's allegation, nor had he dealt with it in his response to the material put before the Panel.

[288] Aside from the fact that it was not part of any of the charges that the President had inappropriately contacted the President of Namibia and he was therefore not required to respond to such an allegation, the interpretation the Panel placed on the media release was ill-conceived and did not have proper regard for the contents of the release as a whole, read in context.

[289] In its first paragraph, the media release clearly proclaimed that it was a statement issued by the Namibian Presidency following 'unfounded allegations' that he may have 'assisted' the SA President in 'apprehending a suspect' who was connected to the 'burglary'.

[290] The media release not only said that there was absolutely no truth to this allegation, but also expressly pointed out that the apprehension of suspects in Namibia was the constitutional and statutory duty of the Namibian police, who

were mandated to effect the arrest of persons suspected of having committed a criminal offence. In addition, the statement said that persons suspected of having committed offences in foreign countries were liable to be dealt with in terms of the International Co-operation in Criminal Matters Act of 2000 and the Extradition Act of 1996, and that the Namibian President was 'not a repository of power' when it came to the apprehension of suspects alleged to have committed offences in foreign countries.

[291] In the circumstances, the media release continued that the politically motivated statements made by individuals and media houses against President Geingob had no factual or legal basis. The Namibian Presidency went on to state that President Geingob liaised with other heads of state on official matters within established diplomatic protocols in accordance with his constitutional powers and the dictates of international practices on co-operation. Consequently, in the final paragraph of the media release, the Namibian Presidency 'categorically' denied any insinuations that President Geingob may have acted inappropriately and/or 'participated or abetted in the apprehension of the individual concerned'.

[292] Read as a whole, therefore, the media release must be seen not only as one aimed at setting the record straight as far as the Namibian President was concerned, but also as refuting the allegation made against him in relation to the SA President. It therefore could not properly serve as a basis for drawing an inference that Mr Fraser's allegation, as to what the President had allegedly done or was alleged to have asked the Namibian President to do, was true, or that it was supported or corroborated by the Namibian Presidency's media release.

[293] As a result, the further finding which the Panel arrived at, consequent upon its finding that General Rhoode set up a meeting with his counterparts in Namibia

to conduct certain investigations at the request of the President, was also unfounded and irrational.

[294] Both of these findings formed the building blocks of the Panel's reasoning, leading it to conclude that the President had a case to answer on charges 3 and 4. Once again, the reasoning, findings and conclusion the Panel arrived at in relation to these charges demonstrate that it applied an incorrect, accusatory prima facie test instead of a sufficient evidence one.

[295] Had it applied a sufficient evidence test, it would have engaged in the comparative exercise of weighing up the hearsay and say-so allegations made by Mr Fraser and the unconfirmed media releases/statements and police reports submitted to the Public Protector, *insofar as they were relevant to the charges*, together with the three sworn statements made by the President, General Rhoode and Mr Chauke.

[296] Given that the Panel applied the wrong test, it did not consider that, in their affidavits, General Rhoode and Mr Chauke refuted the say-so allegations and hearsay information referred to. They both denied that they proceeded to Namibia as part of an investigation into the burglary and theft, at the instance of, or for, the President, following a request he made to the Namibian President. There was also no evidence to gainsay these denials. Once again, unless the contents of the affidavits put up a version which could be held to be clearly false or palpably implausible, on cogent grounds, they could not be ignored in favour of hearsay and simple say-so.

[297] Mr Fraser did not explain why his hearsay or say-so information was reliable. If his sources could not be named because he obtained the information whilst he was an intelligence officer, principles in similar situations may offer guidance. In this regard, one cannot hide behind unnamed sources. When

applying for search warrants, for instance, where a police officer relies on information received from an informer or a source outside the police to justify a warrantless search in terms of section 22 of the Criminal Procedure Act 51 of 1977, such information has to contain sufficient detail to ensure that it is based on more than mere rumour or gossip.[166] It is also relevant that the informer discloses their source or means of knowledge and that there are indications of their reliability. Police surveillance confirming part of their story, or reliable information the informer has supplied in the past, would be such an indication.[167]

[298] In our view, there was accordingly insufficient evidence to conclude, as the Panel did, that the President may have committed a serious violation or serious misconduct, in bad faith, by directing General Rhoode to deal with security issues pertaining to the Farm (charge 3) or by instructing General Rhoode to investigate the 'burglary' and theft 'rather than to report' the matter (charge 4). On the available information, there was insufficient evidence to show that the President had either acted in a manner which was inconsistent with his office or that he exposed himself to the risk of a potential conflict of interest, contrary to the provisions of section 96(2)*(b)* of the Constitution.

Conclusion

[299] As is apparent from the aforegoing, the Report of the Panel cannot stand. The Panel fundamentally misconstrued its functions, the nature of the enquiry it was to conduct, and the recommendation it was required to make to the Speaker. It went beyond its lawful remit, asked itself the wrong questions and made several material errors of law. As a result, the process it engaged in, and the conclusions it came to, were not rationally related to the object of Rule 129G(1)(b) or the power and duty it was required to exercise in terms thereof.

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[166] Du Toit *et al Commentary on the Criminal Procedure Act,* RS 30, 2023, Ch 2-p30I.
[167] Ibid.

[300] The Panel Report must accordingly be reviewed and set aside. It follows that all acts which flowed from, and were consequent upon, the flawed Report are vitiated thereby and cannot stand.

Costs

[301] This case raises novel points of law on issues of significant public importance. The President was entitled to bring suit, asserting, as he did, the constitutional principle of legality in the exercise of public power, as were the respondents in opposing the matter. The Report had not been set aside, and the matter had been referred to the Impeachment Committee, with the process in motion. The matter is complex, and the parties in the Assembly had valid reasons to oppose the review. For that reason, it is appropriate that each party should pay their own costs.

[302] These principles apply equally to the costs of the two applications that stood for later determination in this application. Those relate, firstly, to the application under case number 2026-138228, in which the Speaker and Chairperson of the Impeachment Committee were interdicted from proceeding with the impeachment hearings pending the final determination of this review. Secondly, the application by the ATM and MKP, which sought leave to appeal against the granting of the interdict.

Order

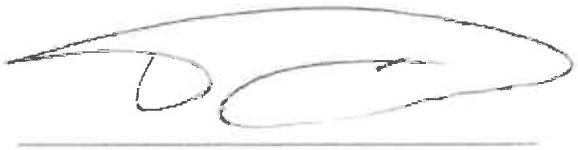
[303] In the result, the following order is made:

1. The report of the Independent Panel, comprising the first, second and third respondents, rendered in terms of Rule 129G(1)(b) of the Rules

of the National Assembly, is declared unlawful, and is reviewed and set aside in its entirety.

2. Any steps taken by the National Assembly pursuant to the Report are reviewed, declared unlawful and set aside.

3. Each party is to pay their own costs of this application as well as that of the interdict application under case number 2026-138228 and the application for leave to appeal that followed.



NP MABINDLA-BOQWANA

JUDGE PRESIDENT OF THE HIGH COURT



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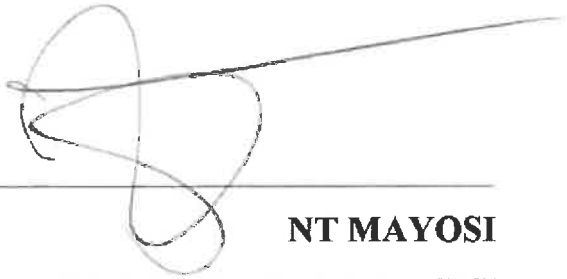
JUDGE OF THE HIGH COURT



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JUDGE OF THE HIGH COURT

Appearances

For the applicant:	W Trengove SC with G Budlender SC and N Luthuli
Instructed by:	Harris Nupen Molebatsi Inc, Johannesburg
For the fifth and seventh respondents:	A Katz SC with M Mhambi and K Perumalsamy
Instructed by:	Ashersons Attorneys, Cape Town
For the sixth respondent:	M Ka-Siboto with P Sokhela and P Vabaza
Instructed by:	England Slabbert Attorneys Inc, Cape Town
For the eighth respondent:	D Mpofu SC with K Monareng and B Khokho
Instructed by:	KMNS Inc, Johannesburg
For the ninth respondent:	T Masuku SC with N Nyathi and K Maponya
Instructed By:	MNS Inc, Johannesburg.