# IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA

Case No:

In the matter between:

**DEMOCRATIC ALLIANCE** Applicant

and

**THE SPEAKER OF THE NATIONAL ASSEMBLY** First Respondent

**JACOB GEDLEYIHLEKISA ZUMA, THE PRESIDENT** Second Respondent

**OF THE REPUBLIC** **OF SOUTH AFRICA**

**THE MINISTER OF POLICE** Third Respondent

**THE PUBLIC PROTECTOR** Fourth Respondent

**NOTICE OF MOTION: CONDITIONAL APPLICATION FOR DIRECT ACCESS**

**TAKE NOTICE THAT** in the event that this Court grants the Economic Freedom Fighters direct access to this Court or assumes exclusive jurisdiction in the matter under case number CCT 143/15, the Democratic Alliance seeks an order in the following terms:

1. In respect of the Second Respondent:
   1. The Second Respondent’s failure to comply with the remedial action taken by Fourth Respondent (*“the Public Protector”*)as set out at page 442, paragraph 11.1 of her report dated 19 March 2014, entitled “*Secure in comfort*” regarding an “*Investigation into Allegations of Impropriety and Unethical Conduct relating to the Installation and Implementation of Security Measures by the Department of Public Works at and in respect of the Private Residence of President Jacob Zuma at Nkandla in the KwaZulu-Natal Province*” (hereafter “*the Nkandla report*”) is declared to be unlawful and constitutionally invalid.
   2. The Second Respondent is directed to comply, within 14 days after the date of this order with the remedial action taken by the Public Protector in the Nkandla report referred to in paragraph 1.1 above and the Second Respondent is directed to report to this Court by way of affidavit that he has done so.
   3. In the alternative to paragraphs 1.1 and 1.2:
      1. The Second Respondent’s failure to report to the National Assembly as required by the Public Protector at page 442, paragraph 11.1.4 of the Nkandla report and section 3(5)(a) of the Executive Members’ Ethics Act, 82 of 1998 (“*the Ethics Act*”), is declared to be unlawful and constitutionally invalid.
      2. The Second Respondent is directed to report to the National Assembly in terms of section 3(5)(a) of the Ethics Act, within 14 days of the date of this order.
      3. The Second Respondent’s failure to engage rationally with the Public Protector’s findings and remedial action taken pertaining to him in the Nkandla report is declared to be unlawful and constitutionally invalid.
      4. The Second Respondent is directed to comply with the remedial action in the Nkandla report referred to in paragraph 1.1 above or to file with the Registrar of to this Court, within 14 days of this order, an affidavit how he intends to engage rationally with the findings and remedial action taken pertaining to him in the Nkandla report.
      5. The Public Protector shall be entitled to respond thereto within 14 days after it has been filed and the Applicant may set down the matter for hearing on whether Second Respondent has fulfilled his obligation on the same papers duly supplemented.
2. In respect of the First Respondent:
   1. The resolution of the National Assembly of 13 November 2014 is declared unlawful and constitutionally invalid.
   2. The resolution of the National Assembly of 18 August 2015 is declared unlawful and constitutionally invalid.
3. In respect of the Third Respondent (“the Minister of Police”):
   1. The Report of the Minister of Police to Parliament on Security Upgrades at the Nkandla Private Residence of the President, dated 25 March 2015, is declared to be unlawful and constitutionally invalid.
   2. It is declared that Minister of Police is not entitled to report to the National Assembly regarding the remedial action required by the Public Protector at page 442, paragraph 11.1.4 of the Nkandla report and under section 3(5)(a) of the Ethics Act.
4. The First, Second and Third Respondents shall pay the costs of the application, jointly and severally, including the costs occasioned by the employment of two counsel.
5. Further and/or alternative relief.

**TAKE NOTICE FURTHER THAT** the affidavit of **JAMES SELFE** will be used in support of this application.

**TAKE NOTICE FURTHER THAT** the Chief Justice is requested to issue directions concerning the manner in which this application shall be dealt with.

**TAKE NOTICE FURTHER THAT** the Applicant has appointed the offices of Minde Schapiro & Smith Inc., care of CHRISTODOULOU & MAVRIKIS, Unit 1 Virgin Atlantic Building, 50 Sixth Road, Hyde Park, Johannesburg,as the address at which it will receive all process in this matter.

DATED AT **CAPE TOWN** this **\_\_\_\_** day of **SEPTEMBER 2015**.

**MINDE SCHAPIRO & SMITH INC**

Per: **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**ELZANNE JONKER**

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**BELLVILLE**

Care of CHRISTODOULOU & MAVRIKIS,

Unit 1 Virgin Atlantic Building

50 Sixth Road, Hyde Park

Johannesburg

**TO: THE REGISTRAR**

The Constitutional Court

# AND TO: THE SPEAKER OF THE NATIONAL ASSEMBLY

First Respondent

c/o **PARLIAMENT OF SOUTH AFRICA**

Parliament Street

**CAPE TOWN**

# AND TO: JACOB GEDLEYIHLEKISA ZUMA,THE PRESIDENT

# OF THE REPUBLIC OF SOUTH AFRICA

Second Respondent

Tuynhuys

**CAPE TOWN**

# AND TO: THE MINISTER OF POLICE

Third Respondent

c/o **OFFICE OF THE STATE ATTORNEY**

4th Floor

22 Long Street

**CAPE TOWN**

# AND TO: THE PUBLIC PROTECTOR

Fourth Respondent

4th Floor

51 Wale Street / Breë Street

**CAPE TOWN**