

A 3266 MARCUS, Adv. Gilbert SC, 1987-2016

24 boxes.

Records relating to selected court cases and proceedings of commissions of enquiry, submitted by Advocate Gilbert Marcus SC.

Please note restricted access to part of the collection.

A NEW NATION' COURT CASE, 1987, 1f

In June and August 1987, during the State of Emergency, various Proclamations were published in the Government Gazette No. 10772 and as amended in No. 10880, which were seeking to further undermine the Press Freedom in South Africa. Progressive publications like the daily newspaper 'New Nation' had to submit written representations in order to avoid persecution. These representations had to satisfy state authorities that the effect of systematic or repeated publication of sensitive matter such as the coverage of political unrest and state security actions, was not causing a threat to the safety of the public or the maintenance of public order. The Proclamations set out the exact terms for the Media as far as the publication of the political events in South Africa was concerned, as well as the offences and penalties in contravention of the terms of the Proclamation.

A1 Representations submitted by New Nation in response to the various Notices published in the Government Gazette - 1f

B SOUTH AFRICAN HUMAN RIGHTS COMMISSION OF INQUIRY INTO RACISM IN THE MEDIA, 1999, 7f

The South African Human Rights Commission conducted an investigation into allegations of incidents of racism in the media. The Commission was to make findings and recommendations based on various public submissions and its analysis of submissions of responses by the 'Mail & Guardian' and the 'Sunday Times' newspapers, which were implicated to have violated the fundamental rights of black persons.

B1 Terms of Reference of the Commission, Government Gazette No. 19740, 12 February 1999-1f
Also included: General Notice of the Commission of Inquiry, Government Gazette No.19809, 2 March 1999, inviting the public to make written submissions; Notices to appear before the South African Human Rights Commission, issued to the editors of 'Mail & Guardian' and 'Sunday Times'

- B2 "The News in Black and White: An Investigation into Racial Stereotyping in the Media", Media Monitoring Project, October 1999 - 1f
- B3 Interim Report of the Inquiry into Racism in the Media, South African Human Rights Commission, November 1999 - 1f
Also included "Faultlines: Inquiry into Racism in the Media", A SAHRC Report, August 2000
- B4 Request and Addendum to Request by the Black Lawyers' Association and Association of Black Accountants of South Africa - 1f
Saying that the Human Rights Commission conduct an investigation of the Mail & Guardian and Sunday Times newspapers, for alleged violations of fundamental rights of Black people.
- B5 Submissions by the Black Lawyers' Association and Association of Black Accountants of South Africa; and Submissions by the Sunday Times and the Mail & Guardian in response - 1f
- B6 Heads of Argument on behalf of Mail & Guardian; and Submissions on behalf of the Sunday Times - 1f
- B7 Submissions of the Media Review Network (MRN) - 1f
Motivating their contention of bias in the media against the religion of Islam and the Muslim community of South Africa
- C SCARBROW BURSARY FUND TESTAMENTARY TRUST, 2006 - Restricted access, 3f

The applicants, being The Minister of Education and The University of Cape Town, were seeking for the High Court to vary the Trust's provisions in line with the Constitution of South Africa. This after the Bursary Trust had published an advert in which it invited applications for Bursaries for students at the University of Cape Town, stipulating that applicants, in terms of the Will of the deceased, were required to be matriculants, of European descent, male, gentile and with limited or no means.

- C1 Court records and supporting material in order as received by Adv. G.Marcus - 3f

Including Arguments; Founding Affidavit by the Minister of Education Kader Asmal; the Last Will and Testament of Edmund William Scarbrow; submissions by the Scarbrow Bursary Fund, the University of Cape Town and the Department of Education
- D SISULU COMMISSION OF INQUIRY INTO THE EXCLUSION OF ANALYSTS OR COMMENTATORS, 2006 - Restricted access, 12 f

Following an official SABC statement issued on the 20 June 2006 and a discussions on SAFm radio thereafter about the 'SABC Ban story' on 21 June 2006, a Commission of Inquiry was appointed, chaired by Mr. Zwelakhe Sisulu and assisted by Advocate Gilbert Marcus SC. The Commission was to deal with three main issues set out in the Terms of Reference, which mainly evolved around the SABC's policies and practices in respect of the utilization of independent political analysts and commentators, as well as the general moral of the employees within the news and current affairs division, headed at the time by Snuki Zikalala.

- D1 Terms of Reference and Procedures for the Commission - 1f
- D2 Preparatory notes by Adv. G.Marcus - 1f
- D3 Exhibits 1-28 - 1f
- D4 Various Submissions to the Commission - 1f
- D5 Testimonies of the Cape Town staff of the SABC about Jeffrey Twala, Regional News Editor in Cape Town, submitted indirectly to the Commission - 1f

- D6 Real Time Transcripts of Hearings before the Commission
 - D6.1 SAFm & AM Live SABC Ban Story, 21 June 2006, pages 1-6 - 1f
 - D6.2 SABC staff, 21-24 July 2006, pages 1-631 - 1f
 - D6.3 SABC staff, 17 August 2006, pages 632-916 - 2f
 - D6.4 SABC staff, 19 August 2006, pages 917-1051 - 1f
 - D6.5 SABC staff, 4 September 2006, pages 1052-1173 - 1f
 - D6.6 SABC staff, 6 September 2006, pages 1174-1302 - 1f

- E LINDIWE MAZIBUKO AND OTHERS v THE CITY OF JOHANNESBURG AND OTHERS, 2009 - 15 boxes

Court Records relating to an Application for leave to appeal against a judgment of the Supreme Court of Appeal, presented In The Constitutional Court of South Africa, Case No.: CCT. 39/2009.
The appeal concerned the right of access to sufficient water, entrenched in section 27 of the Constitution. The applicants were residents of Phiri in Soweto (the residents) and the respondents were the City of Johannesburg, Johannesburg Water and the Minister of Water Affairs and Forestry.

- E1 Media summary
- E2 Combined Index with description of documents contained in Volumes 1-79

- E3 Volumes 1-79

- F ECONOMIC FREEDOM FIGHTERS AND THE SPEAKER OF THE NATIONAL ASSEMBLY AND ANOTHER (CCT143/15) and DEMOCRATIC ALLIANCE AND THE SPEAKER OF THE NATIONAL ASSEMBLY AND OTHERS (CCT171/15), 2015-2016, 5 boxes

In 2015 the EFF and the DA applied to the Constitutional Court for an order that President Jacob Zuma pay back some of the R246 million spent on his home in Nkandla. The application would also clarify the status and powers of the office of the Public Protector Ntuli Madonsela. The EFF was represented by Advocate Wim Trengrove SC and the DA by Advocate Anton Katz SC. The lawyer representing President Jacob Zuma at the Constitutional Court was Advocate Jeremy Gauntlett SC.

In both cases Advocate Gilbert Marcus SC acted for the Public Protector, on behalf of law firm Adams&Adams.

- F1 Economic Freedom Fighters and the Speaker of the National Assembly and Another (CCT143/15), August-December 2015, 2 boxes
The matter between The Economic Freedom Fighters (Applicant) and The Speaker of the National Assembly (First Respondent), Jacob Gedleyihlekisa Zuma, The President of the Republic of South Africa (Second Respondent), The Public Protector (Third Respondent)
- F1.1 Volume 1, page 1-100, 1f
Notice of Motion; Founding Affidavit by Floyd Shivhambu, with Annexures including the Constitution of the EFF, the Findings by the Public Protector, the Report by the President Jacob Zuma to the Speaker of the National Assembly regarding the Security Upgrades at Nkandla, the Report by the Minister of Police to Parliament on the Security Upgrades at Nkandla.
- F1.2 Volume 2, Index, page 101-200, 1f
Applicant's Notice of filing; Extract from the Public Protector's Report; 1st Respondent's Notice of Intention to oppose; 1st Respondent's Condonation application; Filing Notice, 1st Respondents' Answering Affidavit.
- F1.3 Volume 3, Index, page 201-311, 1f
1st Respondent's Answering Affidavit, continued.
- F1.4 Volume 4, Index, page 312-409, 1f
2nd Respondent's Answering Affidavit, Annexures and Supplementary and Answering Affidavit; Corruption Watch's letter requesting consent to join as amicus curiae & responses; 3rd Respondent's Notice of Motion and Founding Affidavit & Annexures.
- F1.5 Volume 5, Index, page 410-450, 1f
Amicus curiae's Filing Notice, Notice of Motion, Founding Affidavit & Annexures; Constitutional Court Directions
- F1.6 Volume 6, Index, page 451-549, 1f
Applicant's written submissions, relating to matters of jurisdiction, the Public Protector's report, unfulfilled constitutional obligations and arguments relating to the President; 1st Respondent's written submissions, relating to the basis for the challenge, EFF's reliance, nature of appropriate remedial action, reliance on sections of Constitution.
- F1.7 Volume 7, Index, page 550-652, 1f

2nd Respondent's Practice Note and Written submissions, relating to jurisdiction, the absence of the Minister of Police, the nature of the Public Protector's recommendations, application being premature, separating of powers and political expediency; 3rd Respondent's written submissions, relating to the Public Protector's report, the Chapter 9 Institutions, legislative history, dealing with the findings of the Public Protector, the SABC matter.

- F1.8 Parties' additional written submissions, 2f
- F1.8.1 Amicus Curiae (Corruption Watch) Written submissions, page 1-20, List of Authorities and Practice Note
Relating to the two related issues of i) status and scope of the Public Protector, ii) how organs of state and public officials are required to respond to remedial action.
- F1.8.2 2nd Respondent's (President) additional written submissions, page 1-17

President's response to Corruption Watch, relating to the status of the Public Protector's powers, the nature of the remedial action in the PP's report, compliance by the President.
- F1.8.3 1st Respondent's (Speaker of the NA) written submission, duplicate pages 502-549
- F1.8.4 2nd Respondent's (President) written submission, duplicate pages 553-606
- F1.8.5 3rd Respondent's (Public Protector) written submission, duplicate pages 610-652
- F2 Democratic Alliance and the Speaker of the National Assembly and Others (CCT171/15), September-November 2015, 3 boxes
The matter between Democratic Alliance (Applicant) and The Speaker of the National Assembly (First Respondent), Jacob Gedleyihlekisa, The President of the Republic of South Africa (Second Respondent), The Minister of Police (Third Respondent), The Public Protector (Fourth Respondent)
- F2.1 Combined Index, 1f
- F2.2 Volume 1, page 1-149, 1f
Notice of Motion; Founding Affidavit by James Selfe, DA, with Annexures including Notice of Motion issued in High Court, Founding Affidavit by James Selfe, the Public Protector's report.
- F2.3 Volume 2, page 150-299, 1f
Annexures continued, including: The Public Protector's report, continued; The Democratic Alliance Constitution.
- F2.4 Volume 3, page 300-449, 1f
Annexures continued, including: The DA Constitution; Mail&Guardian newspaper article; Investigation Report; Correspondence; Special Investigation Unit final report to the President.
- F2.5 Volume 4, page 450-588, 1f
Annexures continued, including: Special Investigation Unit final report, continued; Report by 2nd to the 1st Respondent re. Security upgrades at Nkandla; Letters between the Public Protector, the President and the Speaker of the NA; Ad Hoc Committee report; Minutes of NA proceedings.

- F2.6 Volume 5, page 589-715, 1f
Annexures continued, including: Report by the Minister of Police to Parliament; Letter by the Minister of Public Works to the Speaker; Announcements, Tablings and Committee Reports; Letters between the President and the Public Protector and Media statement.
- F2.7 Volume 6, page 716-843, 1f
1st Respondent's Answering Affidavit (716-784), with various Annexures.
- F2.8 Volume 7, page 844-886, 1f
3rd Respondent's Answering Affidavit, by Nkosinathi Nhleko; 4th Respondent's Answering Affidavit, by Thulisile Madonsela.
- F2.9 Volume 8, page 887-972, 1f
2nd Respondent's Answering Affidavit, by Jacob Zuma.
- F2.10 Volume 9, page 973-1088, 1f
2nd Respondent's Answering Affidavit, by Jacob Zuma, continued; with various Annexures.
- F2.11 Volume 10, page 1089-1122, 1f
Notice of Motion; Founding Affidavit by David Harris Lewis; with Annexures including Corruption Watch Report analysis on corruption in procurement; Correspondence.
- F2.12 Volume 11, page 1123-1135, 1f
2nd Respondent's Application for Condonation and Founding Affidavit, by Jacob Zuma, with various Annexures.
- F2.13 Volume 12, page 1136-1226, 1f
Applicant's Replying Affidavit to 1st, 3rd and 4th Respondent's Answering Affidavit (1136-1166), with various Annexures, including JSCI Report (1171-1190).
- F2.14 Volume 13, page 1227-1351, 1f
Various Annexures, including amongst others: Letters and excerpts from President's report; Security Cluster report.
- F2.15 Volume 14, page 1352-1382, 1f
1st and 3rd Respondent's Notice of Intention to Oppose; Affidavits in response to Application to intervene as amicus curiae.
- F2.16 Parties' written submissions, 4f
- F2.16.1 Applicant's (Democratic Alliance) written submission, page 1-48, 1f
Relating to factual background, the Public Protector's remedial power, merits of the case.
- F2.16.2 1st Respondent's (Speaker NA) written submission, page 1-37, 1f
Relating to misconception of challenge against the resolutions by laying out the true nature of the Public Protector's powers and legislative history of the Public Protector Act.
- F2.16.3 2nd Respondent's (President) written submission, page 1-50, 1f
Relating to the proper approach to the application (factual matrix), exclusive jurisdiction, interests of justice, the nature of the PP's powers and the remedial action indicated.
- F2.16.4 3rd Respondent's (Minister of Police) written submission, page 1-28
Relating to the background facts, the legal status of the Minister's report, separation of powers
- F2.16.5 4th Respondent's (Public Protector) written submission, page 1-33

Relating to the Public Protector's report, the Chapter 9 Institutions importance, legislative history of the powers of the PP, findings of the PP, the SABC matter.

F3

Correspondence, 2016, 1f

Correspondence between the Office of the State Attorney, The Registrar of the Constitutional Court and Adams&Adams relating to both cases. Also included is the Draft Order, suggested by the State Attorney, to be made at the hearing on the 9 February 2016. The Constitutional Court reserved judgement on the 9 February 2016.