

**IN THE CONSTITUTIONAL COURT OF SOUTH AFRICA
HELD AT BRAAMFONTEIN, JOHANNESBURG**

CCT CASE NO.: **CCT109/24**

LAC CASE NO.: **JA78/21**

LC CASE NO.: **J111/21**

In the application for intervention, alternatively admission as *amicus curiae* of:

#UNITEBEHIND NPC

Applicant for intervention

In re the matter between:

ONICA MARTHA NGOYE

First Applicant

TIRO HOLELE

Second Applicant

And

THE PASSENGER RAIL AGENCY OF SOUTH AFRICA

First Respondent

LEONARD RAMATLAKANE

Second Respondent

THINA VUYO MPYE

Third Respondent

DINKWANYANE MOHUBA

Fourth Respondent

SMANGA SETHENE

Fifth Respondent

XOLILE GEORGE

Sixth Respondent

NOSIZWE NONKWE MACAMO

Seventh Respondent

MATODZI MAKHUBA

Eighth Respondent

THEMBA ZULU

Ninth Respondent

THANDEKA MABIJA

Tenth Respondent

NKOSINATHI ALLEN KHENE

Eleventh Respondent

NOTICE OF MOTION

KINDLY TAKE NOTICE THAT the Intervening Applicant apply to this Court for an

Order in the following terms:

- 1 That #UniteBehind are granted seeks, leave to intervene as a party in the Rescission Application in Case Number CCT109/24, on the basis that it has a direct and substantial interest in accordance with Rule 8 of the Rules of this Court.
- 2 That #UniteBehind are granted leave to file written submissions and to present oral argument should the matter be referred for oral argument.
- 3 That, in the alternative:
 - 3.1 #UniteBehind, pursuant to Rule 10 of the Rules of this Court, are admitted as *Amici Curiae*, and that non-compliance with this rule is condoned to the extent necessary;
 - 3.2 That #UniteBheind are granted leave to file written submissions and to present oral argument should the matter be referred for oral argument;
- 4 Directing that the costs of this Intervention Application shall, if unopposed, be costs in the main application, but if opposed, shall be borne by the parties opposing it on Scale C, jointly and severally, the one party paying the others to be absolved, and consequent upon the employment of two counsel.
- 5 Granting such further and/or alternative relief as may be appropriate.

TAKE FURTHER NOTICE THAT the affidavit of Zackie Achmat will be used in support of this Intervention Application together with annexures thereto.

TAKE FURTHER NOTICE the applicants appoint the address of their attorneys, indicated below, where they will accept service of all process in this matter and consent to service via email at rui.lopes@lopesattorneys.com and mandla.mogola@lopesattorneys.com

TAKE FURTHER NOTICE if you intend opposing this application you are required to:

- a) Notify the applicants' attorneys in writing of your intention within fifteen (15) days of service of this application, and to appoint an address referred to in rule 6(5)(b) at which you will accept notice and service of all documents in these proceedings and file a copy of such notification with the Registrar of this Court; and
- b) File your answering affidavit (if any) within fifteen (15) days of the date upon which you have notified the applicant of your intention to oppose this application.

TAKE NOTICE FURTHER that if no such notice of intention to oppose is delivered as aforesaid, this application will be set down on the unopposed roll and an order may be made without any further notice to you.

TAKE NOTICE FURTHER THAT any party shall within 10 days from the date that the application is lodged, respond in writing indicating whether or not this application is being opposed, and if so, the grounds for such opposition.

TAKE NOTICE FURTHER THAT if no such notice of intention to oppose is given, #UniteBehind will request that the Registrar place the matter before the Chief Justice to be dealt with in terms of Rule 11(4).

KINDLY PLACE THE MATTER ON THE ROLL FOR HEARING ACCORDINGLY.

DATED AT RANDBURG ON THIS _____ DAY OF _____ 2026.

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I, the undersigned,

ZACKIE ACHMAT

affirm and make the following statements as binding on my conscience:

- 1 I am a political activist and director of #UniteBehind NPC, whose offices are at 1st Floor, Methodist House, 46 Church Street, Cape Town, 8000. I am authorised to depose to this affidavit and to bring this application on #UniteBehind's behalf.
- 2 The facts contained in this affidavit are within my knowledge, unless the context indicates otherwise, and are to the best of my knowledge both true and correct.
- 3 Where I make legal submissions, I do so on the advice of #UniteBehind's legal representatives.

INTRODUCTION

- 4 This application seeks leave for #UniteBehind to be admitted as a party with a direct and substantial interest, alternatively as an *amicus curiae*, in the application for rescission that has been instituted by Ms Martha Ngoye and Mr Tiro Holele (collectively "**the applicants**") under CCT case no. 109/2024.
- 5 Over the past two decades, corruption and state capture have shaken our country to its core. This Court has described corruption as "*a cancer that threatens our*



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*constitutional order and the human rights to which it seeks to give meaning*¹ and
*“a huge threat to our nascent and fledgling democracy.”*²

6 This Court has repeatedly emphasised the clear public interest:

6.1 In the processes aimed at uncovering and ultimately addressing corruption
 and state capture;³ and

6.2 In a functional commuter rail system.⁴

7 These issues have animated most of #UniteBehind’s work over the past decade.

8 Much of our struggle over the past decade to arrest the rot at PRASA has been
 inextricably intertwined with the specific facts around Ms Ngoye’s and Mr Holele’s
 whistleblowing, their staunch resistance to corruption, their eventual dismissal, and
 the impugned LAC judgment. Their fight is our fight. In this respect, we are less
 interested in the abstract legal theories that resulted in the current disjuncture
 between right and remedy on an individual level (as the current affidavits in the
 rescission application are understandably framed).

9 Instead, we are considerably more interested in the practical public importance of
 ensuring that these actual employees — Ms Ngoye and Mr Holele — find their way
 back into PRASA, for the good of PRASA, commuters, the public, #UniteBehind,

¹ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma and Others* 2021 (5) SA 327 (CC) at [49]

² *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma* [*] 2021 (5) SA 1 (CC) at [10]

³ *Secretary, Judicial Commission of Inquiry into Allegations of State Capture v Zuma* [*] 2021 (5) SA 1 (CC) at [19]

⁴ *Rail Commuters Action Group and Others v Transnet Ltd t/a Metrorail and Others* 2005 (2) SA 359 (CC)

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and our country's enduring fight against corruption and state capture. The applicants complied with their statutory obligations to report corruption. Legislation such as PRECCA, the PFMA, and the Prevention of Organised Crime Act No. 121 of 1998 ("**POCA**"), required them to act, and they did.

- 10 The 'labour dispute' before this Court emanates directly from this broader context of corruption and state capture, and from the specific context of widespread corruption and looting within the first respondent, PRASA, the custodian of South Africa's passenger rail system.
- 11 Ms Ngoye and Mr Holele were dismissed for their honesty, their refusal to turn a blind eye to corruption at PRASA, and their dogged effort to reverse its effects. That is the essential context for the consideration of the rescission application.
- 12 Until the applicants' rescission application, this broader context and the clear public interest in the matter have featured only peripherally in the record. As a consequence, neither the LAC nor this Court appear to have taken proper account of this larger picture when they closed the doors on the applicants. #UniteBehind intends to ensure that this is corrected, and that this Court's decisions in respect of rescission and the merits are guided by the correct context, and by such adjustments as may be necessary to the legal lens through which the matter is approached. The circumstances are truly exceptional.
- 13 PRASA obscures the truth in this respect in two material respects:

13.1 The first is the allegation at AA paragraph 76 that "The Applicants' claims that they are whistle blowers is a red herring. They are not whistle blowers.



They merely attempt to pull at the heartstrings of the justices of this court in a last-ditch effort to re-ignite the dimming embers of an extinguished flame" (Emphasis in the original). This allegation is false. The Applicants are whistleblowers. That fact must be affirmed. As I demonstrate below, the Applicants worked closely with #UniteBehind, at great personal cost, to expose the rot and corruption at PRASA.

- 13.2 The second is the allegation at para 22 that "The Zondo Commission report did not find that the Applicants are whistle blowers, on the contrary, the report recommended that the roles of the Applicants in the Swifambo transaction, *inter alia*, be investigated." (Emphasis in the original). And further, the Applicants "only place reliance on the portion of the State Capture Commission Report that supports their claim. What they fail to do is inform the Court of those portions of the State Capture Commission Report that do not favour them." This is a regrettable exercise in revisionist history. This is not what the Zondo Commission report ultimately found and in fact the Applicants' status as whistle blowers was affirmed subsequently as I demonstrate below.
- 14 If we are granted leave to intervene as a party, we intend to ask for relief that would be practically similar to, but conceptually different from, that sought by the applicants. We intend to ask this Court in terms of section 172 of the Constitution, alternatively through PAJA:

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- 14.1 To declare the conduct of PRASA in dismissing Ms Ngoye and Mr Holele to be unlawful and constitutionally invalid, and to set that conduct aside; and
- 14.2 To order just and equitable relief to the effect that they be reinstated with back pay.
- 15 We approach the matter through the lens of section 172 (or PAJA) because the interests of #UniteBehind — including the interests of the communities, commuters and the public we represent — are not confined to, or even primarily located in, the realm of the employer-employee relationship. The test applied by the LAC, and described as 'settled' by this Court in its order of 12 December 2025, leaves vanishingly little room for these interests to be taken into account.
- 16 If the Court finds that our interest amounts to no more than that of an amicus, we will confine our submissions to the applicants' roles as whistleblowers and the international law obligations relating to corruption and whistleblowing.
- 17 In either of these eventualities, it may be necessary to introduce limited further evidence, to explain the role of #UniteBehind and the interests of the public, and to provide the necessary context to the dismissals.

#UNITEBEHIND

- 18 #UniteBehind was formed as a coalition of people's movements, legal, policy and support organisations advocating for justice and equality. It has since been incorporated as a not-for-profit company and a public benefit organisation dedicated to the building of a just and equal society.

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- 19 One of our central demands is realisation of the fundamental rights to a safe, reliable, accessible, affordable, efficient and quality passenger rail service. #UniteBehind is committed to ending state capture, particularly the corruption, maladministration, mismanagement and malfeasance at PRASA, and we have built a campaign known as #FixOurTrains. To this end, we have engaged the Executive, Parliament, the Courts, the Judicial Services Commission (“JSC”), and many others with letters, submissions, pickets, marches, civil disobedience, creating public awareness and, as a last resort, litigation.
- 20 As I illustrate below, we have often had to resort to litigation, since the courts have in our experience often been the only arm of the state capable of withstanding the onslaught of grand corruption. A number of these cases feature later in this affidavit.
- 21 #UniteBehind’s work was and remains based on rigorous research, data, facts, fact-checking and evidence and our interventions often rely on whistleblowers. Since 2017, our whistleblowers included PRASA’s former board chairperson, Mr Popo Molefe who was a personal comrade of mine since the days of the United Democratic Front. Mr Molefe introduced us to professional, ethical, accountable and transparent public service officials, including Ms Ngoye, Mr Dingiswayo, Mr Holele, as well as others associated with the Ministry of Finance.
- 22 Accordingly, #UniteBehind seeks intervention:
- 22.1 In its own interest.



- 22.2 In the interests of our members and other commuters who rely on a safe and functional passenger rail system, for the realisation of a multitude of other rights;
- 22.3 In the interests of the public, who have rights:
- 22.3.1 To expect that proper action is taken against corruption, including the recovery of stolen resources;
 - 22.3.2 To the restoration of a public service (within PRASA and elsewhere) that complies with section 195 of the Constitution and the rule of law; and
 - 22.3.3 To have whistleblowers protected, in line with South Africa's obligations under both domestic and international law.
- 23 We also act in the interests of PRASA. This is something that we and the applicants have been compelled to do for the past decade. Here it is important to distinguish between PRASA as a public institution on the one hand, and its incumbent leadership at any particular moment, on the other.
- 24 As I discuss below, the interests of those at the helm have often diverged from the interests of PRASA as an institution and an organ of state. This distinction is fundamental to recognising the errors in the LAC's approach. In this context, we act on behalf of and in the interest of PRASA as an institution, since its leadership has shown itself unable or unwilling to act in its own lawful interest.

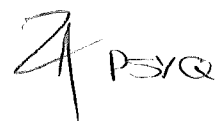


#UNITEBEHIND'S OWN INTEREST

25 #UniteBehind's broad interests are the following:

- 25.1 First, the constitutional imperative to ensure that PRASA operates as an ethical, professional, transparent, accountable, efficient and effective organ of state, which uses its scarce resources in an economic manner and puts the fundamental rights and needs of people first.
- 25.2 Second, the dire need for PRASA to uphold its contractual duties towards its employees in good faith, not to repudiate contracts in an unconscionable manner, in efforts to enable or hide corruption.
- 25.3 Third, the rule of law, which demands that PRASA acts in accordance with the laws, policies, judgments and reports that have directed it to eradicate state capture, corruption, fraud, malfeasance, mismanagement and maladministration by holding perpetrators accountable and recovering its assets.
- 25.4 Last, that PRASA fulfils its international law obligations regarding the eradication of corruption and the protection of whistleblowers.

26 All these grounds are rooted in #UniteBehind's work against state capture for the past decade and our joint work with Ms Ngoye and Mr Holele to hold the perpetrators accountable and to recover billions of rands of assets looted from PRASA.



- 27 If public servants of the caliber of Ms Ngoye and Mr Holele can be expelled from state-owned entities in the fashion that took place here, the fight against corruption has already been lost. The Labour Appeal Court's ("LAC") judgment appears to set a dangerous precedent in this regard.
- 28 #UniteBehind accordingly seeks, in the first instance, leave to intervene as a party in the rescission application, on the basis that it has a direct and substantial interest in the subject matter and outcome of that application.
- 29 In the event that this Court finds that #UniteBehind's interest is not sufficiently direct and substantial to warrant intervention as a party, #UniteBehind seeks, in the alternative, leave to be admitted as an *amicus curiae*.
- 30 The submissions we intend to advance are underpinned by a deep commitment to accountability, openness and to always act in the public interest to respect, protect, promote and advance the fundamental rights enshrined in the Constitution and international law. In this context, we intend to make submissions on the fundamental rights of whistleblowers who attempt to ensure that all organs of state fulfil their obligations in terms of section 195 of the Constitution and the laws which give effect to it, such as the Public Finance Management Act ("PFMA") and the Prevention and Combatting of Corrupt Activities Act ("PRECCA").

#UNITEBEHIND'S WORK IN HOLDING PRASA TO ACCOUNT

- 31 Since at least the year 2000, the then South African Rail Commuter Corporation, later incorporated as PRASA, has been mired in maladministration, mismanagement, corruption, incompetence, fraud and state capture.

Handwritten signature and initials, possibly reading 'ZK' followed by 'PSRQ'.

- 32 Over more than two decades, the fundamental rights to amongst others, life, freedom and security of the person, dignity, access to healthcare, education and employment were violated by PRASA, despite tens of billions of rands being invested in it by the state. This Court was called upon to protect the lives of people who use PRASA trains and to provide remedies for those who were harmed in the matters of *Rail Commuter Action Group and Others v Transnet Ltd t/a Metrorail* (2004) and *Mashongwa v PRASA* (2015).
- 33 The *Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State* chaired by former Chief Justice Raymond Zondo ("**State Capture Commission**") found that at every level of government and governance, including Parliament, there was an abject failure to hold the wrongdoers accountable or active connivance in the looting of PRASA. A copy of the relevant extract of the State Capture Commission is annexed as **ZA01**.
- 34 #UniteBehind provided all the evidence we had gathered on more than three hundred unlawful contracts to the State Capture Commission and recommended that the inquiry call Ms Ngoye, Mr Dingiswayo and Mr Holele. I personally deposed an affidavit to the State Capture Commission and alluded to their role as whistleblowers:

Pending the finalisation of the inquiry or investigation (internally and by SAPS, **every effort must be made to protect the public purse and any employee who resisted corruption, maladministration or the abuse of power. This is particularly necessary where courageous employees make protected disclosures to prevent criminality in an organ of state.** Measures must include: where

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possible and without disrupting an essential service, the withholding of payments to protect the public purse until a matter is finalised; the suspension of accused persons to protect witnesses and evidence; speedy conclusion of disciplinary processes and the refusal to accept resignations by accused persons who use this tactic to escape justice. There can be [sic] little doubt that these measures will constitute some form of deterrence and even if it does not eliminate these practices, The events to which I refer demonstrate, that did not happen. Instead, there were often cover-ups, suspension and dismissals of employees and an indecent haste to make payments even when the basis of claims were highly dubious and contentious. I pause here to address a current set of crises. PRASA has suspended one of the most courageous senior managers, Mr. Fani Dingiswayo because of his persistent and principled resistance to state capture, corruption and the execution of legally dubious orders. Martha Ngoye, his superior has encouraged and supported Fani Dingiswayo while resisting state capture and malfeasance in her own right. Together with other professionals at PRASA (who choose to remain unnamed), Ngoye and Dingiswayo have saved PRASA billions of rands. I came to know of their work as ethical, effective, competent, qualified and professional public servants through studying thousands of pages of affidavits and reports. Most recently, Ngoye and Dingiswayo have been central to ensuring that PRASA has a permanent Board of Control and that PRASA continues to defend matters against corrupt companies such as Siyangena, PRASA employees such as Daniel Mthimkulu and politically connected individuals. [Annexure Paragraph 33]

35 I attach the relevant pages from my affidavit, marked as **ZA02**.

36 I still stand by these statements except to add that the unnamed whistleblowers at that stage included Mr Holele. Ultimately, the State Capture Commission only focused on about a handful of the contracts because of a lack of resources and time.

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- 37 #UniteBehind is also currently litigating in the Western Cape High Court to plug the gaping holes in the National Assembly's ethics enforcement mechanisms through which multiple directly implicated members have slipped.

PRASA'S HISTORY

- 38 In order to contextualise the facts that follow, the specific nature of #UniteBehind's interest, and the public interest, it is important to set out a broad overview of PRASA's history. Most of what I say here are matters of extensive public record and incontrovertible by this point.
- 39 Between about 2005 and August 2014, PRASA and its predecessor, the South African Rail Commuter Corporation Ltd, were under the functional control of Lucky Montana, variously as chair and member of the board, and later as CEO.
- 40 It is now a matter of public record that PRASA suffered from endemic corruption during this period. Two well-publicised examples are, first, the infamous "tall trains" contract, a R 3.5 billion tender that was awarded to Swifambo Rail Leasing (Pty) Ltd ("**Swifambo**") in 2013 and, second the tender awarded to Siyangena Technologies (Pty) ("**Siyangena**") Ltd which amounted to R 5.5 billion regarding the supply and maintenance of an integrated security access management system at various stations of PRASA. There were many, many other corrupt contracts from this period. In most instances, including that of Swifambo and Siyangena, PRASA has to date been unable to undo the damage. I return to this later.
- 41 It was also during the Montana board's tenure, in 2012, that the initial complaints were lodged with the Public Protector, which would result in her *Derailed* report in

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August 2015. This report too confirmed widespread corruption, mismanagement, maladministration and unethical conduct at PRASA. Victimisation of whistleblowers was alleged but the question was not finally adjudicated in *Derailed*, owing to the report's limited scope and the sheer number of allegations.

42 In August 2014, a new PRASA board was appointed, with Popo Molefe as chair. The Molefe board made slow but admirable progress in cleaning up governance at PRASA. The Molefe board's term came to an end on 31 July 2017.

43 For these three years, and arguably for the first time, PRASA's leadership acted or attempted to act as the Constitution requires of it. I mention a few specific examples that would later feature in the lead-up to the applicants' dismissals:

43.1 In November 2015, PRASA applied in the Pretoria High Court to set aside the Swifambo tender and contract, to the value of R 3.5 billion. This culminated in the Supreme Court of Appeal's decision in *Swifambo Rail Leasing (Pty) Ltd v PRASA 2020 (1) SA 76 (SCA)* ("**Swifambo SCA**").

43.2 In February 2016, PRASA launched proceedings against Siyangena Technologies to undo a similarly unlawful contract concluded during the Montana years, to the value of more than R 5 billion. This case was overtaken by another attempt in 2018, which eventually resulted in the Supreme Court of Appeal's decision in *Siyangena Technologies (Pty) Ltd v Passenger Rail Agency of South Africa and Others 2023 (2) SA 51 (SCA)* ("**Siyangena SCA**"). #UniteBehind participated in this litigation as *amicus curiae*.



- 43.3 Between 2015 and 2016, PRASA (under the Molefe board) made about 39 reports to the Directorate for Priority Crimes Investigation (“DPCI”) in terms of section 34 of PRECCA. When these were not acted upon, PRASA applied in the Pretoria High Court in May 2017 for a mandamus to force the DPCI and the National Prosecuting Authority (“NPA”) to do its work. Although the main application has since been abandoned by PRASA (in circumstances I discuss below), an interlocutory victory was reported in SAFLII as *Passenger Rail Agency of South Africa and Another v Directorate for Priority Crimes Investigation and Another* (36337/2017) [2018] ZAGPPHC 293 (4 May 2018).
- 43.4 PRASA resisted unlawful claims for payment made by the Siyaya group of companies, in the amount of about R 60 million. Various cases and processes around these contracts would eventually result in a ruling by a Judicial Conduct Tribunal in January 2025 that Judge Nana Makhubele was not fit for judicial office, owing inter alia to her unlawful attempts to settle the claims with Siyaya while chairing an ‘interim board’ at PRASA.
- 44 Ms Ngoye was appointed as PRASA’s Group Executive: Legal Risk and Compliance during August 2014. As such, she played a crucial role in clean-up efforts during the term of the Molefe board. She was in charge of all PRASA’s litigation to set aside unlawful contracts and decisions, and to recover money lost to corruption. She was also responsible for many of the section-34 reports under PRECCA.



- 45 Mr Holele was appointed to the position of General Manager: Corporate Affairs on 30 May 2007. Between 2011 and 2020 he was moved to several executive positions within the first respondent by either transfer or appointments. This included appointment to the positions of the CEO at Autopax.

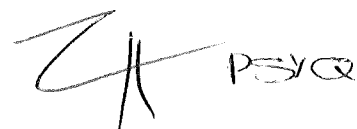
THE APPLICANTS' WORK WITH #UNITEBEHIND

- 46 #UniteBehind specifically commenced PRASA work in July 2017 as part of a sustained campaign against state capture. This was around the time that the Molefe board's term ended, without any succession plan in place.
- 47 Mr Molefe contacted me during mid-2017 when he learnt that #UniteBehind and its affiliate, the UDF Veterans, were addressing the question of state capture at PRASA. He provided a detailed briefing to #UniteBehind and made the Treasury Reports into around 300 unlawful contracts available to us.
- 48 These reports became known as the #PRASALeaks and were published by #UniteBehind as a summary of contracts, people and businesses implicated based on studying the forensic reports and the Swifambo court matter. All the treasury reports were made available to GroundUp News. A summary of the #PRASALeaks is attached as **ZA03**.
- 49 #UniteBehind was introduced to Ms Ngoye and her colleague, Mr Dingiswayo, shortly after this, because we insisted on taking action against the DPCI and the NPA for their egregious delays in acting on the 39 reports. Mr Molefe arranged for me to meet them with #UniteBehind attorney at the time, Mr Halton Cheadle. From

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that point onwards, I handled all communications with Ms Ngoye and Mr Dingiswayo.

- 50 They provided a full briefing on PRASA's case against the DPCI and the NPA and explained that the Organisation Undoing Tax Abuse ("**OUTA**") had applied to join the PRASA case. They also informed us that the DPCI and the NPA had challenged the authority of Mr Molefe, Ms Ngoye and PRASA's attorneys (Werksmans) to conduct the litigation. This would turn out to be a repeated tactic by the corrupt elements in PRASA to scupper anti-corruption efforts.
- 51 At that time, they were waiting for a hearing in the matter. At a later stage, #UniteBehind's current Executive Director, Ms Zukiswa "Vuka" Fokazi also worked with Ms Ngoye and Mr Dingiswayo.
- 52 PRASA had no board for about two and half months after the Molefe board's term ended. On 17 October 2017, an 'Interim Board of Control' was appointed with then-Advocate Makhubele SC at the helm (for convenience, I will refer to her as **Judge Makhubele**). While #UniteBehind and others contend that this interim board was improperly constituted, not much turns on this for the purpose of this application. I refer to it as "**the interim board**".
- 53 The interim board immediately started efforts to undo the progress of the Molefe board and to paralyse the parts of PRASA driving this recovery. Since much of the course-correcting work involved litigation, the legal department under Ms Ngoye's leadership was an obvious and immediate target.

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54 I deal with only four episodes illustrating these unlawful efforts and how they were counteracted through the whistleblowing and honesty of Ms Ngoye, Mr. Dingiswayo and Mr Holele:

54.1 First, I discuss how, on 1 December 2017, the interim board adopted a resolution ("**the December resolution**") that would undermine every investigation conducted, court case launched, and charge laid in relation to state capture and corruption at PRASA. I also address #UniteBehind's successful litigation against this.

54.2 Second, I discuss Judge Makhubele's role in concluding a secret unlawful settlement of the Siyaya litigation, during early 2018, to the tune of about R60 million. I include the roles of Ms Ngoye, Mr Holele and #UniteBehind in averting this.

54.3 Third, and in consequence of the second, I discuss #UniteBehind's complaint to the JSC regarding Judge Makhubele. I also deal with the crucial role of whistle-blowers in this process.

54.4 Fourth, I discuss the unlawful appointment during December 2019 of Mr Bongisizwe Mpondo as PRASA 'administrator', by the then-Minister of Transport, Mr Fikile Mbalula. This element featured prominently on the record as early as Ms Ngoye's founding affidavit in the Labour Court, but not much weight was attached to it in the LAC's view of the case. I also include our successful litigation against the Minister to set this appointment

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aside, as mentioned in Ms Ngoye's founding affidavit in the rescission application.

55 Before setting out that history, I explain the basis on which #UniteBehind places this factual material before the Court, and the limited use to which it is put.

56 #UniteBehind does not ask this Court to sit as a court of first and last instance, to resolve newly created disputes of fact, or to make findings on the long history of corruption and state capture at PRASA. The material that follows is tendered for three limited purposes:

56.1 First, to provide the context – drawn from official and public records – relevant to the interests of justice and the exceptional circumstances that this Court must weigh in the rescission application

56.2 Second, to establish #UniteBehind's own direct and substantial interest, which #UniteBehind must demonstrate in order to intervene; and

56.3 Third, to answer the specific factual allegation, raised by PRASA itself, that the applicants are not whistleblowers.

57 Much of the material is a matter of public record and is either common cause or incontrovertible, or of an official nature capable of easy verification. To the extent that any of it is properly to be regarded as 'new' evidence, I set out later in this affidavit the grounds on which #UniteBehind asks that it be admitted.

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The interim board's resolution of 1 December 2017

- 58 On 1 December 2017, the interim board chaired by Judge Makhubele passed an unlawful resolution. Mr Holele obtained a copy, which he furnished to Ms Ngoye. On 4 December, Ms Ngoye provided it to me. I attach this unsigned version, marked as **ZA04**. There has been no dispute about its authenticity in any of the processes I discuss below.
- 59 Five of the six sections of this resolution are pertinent:
- 59.1 First, it was resolved that the Acting-Group CEO must collate and collect all reports related to the investigation of maladministration at PRASA and place it under the control of the interim board, led by Judge Makhubele.
- 59.2 Second, Ms Ngoye was required to surrender all litigation files related to contractors that emanated from these investigations. As I discuss later, Ms Ngoye refused this instruction, which allowed, among others, the Siyangena matter to be re-launched a few months later.
- 59.3 Third, the board requested a statement of accounts of money paid to Werksmans Attorneys. While this request on its face is lawful, it was aimed at — and achieved — an unlawful purpose. This was to divest Werksmans Attorney of authority to continue the litigation against Swifambo, Siyangena, the DPCI and the NPA.
- 59.4 Fourth, PRASA's legal panel was suspended with immediate effect, on the basis that its term had expired many years before. Again, the purpose was



correct but the measure was drastic and malicious because it failed to provide a stop-gap measure to deal with ongoing and new matters. In relation to the state capture, maladministration, mismanagement, corruption and fraud matters, the interim board required that any new service related to "investigations only" should be procured on a case by case basis through the SCM processes and in consultation with Judge Makhubele. She, of course, disregarded the fact that within a month she would take the oath to serve, not only as a judge, but as a judge in the same division where most of the PRASA litigation played out, namely North Gauteng.

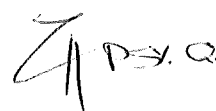
- 60 But the fifth and most dangerous aspect was the section related to legal matters under PRECCA. The resolution questioned the authority of Ms Ngoye, as Group Executive for Legal, Risk and Compliance, to take actions under section 34. This part of the resolution reads as follows:

AUTHORITY IN TERMS OF SECTION 34 OF THE PREVENTION AND COMBATING OF CORRUPT ACTIVITIES ACT

Management should provide the Board with a signed resolution in terms of Section 34 of the Prevention and Combating of Corrupt Activities Act and the rationale to pass such resolution conferring to the GE LRC the authority to transact in terms of Section 34.

Provide the Board with a report that details whether the GE LRC has acted in terms of such authority conferred to her and if so what is it that she has done to date.

- 61 Section 34 of PRECCA expressly provides that any person who holds a position of authority and who knows or ought reasonably to have known or suspected that any other person has committed among others an offence identified in the Act or



of any theft, fraud, extortion, forgery or uttering of a forged document involving the princely sum of R100 000 or more, *"must report such knowledge or suspicion or cause such knowledge or suspicion to be reported to the police official in the Directorate for Priority Crime Investigation"*.

- 62 More importantly, in terms of section 34(2) and subject to the provisions of section 37(2), *"any person who fails to comply with subsection (1), is guilty of an offence"*. Importantly, there is no requirement for a board resolution; people who, like Ms Ngoye, hold positions of authority, are compelled by force of law and a risk of criminal liability to report these matters to the DPCI.
- 63 The resolution was a clear stratagem to disable Group Legal Services from continuing with crucial state capture litigation, including:
- 63.1 Swifambo, which was at that stage pending before the Supreme Court of Appeal;
 - 63.2 the case against the DPCI and the NPA, where these parties had already teed up a challenge to Group Legal Services' authority to litigate (due to be argued on 30 April 2018);
 - 63.3 the Siyangena litigation regarding the supply and maintenance of an integrated security access management system at various stations of PRASA ; and
 - 63.4 the Siyaya cases, to which I turn in the next section.

- 64 On 12 December 2017, #UniteBehind applied in the Western Cape High Court in case number 23200-2017 to set aside the interim board's resolution. In March 2018, the case was settled. PRASA agreed to set the resolution aside and to provide us with the transcript of the meeting.
- 65 For their part, Ms Ngoye and Mr Dingiswayo refused to implement the more reprehensible parts of the resolution while it stood. They refused to surrender files, for example, which allowed, among others, the second Siyangena case to be launched on 5 March 2018, which would lead to *Siyangena SCA*.

Attempts to settle the Siyaya cases (Jan to Nov 2018)

- 66 The Siyaya cases have enjoyed almost as much judicial and media scrutiny as Swifambo and Siyangena. The more detailed background I provide next is intended only for clarity.
- 67 Makhensa Mabunda is a politically connected individual who was previously employed by the Departments of Public Works and later worked with the Department of Transport. Mr Mabunda was the owner of a group of companies that share the name Siyaya. The companies include Siyaya Energy, Siyaya DB Consulting Engineers (Pty) Ltd, Siyaya Rail Solutions (Pty) Ltd, Siyaya Rail Infrastructure, and S-Investments.
- 68 According to the reports of the National Treasury, these companies were awarded numerous contracts by PRASA between 2012 and 2015. Most of the contracts were awarded without following an open tender process.

ZA P.S.G.

- 69 Mabunda was directly involved in the *Swifambo* matter and caused the company to be established by Auswell Mashaba with the express purpose of winning the tender for the locomotives. These facts were canvassed in the high court in *Passenger Rail Agency of South Africa v Swifambo Rail Agency (Pty) Ltd* 2017 (6) SA 223 (GJ) ("**Swifambo HC**") at paragraphs 116 and 117, and were left undisturbed on appeal in *Swifambo SCA*.
- 70 In 2018, it was confirmed that S-Investments, one of Mr Mabunda's companies, was paid R75 million by Vossloh Espana for "help[ing] with the locomotives contract". The 'locomotives contract' was an open tender and thus did not require any party to "help" any other party with it. The locomotives contract was not awarded to Vossloh but to Swifambo Rail Leasing (Swifambo), a company found by Francis J to have been a front of Vossloh, in *Swifambo HC*.⁵
- 71 In late January 2018, #UniteBehind was alerted through Mr Holele and Ms Ngoye to an unlawful secret agreement to settle an arbitration claim for around R 60 million with several Siyaya companies. We consulted our lawyers and on 9 February 2018, #UniteBehind sent a letter of demand to Judge Makhubele and the interim board (with Mr Dingiswayo in copy). I attach it as "**ZA5**",
- 72 The letter set out the history of the matter and asked the following questions:

Who authorised the settlements for payment with the S-Group?

Is the Interim Board of Control aware of the settlement agreements?

⁵ At []

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If you are not aware of it, kindly inform us of the identities of people who made the authorisation.

If you made the decision as the Board of Control, provide legally valid reasons for doing so.

The investigations into the S-Group and Mr Makhensa Mabunda was as a result of a Public Protector's remedial action, therefore were the agreements provided to the Public Protector for her consent and publication? If not, why not?

Was the agreement of the Minister of Finance sought, because Treasury was responsible for the investigations which found irregularities in contracts? Likewise, was the agreement of the Treasury sought?

Was Parliament informed of any such agreements?

73 #UniteBehind received no response from Judge Makhubele or the interim board.

We then turned to Parliament, the President, Mlambo JP (as he then was), the Office of the Chief Justice and others to assist in resolving the matter. The Office of the Chief Justice advised us to lodge a complaint with the JSC. I attach this correspondence marked as "ZA6".

74 Events then spun out of control and on 8 March 2018, I received the following email:

Mr Achmat,

On 9 February 2018 you requested me to forward a letter to the Chairperson of the Interim Board of PRASA from your organisation. I duly forwarded this letter to the Company Secretary and implored him to ensure that it reaches the Chairperson of the Interim Board. The Company Secretary, Mr Lindikaya Zide confirmed to me that the Chairperson had received the letter. In the letter you requested "an unequivocal written undertaking from the Chairperson that PRASA will not make any payments to Siyaya ... unless there is a final, binding and

 PRASA

executable decision from a court of law on the merits of [the] claims against PRASA”.

The e-mails below set out the events of this week around 4 matters in which Siyaya Companies have reached a secret settlement in terms of which, “without admitting liability” PRASA will pay amounts in excess of R50 million. Tomorrow’s applications are intended to make these secret settlement agreements orders of court. It occurred to me that it might be necessary to advise you of the latest developments and the support that the Chairperson has been giving to the attorneys of the Siyaya Companies.

Kind regards,

Fani Dingiswayo

- 75 The thread in Mr Dingiswayo’s email set out the facts to the then-new Minister of Transport, Dr Blade Nzimande. This thread makes it clear that Ms Ngoye supported this protected disclosure. It is attached as “**ZA7**”.
- 76 On 21 February 2018, the Siyaya liquidators applied for the enforcement of the ‘settlement agreements’ in the North Gauteng High Court. This was heavily opposed by Group Legal Services, led by Ms Ngoye and Mr Dingiswayo.
- 77 At the hearing on 9 March 2018, Holland-Muter J allowed evidence to be introduced from the bar by the Siyaya liquidators’ counsel, who had acted in concert with Judge Makhubele to release the settlement amount to the Siyaya liquidators. Through Ms Ngoye’s efforts, PRASA applied for rescission. The facts around Judge Makhubele’s connivance were set out by Tuchten J in a rescission judgment handed down on 27 November 2018 at paragraphs 17-20. This judgment is unreported, and I attach a copy marked as “**ZA8**”.

ZA PSYQ

- 78 For his part, Minister Nzimande asked Judge Makhubele to submit a report on the Siyaya settlements by the 16th of March 2018. Judge Makhubele resigned from the interim board (as stated below) without submitting this report.
- 79 Ultimately, the joint action of Ms Ngoye, Mr Dingiswayo and #UniteBehind prevented the money attached by the Sheriff from being paid over to the Siyaya liquidators.

Complaint to the JSC against Judge Makhubele (Feb 2018 to Aug 2025)

- 80 On 28 February 2018, Judge Makhubele and the interim board received a legal opinion they had sought from ENS Africa, which supported #UniteBehind's position on Judge Makhubele's appointment and the lawfulness of the interim board. Ms Ngoye and Mr Holele provided the opinion to #UniteBehind around the first week in March 2018.
- 81 The opinion concluded:
- 81.1 first, that Judge Makhubele was a judge from 1 January 2018 and that this can be considered a breach of the separation of powers.
- 81.2 second, that the interim board had been unlawfully constituted until the appointment of the Treasury Representative, Mr Duncan Pieterse, in mid-February 2018.
- 81.3 third, that the interim board's decisions taken up to that point could be challenged in the courts and that a similar situation arose with the violation of the separation of powers.

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82 Copy of opinion is attached as **ZA9**.

83 I forwarded the opinion to Mr Mondli Makhanya (then editor of City Press) and a reporter, Mr Setumo Stone. On 18 March 2018, City Press published a front-page story about this. The next day, PRASA announced that Judge Makhubele had resigned on 16 March 2018. Judge Makhubele's resignation followed her failure to account to Minister Blade Nzimande for the Siyaya debacle.

84 At that point, #UniteBehind assisted Minister Nzimande to appoint a new permanent board of control for PRASA. By May 2018, Ms Khanyisile Kweyama was appointed as board chairperson. On 18 May 2018, #UniteBehind met with Ms Kweyama but within months it became clear that the new board was not interested in dealing with state capture.

85 As the year progressed, we awaited the outcome of PRASA's rescission matter and when Tuchten J found that Judge Makhubele had to clear her name before continuing to occupy her position as a judge,⁶ #UniteBehind prepared its complaint to the JSC.

86 On 14 January 2019, #UniteBehind filed its complaint against Judge Makhubele with the JSC, by way of an affida. vit by Ms Zukiswa "Vuka" Fokazi. The two salient grounds of the complaint related to:

86.1 A breach of the separation of powers doctrine, in that Judge Makhubele served as chairperson of the interim board of control between 1 January

⁶ Paragraph __ of ZA__

ZA PSYQ.

2018 and 16 March 2018 when she was a judge of the North Gauteng High Court; and

86.2 Her conduct in relation to the Siyaya matters.

- 87 We stated that Judge Makhubele had made herself guilty of gross misconduct in terms of the Judicial Service Commission Act and the Code of Judicial Ethics.
- 88 After protracted delays occasioned by both the JSC and Judge Makhubele, including launching proceedings to interdict the President from suspending her while the complaint was being considered, the Judicial Conduct Tribunal commenced its hearings on 21 February 2023.
- 89 Several witnesses were called including Mlambo JP (as he then was), Ms Ngoye and Mr Dingiswayo. Mlambo JP gave evidence on the question of the breach of the separation of powers doctrine, while Ms Ngoye and Mr Dingiswayo gave evidence in relation to Siyaya. Adv Francois Botes SC, counsel for the Siyaya Group also testified about his relationship with Judge Makhubele and the facts that led to the secret settlement of R60 million to his clients.
- 90 The Judicial Conduct Tribunal handed down its findings on 9 January 2025 and found against Judge Makhubele. On 25 August 2025, the JSC confirmed the findings of gross misconduct based on a breach of the separation of powers and dishonesty in relation to the Siyaya matters. The JSC forwarded their report to Parliament to commence impeachment proceedings, which are pending at the time of this affidavit.



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- 91 Ms Ngoye, Mr Holele and Mr Dingiswayo were indispensable whistleblowers to Minister Nzimande, Parliament and #UniteBehind. They ensured that the JSC held Judge Makhubele accountable for gross and impeachable misconduct.
- 92 I pause to state that Ms Ngoye also almost single handedly and successfully opposed the appeals of Swifambo and Siyangena at the Supreme Court of Appeal, as well as an attempted appeal of the latter in this Court. I say single-handedly, because she did this without the support of successive PRASA boards, and often in the face of direct opposition by these boards.

The PRASA 'administrator', Mr Mpondo (Dec 2019 to Aug 2020)

- 93 In her founding affidavit in the rescission application, Ms Ngoye sets out what she regarded as the key reason for her dismissal:

What seemed to be the trigger for my dismissal was when the then-Minister of Transport disbanded the board of PRASA and appointed a single administrator, Mr Mpondo, *in lieu* of the Board. This was subsequently found to be unlawful, declared and set aside in *#UniteBehind v Minister of Transport and Others* [2020] 4 All SA 593 (WCC).

I expressed the opinion within PRASA at the time that Mr Mpondo's appointment was unlawful.

- 94 Throughout the period of the 'administrator's' reign as both the accounting authority (board) and the accounting officer (Acting-GCEO), I was in personal and regular contact with Ms Ngoye and Mr Dingiswayo. I shared with them our understanding and our political and legal strategies through phone calls, emails and, where possible, meetings.

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PSYCR

- 95 Ms Ngoye sets out (in her affidavits in the Labour Court and in the rescission application) the hostile role of the Director-General of the Department of Transport in relation to the administrator and the Group Executive Managers, specifically in relation to the meeting of 20 February 2020. She also discusses the legal advice provided in a memorandum to Mr Mpondo by Mr Dingiswayo and herself regarding Mr Mpondo's unlawful appointment on 14 January 2020. An excerpt of that memorandum reads as follows:

[I]n the context of PRASA. The concept of an Administrator is alien whether one looks at the Legal Succession Act or the PFMA. [The appointment of an Administrator] will definitely imperil the position of PRASA in ... litigation... We are also concerned that the decisions of the Administrator that may not be favourable to any third party may be subject to challenge and thus hampering all the efforts that would have gone into making those decisions.

- 96 Ms Ngoye and Mr Dingiswayo then explained in their opinion that the only way to resolve the risk would be for the Minister to appoint a permanent and lawfully constituted board of control. The above information is contained in a letter sent by email from Mr Dingiswayo to Mr Mkhuleko Hlengwa, the then Chairperson of SCOPA requesting him to "assist urgently". The letter followed Mr Dingiswayo's unlawful suspension by Mr Mpondo on 11 February 2020. I attach the letter marked as "ZA10".
- 97 Although Ms Ngoye briefly explained the issues around the administrator's appointment as early as her founding affidavit in the Labour Court (the relevant

extracts are attached to her rescission application as MN7), #UniteBehind's role has featured only peripherally.

- 98 I now turn to our role in the administrator saga, and point out again that this represents a fraction of our own work and engagement with the Executive, Parliament, the then Auditor-General, Mr Kimi Makwetu, and the then Director-General of Finance, Mr Dondo Mogajane.
- 99 On 9 December 2019, I was part of a #UniteBehind delegation invited by Minister Mbalula to meet with him at his office in the Parliamentary precinct at 120 Plein Street, Cape Town. After waiting for two hours, his assistant Mr Kagiso Moleme came to apologise and informed us that he had appointed Mr Mpondo as administrator and handed us the press statement.
- 100 #UniteBehind immediately met to discuss the legality of the appointment which we felt was not mandated by the Legal Succession Act, and which we suspected to be a further chapter in the capture of PRASA. We consulted Mr Cheadle, our attorney, who agreed that the appointment was unlawful.
- 101 On 10 December 2019, #UniteBehind sent a letter to Minister Fikile Mbalula. We set out our agreement with his sense of urgency and frustration but gently pointed out that the appointment of the administrator had no legal basis in the Legal Succession Act, the Companies Act or the PFMA. We pointed out that in terms of section 29 of the Legal Succession Act, PRASA could only be placed under 'judicial management' through an Act of Parliament. We requested an urgent response by 12 December 2019. There was none. I attach the letter as "ZA11".

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102 #UniteBehind then started preparing an urgent application to the Western Cape High Court. This application was launched on 31 January 2020.

103 In mid-January 2020, we were informed by Ms Ngoye that the review application against the unlawful Siyangena contracts was in jeopardy because Mr Mpondo had refused to pay Werksmans Attorneys. #UniteBehind had been admitted as an amicus in the Siyangena matter, and we contacted Mr Bernard Hotz, the attorney of record who confirmed that Werksmans had withdrawn from the matter.

104 On 17 January 2020, #UniteBehind's attorney, Mr Vlad Movshovich from Webber Wentzel, wrote a letter of demand to Mr Mpondo and copied Mr Dingiswayo and Ms Ngoye. We demanded that the matter be continued with new attorneys on or before 24 January 2020. I attach the letter marked **ZA12**.

105 On 22 January 2020, #UniteBehind wrote to the Auditor-General and the Director-General of the Department of Transport to intervene and ensure that either Werksmans were reappointed or that new attorneys were appointed. We pointed out the urgency of the matter because the hearing by a full bench of the North Gauteng High Court had been set down for 24 to 28 February 2020. I attach this letter as **ZA13**.

106 On 22 January 2020, #UniteBehind also wrote to Mr Mpondo after receiving an invitation to a 'stakeholder engagement' on 21 January 2020 for the next day. We once again pointed out that he was not lawfully appointed and requested that the meeting be postponed to 29 January 2020 to give everyone a chance to prepare for it. We also requested that his office provide source documents to ensure active

participation by all the attendees. This letter went unanswered. I attach it as "ZA14".

107 On 31 January 2020, #UniteBehind again wrote to Mr Mpondo regarding potential contempt of court proceedings against PRASA and himself in relation to two court orders against them:

107.1 On **26 November 2019**, the Western Cape High Court (in case number 3310/19) had ordered that PRASA provide #UniteBehind with:

107.1.1 All the security contracts, including any extensions thereto which were concluded for PRASA/ Metrorail's Western Cape operations and that were effective over the period from 12 January 2018 to the date of the order, as well as other security related documents;

107.1.2 Any and all Memoranda of Agreement or Understanding entered into between *inter alia* PRASA/ Metrorail Western Cape and the City of Cape Town;

107.1.3 Records of the levels of training of security personnel and firearm competencies employed at PRASA/Metrorail Western Cape Operation.

107.2 On **19 November 2019**, the same court (in case number 19976/2019) made orders related to:

107.2.1 The status of the completion and implementation of tender number HO/SEC/290/05/2019;



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- 107.2.2 An adequate contingency safety plan approved by the Railway Safety Regulator which is to include (a) a description of the preventative and response measures to be used to manage theft, vandalism, assault, sexual assault and other criminal acts or other sources of harm and (b) the allocation of security roles and responsibilities to appropriate personnel.
- 108 No reasons were provided, but the circumstances and consequences of this order are set out in a subsequent judgment reported on SAFLII as *Sechaba Protection Services CC (Pty) Ltd and Others v Passenger Rail Agency of SA Ltd and Others* (3 November 2023) (19976/2019) [2023] ZAWCHC 280 (3 November 2023).
- 109 The deadline in both orders was by the end of December 2019. #UniteBehind stated in **ZA15** that we would approach the courts should Mr Mpondo persist in his non-compliance.
- 110 On **3 February 2020**, after a telephonic discussion, I sent an email to Mr Mkhuleko Hlengwa (then SCOPA chairperson) with all the letters written between 10 December 2019 and 31 January 2020. He failed to respond even though we followed up three weeks later by again including the same document. Mr. Hlengwa is now the Deputy Minister of Transport. I attach the email, marked "**ZA16**".
- 111 On **4 February 2020**, #UniteBehind launched an urgent review application in the Western Cape High Court to (1) set aside Minister Fikile Mbalula's decision to appoint an administrator for PRASA and (2) for Treasury to appoint an interim

accounting authority until a permanent board of control was appointed in terms of section 49(3) of the PFMA.

- 112 On **24 August 2020**, Mr Mpondo was given R3.17 million in backpay **after deductions** based on a monthly salary of R650 750 by PRASA.
- 113 On **25 August 2020**, Erasmus J set aside the unlawful appointment of Mr Mpondo and ordered the Treasury to appoint an accounting authority within seven days. Minister Mbalula was ordered to appoint a permanent board of control for PRASA within sixty days and to pay #UniteBehind's costs. This judgment is reported as *Unitebehind v Minister of Transport 2020 JDR 1646 (WCC)*.
- 114 The fact that Ms Ngoye gave Mr Mpondo an opinion even before #UniteBehind consulted with its lawyers on this appointment shows both the value of a professional like Martha Ngoye to a public entity and, unfortunately, the need for purveyors of fraud, corruption, money laundering and general malfeasance to rid public institutions of professionals like her.
- 115 The attempt to frustrate the prosecution of the Siyangena matter failed, PRASA was successful in the High Court and the Supreme Court of Appeal while the Constitutional Court declined to hear the corrupt company's appeal. Ms Ngoye assisted in the protection of PRASA's interest and for this she was visited with more trials and tribulations that led to her unlawful dismissal.



THE ROLES OF THE APPLICANTS AS WHISTLEBLOWERS

- 116 The applicants are first and foremost competent professionals. The honesty and competence with which they did their work caused them to have targets on their backs. The victimization that culminated in their unlawful dismissals is also meant as a message to others to not do their work so competently that it protects the interests of PRASA and improves the lot of the commuting public. In her rescission application to this court, Ngoye sets out some of the whistleblowing work she and Holele undertook at paragraphs 77-97.
- 117 Ngoye outlines the exceptional circumstances surrounding their dismissal from PRASA and argues that the outcome of the legal proceedings was unjust. She sets out why the LAC, while effectively acknowledging the merits of the applicants' case, denied them a remedy and ordered them to pay costs, without any reasoning. Ngoye argues that this result is fundamentally unfair and must be understood within the broader context of her role as a whistleblower exposing corruption and maladministration within PRASA.
- 118 Ms Ngoye's dismissal, she contends, was not a typical employment dispute but a direct consequence of her efforts (mostly successful, while they lasted) to challenge unlawful conduct, including litigation involving major PRASA matters (such as Swifambo and Siyangena), internal legal advice opposing unlawful decisions (such as the administrator's appointment), and testimony before the Judicial Conduct Tribunal and the State Capture Commission. These actions



implicated senior leadership and exposed systemic wrongdoing that has not been meaningfully accounted for.

119 While PRASA's denial of the applicants' status as whistleblowers is paper-thin and formalistic, it is true that the specifics of when and how they conveyed information to #UniteBehind (and to others trying to rescue PRASA from itself) have not been in the public domain until now. This is the case for a number of obvious reasons, including the well-known lack of protection for whistleblowers that our institutions tend to offer. I ask the Court to take judicial notice of reports of a number of recent high profile murders of witnesses and whistleblowers in the context of corruption.

120 The truth is that the applicants were forced by the circumstances and their adherence to the higher authority of the Constitution and the rule of the law to make use of unconventional methods. The conventional methods — mandatory reporting to the DPCI under PRECCA and whistleblower protection mechanisms in the Protected Disclosures Act — were plainly unavailable.

121 In case any further doubt remains about the applicants' de facto status as whistleblowers, I attach (marked as "ZA17") an email dated 20 April 2018, which I sent to Ms Tembela Dakuse on behalf of the #UniteBehind Coordination Committee. The email can leave no doubt as to the relationship between our organisation and the whistleblowers, Ms Ngoye, Mr Dingiswayo and Mr Holele.

122 In part read the email reads as follows:

Last night the #UniteBehind Coordination Committee met and discussed the spying for the corrupt PRASA network in our leadership body and the outcome of our [forensic] investigation.



PRASA

The WhatsApp message sent to Cromet Molepo **exposed our whistleblowers Martha Ngoye and Fani Dingiswayo ...**

...

The #UniteBehind CC agreed that we will remove you because we believe you exposed PRASA whistleblowers to extreme harm and destroyed the trust we placed in you.

THE AFTERMATH OF THE APPLICANTS' REMOVAL FROM PRASA

123 In her application in the Labour Court, Ms Ngoye explained the importance of her role at PRASA. She said that a *"view of open sources will show that the department that I lead (Legal, Risk and Compliance) has acted as an able line of defence against people who have tried to fleece PRASA."*⁷

124 She provided a list of matters that would be jeopardised if she were not reinstated. These matters included the following:

124.1 *"An appeal launched by Siyangena Technologies against PRASA after PRASA successfully applied for the review and setting aside of contract worth about R6 billion. I am the deponent in the review application,"*⁸

124.2 *"Several applications, appeals and counter-applications relating to security contracts between PRASA and private security contractors. The wholesale destruction of the network of PRASA that led to PRASA having limited operations,"*⁹

⁷ Paragraph 94

⁸ Paragraph 114.3

⁹ Paragraph 114.4

124.3 *"Numerous interlocutory applications meant to derail the liquidation of Swifambo Rail Leasing (Pty) Limited (In Liquidation) and avoid a section 417 inquiry."*¹⁰

125 She was correct. After the applicants' dismissal and PRASA's subsequent abuses of the labour-relations and court systems (as detailed in her rescission affidavit) to keep Ms Ngoye and Mr Holele out of PRASA, nobody took the proverbial baton from them. Instead:

125.1 The mandamus application against the DPCI and the NPA was, to the best of my knowledge, abandoned, despite the scathing words that Davis J had for the DPCI's dilatory tactics (**ZA18**). In the result, 39 PRECCA reports involving 72 companies at the heart of the capture of PRASA have escaped proper investigation. Instead, Open Secrets NPC is now pursuing new litigation in the North Gauteng High Court under case number 066038-2025 to compel the DPCI to do its job.

125.2 PRASA is reported to have considered settlements with Swifambo and Siyangena – these settlements were stopped after being reported on by the media, and (failed to implement court order to recover funds).

125.3 PRASA has failed to push for the Swifambo liquidators to continue the section-417 inquiry that they had initiated. This inquiry revealed evidence of suspected fraud and corruption, according to their evidence at the State Capture Commission, which led to the Swifambo's liquidators submitting a

¹⁰ Paragraph 114.8

criminal complaint to the DPCI in May 2020 against Mr Mashaba. As Swifambo's biggest creditor, PRASA should have used the section-417 inquiry to recover funds that were unlawfully gained by parties involved in the Swifambo corruption, even if the DPCI failed, as it did, to criminally charge them. With the passage of time, the proceeds of this crime will probably not be recoverable.

125.4 Recover of money from all the people in the treasury reports.

125.5 further allegations of fraud, corruption, money laundering and general malfeasance at PRASA have continued.

126 The Labour Court and the LAC have confirmed that the dismissals of Ms Ngoye and Mr Holele were unlawful. These courts came to this conclusion because PRASA did not even attempt to contend that the dismissals were lawful or to place before court the real reasons for the unlawful dismissals.

127 In the circumstances, it is difficult to believe that the dismissals of Ms Ngoye and Mr Holele were not meant to bring to a halt this work that has, by all accounts, been brought to a halt. This, with respect, underlines the need for the court to protect whistleblowers who are unlawfully dismissed to stop accountability of an organ of state. Our courts should never countenance this level of unlawfulness and what the surrounding facts show to be the real reason for the unlawful dismissals.

128 Ngoye emphasizes that none of her allegations were meaningfully disputed by PRASA. The State Capture Commission later supported her account, finding that PRASA had no valid defence for dismissing the executives and criticising the



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leadership's conduct as irrational and potentially incompetent. It also questioned why PRASA incurred significant legal costs opposing a claim it could not defend.

- 129 Despite her success in the Labour Court and to increase its odds of securing her dismissal, PRASA continued efforts to remove her through retaliatory disciplinary charges, which were eventually dismissed in arbitration, where she was found not guilty of all charges. Even after this, PRASA continued legal actions against her, including a baseless civil claim of R45 million instituted in August 2021, illustrating what she describes as a broader strategy to harass and out-litigate her, Holele and any other employee. PRASA has not pursued this baseless civil claim.
- 130 Ngoye argues that this pattern reflects an abuse of legal processes by a state entity, undermining the rule of law. She warns that the LAC's decision effectively validates this strategy and may have a chilling effect on future whistleblowers, discouraging them from exposing corruption due to lack of protection and remedies.
- 131 In conclusion, she maintains that the injustice of her case lies not only in the denial of relief despite success on the merits, but also in the broader implication that those who expose corruption are punished while wrongdoing is indirectly rewarded, contrary to constitutional values.

RELIEF SOUGHT BY #UNITEBEHIND

- 132 #UniteBehind seeks, first, an order allowing us to intervene as a party in the rescission application. Alternatively, we seek admission as a friend of the Court. Our position in these respects has been set out above.



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Common-law test around specific performance

133 The LAC described its approach as follows:

“In this instance, although there has been an unlawful termination of the contract, I cannot exercise a discretion in favour of granting specific performance without being satisfied that in their continued employment there will be no interaction between the Respondents and those who control the affairs of the Appellant to determine the continued operation of the enterprise, or whether the grant of specific performance may lead to conflict within the workplace.”

134 We agree with the applicants that the LAC clearly misapplied the test for specific performance, as between employer and employee, as set out in the rescission application.

135 There can be no reason in law why reinstatement upon a finding of an unlawful dismissal (or one occasioned by breach of contract) would automatically attract a higher onus for the employee than the factors set out in the Labour Relations Act.

136 A fundamental shortcoming in the LAC’s reasoning was that it approached the issue too narrowly. The LAC looked only at the binary relationship between employer and employee. In so doing, it overlooked the interests of the public in clean governance and a functional rail system, as well as the interests and the obligations of PRASA, as seen through section 195 of the Constitution.

137 It must be recalled that the same judgment of this Court which caused the LAC such discomfort also recognised that a labour dispute could amount to a question



of legality or administrative justice, if the dispute had "*direct implications or consequences for other citizens*."¹¹

138 We submit that this matter is precisely of this type. This was the case when the Labour Court and the LAC issued their rulings, and it continues to be the case today. Ms Ngoye and Mr Holele were dismissed for their resistance to corruption, an issue that directly affects the public in multiple severe ways. I have explained above the stellar work that Ms Ngoye and Mr Holele undertook at PRASA. I also explained some of the impacts that their absence from PRASA over the intervening years has had on the entity's ability to correct course.

139 The current approach seems to be the following:

139.1 An employee can choose to base their challenge on the broad LRA or BCEA framework in the Labour Court. In this event, on the LAC's test, the employee's reliance on public-law factors, the public interest, and the existence or otherwise of "*direct implications or consequences for other citizens*" does not play any role. The court is concerned only with the narrow binary relationship between employer and employee.

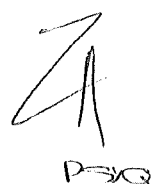
139.2 Or, an employee can roll the dice and contend in the high court that their role implicates the public interest to such a degree that the matter should be approached through the lens of PAJA or the principle of legality.

¹¹ *Gcaba v Minister for Safety and Security and Others* 2010 (1) SA 238 (CC) at [64]

- 140 The employee gets this one choice. If they choose incorrectly, a conclusion that will usually follow only months or years after the fact, they are wholly non-suited, possibly with a financially ruinous legal bill, and even a costs order.
- 141 We submit that the LAC's approach — turning a blind eye to the public interest simply because the matter was adjudicated primarily as a labour dispute — constituted a misreading of section 157(2) of the LRA.
- 142 If the LAC applied the correct test, then we submit that the test is inconsistent with the Constitution and with South Africa's international law obligations, and must be developed.

International law obligations in respect of corruption and whistleblowing

- 143 In December 2023, the Conference of the States Parties to the United Nations Convention against Corruption ("**UNCAC**") adopted resolutions and decisions at its tenth session. Resolution 10/8 addressed the protection of reporting persons.
- 144 The State parties recognized the importance of the establishment of robust frameworks for reporting and for the protection of all reporting persons, including public officials, who report corruption through appropriate channels in the following manner, namely inter alia:
- 144.1 The development of appropriate measures to fully and effectively provide protection against unjustified treatment for all persons who, on reasonable grounds, expose or report corruption and related offences to competent authorities;



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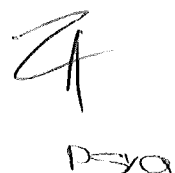
- 144.2 Increasing public awareness of means for reporting instances of corruption;
 - 144.3 Encouraging the establishment and strengthening of confidential complaint systems and protected internal reporting systems that are accessible, inclusive to facilitate timely reporting of corruption and to ensure the confidentiality of the reporting persons' identity and personal information; and
 - 144.4 Ensure relevant protections are available to those who report corruption and may suffer unjustified treatment.
- 145 In giving effect to UNCAC, section 231(4) of the Constitution provides that any international agreement becomes law in the Republic when it is enacted into law by national legislation. That said, South Africa has undertaken the following steps in evidencing its intention to give effect to UNCAC as it relates to whistleblower protection:

The National Anti-Corruption Strategy

- 146 The National Anti-Corruption Strategy 2020 -2030 ("**the Strategy**") aims to ensure that South Africans act with integrity and will not be hindered to act against corrupt individuals through whistleblowing and other measures that promote transparency and accountability and it aims to:¹²

- 146.1 Promote and encourage whistleblowing, integrity and transparency;

¹² https://www.gov.za/sites/default/files/gcis_document/202105/national-anti-corruption-strategy-2020-2030.pdf



- 146.2 Ensure Improved whistleblower protection; and
- 146.3 Ensure the appointment of Independent anti-corruption agencies able to withstand political pressure.
- 147 Additionally, the Strategy encourages whistleblowers to report corruption and are supported when doing so.
- 148 The strategy is not legislation and does not assist in ensuring the protection of whistleblowers.

National Anti-Corruption Advisory Council

- 149 In August 2025, the National Anti-Corruption Advisory Council ("**NACAC**") presented its final report advising on the fight against corruption in South Africa.
- 150 In implementing the recommendations of the Zondo Commission, the NACAC advised on the strategies and systemic implementation, including acknowledging and supporting whistleblowers, preventing retaliation and exploring mechanisms for incentivized disclosures.
- 151 The report highlighted the need for urgent need for robust protection and support mechanisms for whistleblowers, calling for legislative reforms to criminalize retaliation and establishing independent bodies for managing disclosures and providing comprehensive support.
- 152 The report recommended the establishment of the Office of Public Integrity and Anti-Corruption ("**OPI**") as a permanent, independent anti-corruption body entrenched in Chapter 9 of the Constitution. The mandate of the OPI would be to



prevent, investigate, and remedy systemic corruption involving government and other organs of state, enhancing transparency, accountability and integrity in their operations. This includes conducting systemic antic-corruption audits, inquiries and investigations, providing policy guidance, protecting and supporting whistleblowers and leading social mobilization and public education programs.¹³

153 Like the strategy, the final report is not legislation and is in its current form not effective to be used as a means to justify robust whistleblower protection.

154 For anti-corruption reforms to be meaningful, whistleblowers must be recognized not as risks, but as the lifeblood of accountability, integrity and democratic renewal.

Relief in terms of section 172 / PAJA

155 In the event that the common-law test for specific performance in the labour context is not developed to accommodate the interests of the public in appropriate circumstances, #UniteBehind seeks substantive relief to the following effect:

155.1 That this Court declare constitutionally invalid and unlawful PRASA's decisions to terminate the employment of Ms Ngoye and Mr Holele; and

155.2 That just and equitable relief be granted that they be reinstated with back pay.

156 PRASA's decisions to terminate Ms Ngoye's and Mr Holele's employment have already been declared unlawful by the Labour Court. This finding was left intact by

¹³ <https://www.thepresidency.gov.za/sites/default/files/2025-08/National%20Anti-Corruption%20Advisory%20Council%20Final%20Report%202025.pdf>

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the LAC and PRASA has never sought to appeal this aspect, beyond its narrow jurisdictional challenge.

DELAY IN INTERVENING & ADMISSION OF NEW EVIDENCE

157 I am advised that, in determining whether to grant a party leave to intervene, this Court will consider, among other things, the stage of the proceedings at which the application is made. Since #UniteBehind approaches this Court at the eleventh hour, I explain next why we did not attempt to intervene at the Labour Court, the LAC, or in the application for leave to appeal in this Court.

158 The same considerations and events will also apply to one of the factors we have to address in convincing this Court to admit further evidence at this stage. This factor is the question of why the evidence was not tendered earlier.

The timing of #UniteBehind's intervention

159 Rule 8 of this Court's Rules provides that '*Any person entitled to join as a party or liable to be joined as a party in the proceedings may, on notice to all parties, at any stage of the proceedings apply for leave to intervene as a party.*' The Rule accordingly recognises that intervention can occur at any stage.

160 While we were aware of the applicants' approach to the Labour Court in 2021, this litigation was launched urgently and it did not appear that #UniteBehind's assistance was necessary. Moreover, it remains unclear whether the Labour Court would have had the power to order what we seek in this Court, or to admit


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#UniteBehind in the first place on the basis of the public interest in constitutional questions only tangentially related to labour rights.

- 161 The Labour Court's jurisdiction in constitutional matters is confined to section 157(2). As the LAC judgment illustrates, the interplay between this section and sections 33 and 172 of the Constitution is fraught with confusion and judicial disagreement.
- 162 In either event, the Labour Court got the law and the facts right.
- 163 When PRASA appealed to the LAC, #UniteBehind was not concerned. The grounds of appeal and PRASA failure at all to deal with the damning facts alleged in the Labour Court convinced us that the LAC would, on appeal, uphold the Constitution and dismiss PRASA's technical appeal with the disdain it deserved.
- 164 We were shocked when we learned of the LAC judgment in 2024. #UniteBehind considered intervening in some capacity in this Court. During this time we met with the applicants' legal team to discuss the issue. The parties eventually agreed that the LAC ruling and PRASA's position were so manifestly wrong on what we thought was settled law that our intervention would simply muddy an otherwise straightforward appeal.
- 165 After this Court's dismissal of the application for leave to appeal, we again considered intervening as amicus in the rescission application. The pleadings closed in April 2026. During the course of preparing these papers, we determined that we should attempt intervention as a party first, and as amicus in the alternative, in order to ensure that we can seek relief in the public interest, in the event that the



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confusion around the relevant labour law framework continued to obstruct simple justice.

166 We submit that #UniteBehind has a direct and substantial interest in the relief sought from this Court. We also submit that our intervention at this stage will not cause prejudice to the other parties (addressed further below), that the interests of justice require our intervention, and that any delay be condoned.

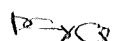
Admission of the factual material in this affidavit

167 I am advised that the factual material set out in this affidavit falls into three broad categories, and that each is properly before the Court on a distinct basis. I deal with each category in turn.

168 The first category is contextual, and comprises the public record of corruption and state capture at PRASA and the response of the courts and other institutions to it.

168.1 This includes the judgments of the High Courts, the Supreme Court of Appeal and this Court; the Public Protector's *Derailed* report; the report of the State Capture Commission; and the findings of the Judicial Conduct Tribunal and the JSC in respect of Judge Makhubele.

168.2 I am advised that this Court may receive such material under Rule 31 of its Rules, which permits a party or an *amicus* to canvass facts not appearing on the record where those facts are common cause or otherwise incontrovertible, or are of an official, scientific, technical or statistical nature capable of easy verification. I am advised that this Court may, in any event,



take judicial notice of its own and other courts' judgments and of the reports of these public bodies.

168.3 I respectfully submit that this contextual material meets this standard. The existence of the relevant court rulings, and of the reports of investigative bodies such as the Public Protector and the State Capture Commission, cannot credibly be denied. While individuals have from time to time challenged findings made against them personally, PRASA as an institution cannot credibly deny, and is constrained to acknowledge:

168.3.1 That it has been hampered by endemic corruption and state capture;

168.3.2 That it has been extensively investigated by multiple bodies, which have repeatedly confirmed the scale and severity of the problem and recommended corrective action;

168.3.3 That it has not complied, in a lawful, expeditious and effective manner, with the rulings and recommendations aimed at its recovery;
or

168.3.4 That it has routinely subjected whistleblowers to adverse consequences.

168.4 Accordingly, #UniteBehind does not ask this Court to make factual findings on the history of corruption and mismanagement at PRASA. That was the task of the many institutions that have already performed it — the Public Protector, the State Capture Commission, the SIU, the DPCI and the NPA,



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and the several courts that have adjudicated these matters. #UniteBehind asks only that this Court restore PRASA's own ability to participate in those processes, by undoing its unlawful acts against Ms Ngoye and Mr Holele.

169 The **second** category is the material that establishes #UniteBehind's own interest in these proceedings.

169.1 This includes the account of our work against state capture at PRASA over the past decade, and of our relationship with Ms Ngoye, Mr Holele and Mr Dingiswayo.

169.2 I am advised that this material stands on a different footing from the further evidence contemplated in an ordinary appeal. An applicant for leave to intervene is required to place before the Court the facts that establish its direct and substantial interest, and an applicant for admission as an amicus must show that its submissions will be useful and will differ from those of the parties.

169.3 This material is directed at that question — which is the very question this Court must decide in order to rule on #UniteBehind's application — and not at re-opening the merits of the dismissals. It is the evidence proper to an application of for leave to intervene, rather than new evidence on the merits.

170 The **third** category is the material concerning the applicants' conduct as whistleblowers.

- 170.1 This answers an allegation that PRASA itself has chosen to raise: its contention, at paragraphs 22 and 76 of its answering affidavit, that the applicants are not whistleblowers.
- 170.2 In placing the relevant facts before the Court, #UniteBehind does not thereby introduce a new dispute. It simply meets the facts that PRASA has put in issue. I respectfully submit that this evidence is weighty, material and to be believed, and that PRASA is in no position to raise any genuine dispute of fact in answer to it.
- 171 To the extent that any of the material in these categories is properly to be regarded as further evidence falling outside Rule 31, I am advised that this Court has a discretion to admit it — drawing on section 22 of the Superior Courts Act 10 of 2013 — where special grounds exist, or where there will be no prejudice to the other parties and the further evidence is necessary to do justice between them. Such evidence must be weighty, material and to be believed, and the existence of a substantial dispute of fact, or the absence of a reasonable explanation for the late tender of the evidence, will weigh against admission.
- 172 I submit that these requirements are met. The evidence is weighty, material and to be believed, and I can conceive of no substantial dispute of fact that PRASA could conceivably raise against it.
- 173 As to the explanation for its late tender, I say the following.
- 174 First, #UniteBehind was not a party to the proceedings in the Labour Court, the Labour Appeal Court, or the application for leave to appeal, and so had no

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procedural means of placing this material before those courts. I have already explained why #UniteBehind did not itself seek to intervene at those stages.

- 175 Second, much of the material could not have been placed before the lower courts because the relevant processes had not by then concluded. The State Capture Commission's report was finalised only in 2022; the Judicial Conduct Tribunal's finding was handed down in January 2025; and the JSC confirmed its findings against Judge Makhubele only in August 2025.
- 176 Third, #UniteBehind was understandably reluctant to disclose its most intimate communications with the whistleblowers with whom it worked. Only the exceptional circumstances that have compelled this application, and then only after consultation with Ms Ngoye, Mr Holele and Mr Dingiswayo, have persuaded it to take that step.
- 177 For these reasons, I submit that all of the factual material in this affidavit is properly before the Court — whether under Rule 31, by way of judicial notice, as evidence of #UniteBehind's interest, or in the exercise of this Court's discretion to admit further evidence. It is placed before the Court not to invite findings on newly disputed questions of fact, but to provide context, to establish the interest on which this application depends and to meet the case advanced by PRASA.

CONCLUSION & COSTS

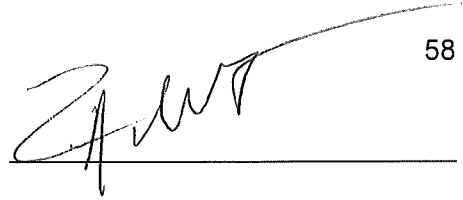
- 178 PRASA's assertion that the applicants cannot claim whistleblower status because they did not expressly ground our cause of action in the Protected Disclosures Act misses the point. The application for the rescission of a final order where the

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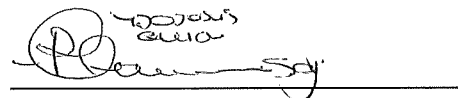
interests of justice demand flexibility. The Applicants' victimisation as whistleblowers constitutes the vital, uncontradicted exceptional circumstances against which the failure of justice and the chilling effect of the lower court's orders must be evaluated.

- 179 This matter thus raises critical issues regarding the legislative scheme put in place to regulate both the obligation to disclose corrupt transactions, and thereafter, the protection in place to protect whistleblowers.
- 180 We do not seek to litigate the matters. The evidence placed before the Constitutional Court are either common cause or contained in documents. #UniteBehind relies on extracts of documents because to provide the Court with all the relevant evidence in their complete form would as in the *Metrorail* case fill a bakkie.
- 181 #UniteBehind's relationship with Mr Holele was kept secret and though we almost never included him in emails or other recorded communications, he was present along with Ms Ngoye and Mr Dingiswayo, as we all call them in many meetings providing information and guidance. Cruelty and persecution are the rewards that Tiro and Martha continue to suffer because they are competent, professional and abide by the Constitution. At the very least, this Court can help to restore their dignity.
- 182 Accordingly, #UniteBehind prays for an order in terms of the notice of motion.



ZACKIE ACHMAT

I HEREBY CERTIFY that the deponent has acknowledged that he knows and understands the contents of this affidavit which was sworn to and signed before me at on this th 04 day of August 2026, the regulations in terms of section 10 of Act 16 of 1963 as read with regulations published in Government Notice R1258 in Gazette No. 3619 dated the 21st July 1972 having been fulfilled before me.



COMMISSIONER OF OATHS

[1] *Hoffmann v South African Airways* 2001 (1) SA 1 (CC) at 27H-28B.

[2] *Van der Merwe and Another v Taylor NO and Others* 2008 (1) SA 1 CC at para 71

[3] Id para 72

[4] The 2015 report of the then-Public Protector Advocate Thuli Madonsela remains virtually undisputed in most of its conclusions of corruption, malfeasance and mismanagement at PRASA under the board chairperson or Mr Buthelezi and Group Central Executive Officer Mr Lucky Montana, and a cast of corrupt managers, staff business operators and others.

