



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

Case No: 17896/2020

In the matter between:

**PAN AFRICAN CONGRESS OF AZANIA**

1<sup>st</sup> Applicant

**THE NATIONAL COMMITTEE OF THE PAN AFRICAN**

**CONGRESS OF AZANIA ELECTED AT**

**BLOEMFONTEIN**

2<sup>nd</sup> Applicant

**MZWANELE NHYONTSO**

3<sup>rd</sup> Applicant

**NTSIRI APAA POOE**

4<sup>th</sup> Applicant

and

**THE SPEAKER OF THE NATIONAL ASSEMBLY:**

**MS THANDI RUTH MODISE**

1<sup>st</sup> Respondent

**NARIUS MOLOTO**

2<sup>nd</sup> Respondent

**PHILLIP DHLAMINI**

3<sup>rd</sup> Respondent

**MR BENNETT NJOKO**

4<sup>th</sup> Respondent

Date of hearing: 08 June 2021

Date of Judgment: 18 June 2021 (delivered via email to the parties' legal representatives)

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**APPLICATION FOR LEAVE TO APPEAL JUDGMENT**

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**PANGARKER, AJ**

1. On 26 May 2021 I delivered judgement in this matter and dismissed the applicants' application with costs, and in so doing I also set aside the interim orders granted on an urgent basis on 3 December 2020. Pursuant to the judgement, the applicants delivered an application for leave to appeal on 28 May 2021, basing the application on 9 grounds or paragraphs in their application. During the virtual hearing of the leave to appeal application On 8 June 2021, it became apparent that the applicants' rely on paragraph 1 of the application. Paragraph 1, in summary, states that the judgement was incorrect in determining that the removal from the National Assembly of the 3rd applicant, by the 1st respondent, was not an administrative decision. The applicants aver at paragraph 1.2 of the notice that in determining whether the 1st respondent's conduct was reviewable, I ought to have determined whether the act was committed by a public body which had the effect of adversely affecting the rights of the 3rd applicant. As a further ground related to the above submission, paragraph 1.3 of the notice states that had the correct test been applied, I would (or should) have found that the Speaker's conduct has an adverse effect which amounted to an administrative action and thus reviewable either on the principle of legality or PAJA.

2. The 2nd to 4th respondents requested to provide me with brief submissions and they were allowed to do so. I have had regard to the oral as well as written submissions by the legal representatives and the 3rd respondent, Mr Dhlamini, who has at all instances represented himself.

3. In summary, the applicants' submissions are that the 1st respondent could not make a decision in terms of section 47 (3)(c ) of the Constitution without hearing the other side. The submission is further that she acted as an administrator and has a duty to hear the other side and confirm the correctness of the information provided to her in the correspondence she received from the 4th respondent. I deal with the section 47 (3) aspect from pages 9 to 16 of the judgment. The argument in the leave to appeal application is that my finding regarding the actions taken by the Speaker in informing the 3rd applicant of the provisions of section 47 (3) and his removal from the National Assembly, is a misreading regarding the powers of the Speaker who heard only one side. In that respect, it was submitted that the 3rd applicant was not given a hearing and the speaker had to engage with the 3rd applicant whose benefits were terminated.

4. The 2nd respondent's legal representative agreed that although 9 grounds were raised in the leave to appeal application, the application turned only on the aspect related to the Speaker's action. However, it is pointed out during argument that a different argument is now being made in the leave to appeal application than what was sought in paragraph 2 of the notice of motion. Paragraph 2 of the notice of motion clearly sought a review and setting aside of the Speaker's decision to terminate the 3rd applicant's membership as a member of Parliament and representative of the 2nd applicant. Having considered the submissions of the 2nd respondent taken with the applicants' submissions in the leave to appeal, I am inclined to agree with Mr van Rensburg that a different case is argued in the leave to appeal application. I am furthermore in agreement with the 2nd respondent that once the Speaker had received the communication of termination of the 3rd applicant's membership of the party, she sought legal advice before sending correspondence to him indicating that his




membership of the National Assembly was terminated by operation of section 47 (3)(c). It is submitted that I should dismiss the application for leave to appeal because a different case cannot be made out on appeal and that the 3rd applicant never challenged the termination of his membership with the party. It is further submitted that leave to appeal may not be granted because the decision sought on appeal falls within the ambit of section 16(2) of the Superior Courts Act 10 of 2013 as the decision sought on appeal will have no practical effect or result because the 3rd applicant is no longer a member of the party (PAC).

5. Similarly, the 3rd respondent has submitted that the Speaker sought advice after receiving communication from him regarding the 3rd applicant's termination of membership by the party and she is a creature of statute, does not adjudicate on the issue of termination of membership. The 3rd respondent also criticises the grounds of appeal in that they have read or interpreted the judgement incorrectly and that there are no chances of success on appeal. Mr Baartman for the 4th respondent has reminded the court that leave to appeal may only be granted in terms of section 17 (1) where the Judge is of the opinion that the appeal would have a reasonable prospect of success and that the threshold is higher for the party seeking leave to appeal a judgment. The 4th respondent's submissions are similar in that the operation of section 47 (3) is automatic once a member of Parliament loses his or her membership of the party which he/she is representative of. In reply, the applicants persist with the argument they made at the outset of the application for leave to appeal.

6. In considering the various submissions made during the leave to appeal application, I am satisfied that the judgment dealt specifically with section 47 (3) (c ) of the Constitution and the question related to whether the Speaker was required to make a decision terminating the 3rd applicant's membership of the National Assembly. Section 47(3) and the Speaker's letter was considered in some detail and reference to authorities. I am not convinced that another Court would hold that the Speaker, where she had already sought legal advice and considered the matter, would be required in terms of section 47(3) to hear the other side and potentially hold an enquiry at to the information received. She was entitled to inform the 3rd applicant of the provisions of section 47(3)(c). It is also so that the termination of the party membership was never challenged and paragraph 1 of the Notice of Motion seeking a review of her decision related to the termination of membership of the PAC was never competent. The history of the matter was set out in the judgment and it is apparent from the history that there are different factions which purport to represent the PAC. I have addressed in the judgment the events which led up to the removal of the 3rd applicant from the National Assembly and the orders sought.

7. having regard to section 17 of Act 10 of 2013, I am not convinced, with respect, that the applicants have shown that the appeal would have reasonable prospects of success, particularly in respect of the interdictory and declaratory relief. Furthermore, the applicants' argument that the Speaker was required to hear the 3rd applicant and confirm the information received ignores that she had sought advice on the matter before issuing the letter to the 3rd applicant and that section 47(3)(c ) does not require the Speaker to make a decision regarding termination of membership.

8. In the result, the application for leave to appeal is dismissed with costs; such costs to be paid jointly and severally by the applicants.

  
**M. PANGARKER**  
**ACTING JUDGE OF THE HIGH COURT**

For applicants:	Adv. T Masuku SC
Instructed by:	Ndumiso Attorneys
For 2 <sup>nd</sup> respondent:	Att. Mr L J Van Rensburg
Instructed by:	Van Rensburg & Co.
For 3 <sup>rd</sup> Respondent:	Mr P Dlamini
	In person
For 4 <sup>th</sup> Respondent:	Att. Mr C M Baartman
Instructed by:	CMB Attorneys