

**IN THE HIGH COURT OF SOUTH AFRICA
(GAUTENG DIVISION, JOHANNESBURG)**

CASE NO:

In the matter between:

RUTH NTLOKOTSE

Applicant

and

**NATIONAL UNION OF METALWORKERS
OF SOUTH AFRICA**

First Respondent

IRVIN JIM

Second Respondent

**SOUTH AFRICAN FEDERATION
OF TRADE UNIONS**

Third Respondent

FOUNDING AFFIDAVIT

I, the undersigned,

RUTH NTLOKOTSE

hereby state under oath that:

1. I am the applicant in this matter. I am an adult female and a member of the National Union of Metalworkers of South Africa ("**NUMSA**"), although I have purportedly but unlawfully been expelled from the Union, in the circumstances that I explain below.

MQN

[Signature]

2. The facts contained in this affidavit are, unless otherwise indicated or the converse appears from the context, within my personal knowledge and are to the best of my knowledge and belief both true and correct.
3. Where I make any submissions of a legal nature, I rely on the advice of my legal representatives, who's advice I believe to be correct.

PARTIES

4. I am the applicant in this matter, **RUTH NTLOKOTSE**, an adult female, with the service address for purposes of these Court proceedings, c/o Kropman Attorneys, 20 Baker Street, Rosebank. As a result of my previous designation – prior to the 11th National Congress of NUMSA held on 25 to 29 July 2022 – I was the erstwhile Deputy Second President and thus a National Office Bearer of NUMSA. I am further the President of SAFTU, which is the federation where NUMSA is an affiliate.
5. The first respondent is the NUMSA, the **NATIONAL UNION OF METALWORKERS OF SOUTH AFRICA**, a trade union duly registered and established in terms of the Labour Relations Act 66 of 1995 (“LRA”) with its head office at 153 Lillian Ngoyi Street, Cnr Gerald Sekoto Street, Newtown, Johannesburg.
6. The second respondent is **IRVIN JIM** (“Mr Jim”), the General Secretary of NUMSA, who is cited herein in his official capacity as such, with his place of employment at 153 Lillian Ngoyi Street, Cnr Gerald Sekoto Street, Newtown, Johannesburg.

MRW 

7. The third respondent is **SOUTH AFRICAN FEDERATION OF TRADE UNIONS** ("SAFTU") a federation of trade unions duly registered as such in terms of the Labour Relations Act 66 of 1995, with its registered offices being at 5th Floor JC Bez Building, 34 Eloff Street, Johannesburg.

INTRODUCTION

8. This is an application in two parts.
9. In Part A, I ask this Honourable Court to suspend the operation of my purported suspension and expulsion as a member of NUMSA, pending the determination of
- 9.1. Part B of this application to review my expulsion.
- 9.2. The finalisation of the appeal currently before the Labour Appeal Court under matter number JA84/2022; and
- 9.3. The finalisation of the application in term of section 158(1)(e) of the Labour Relations Act 66 of 1995 currently before the Labour Court under matter J381/2023.
10. In Part B, I ask the Court to review and set aside the decision of the National Executive Committee to expel me, and the decision of the Special Central Committee to dismiss the appeal of my suspension. I do so because, at every step, those decision were in conflict with the rule of law, rationality, reasonableness and procedural fairness.
11. Equally, those decisions and the processes that led to them were patently at odds with the requirements of the NUMSA Constitution.

nrw

12. I am advised that, in the same way the constitution of a political party gives effect to the constitutional right to political participation, the constitution of my union gives effect to my constitutional right to join and participate in a union, in terms of section 23(2) of the Constitution, and my right to freedom of association, encapsulated in section 18 of the Constitution. Accordingly, a Union is obligated to approach the duties it owes its members under its Constitution with the utmost respect and diligence.

BACKGROUND

13. I have been a member of NUMSA for a continuous period since 2006.
14. In 2006 I became a NUMSA shop steward.
15. In 2016 I was nominated and elected as a second deputy president of NUMSA.
16. On 26 May 2022 I was nominated and subsequently elected as president of SAFTU.
17. In the first half of 2022, I expressed disagreement with regard to a number of steps taken by and/or on behalf of NUMSA. As a result, I was targeted for a suspension (which suspension the Labour Court declared unlawful) and later, for expulsion.
18. My expulsion, which is unlawful, forms the basis of my approach to this Court.
19. In sum, the disagreements that led to my being targeted for disciplinary proceedings unlawful expulsion from NUMSA consisted in the following.

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- 19.1. On 7 February 2022 I opposed the NUMSA General Secretary Mr Irvin Jim deposing to an affidavit in support of 3Sixty Life Limited in an application for the appointment of a curator over the company, a copy of this letter is annexed marked "FA1". My approach was subsequently vindicated by this Court on 30 September 2022 through an order dismissing the application to intervene with costs.
- 19.2. This letter followed from an exchange over the National Office Bearers' WhatsApp group wherein I had stated that I did not support Mr Jim's entry into the fray of the litigation on potential falsehoods, a copy of the screen grabs of these conversations is annexed marked "FA2".
- 19.3. On 25 May 2022 the National Executive Committee of NUMSA took a decision to nominate Mac Chavalala as president of SAFTU. I did not agree with this decision. My reason being that such a decision was not sanctioned by the NUMSA constitution, and further unduly limited my right and that of other members to freedom of association. Importantly, the decision circumscribed the right of worker participation in the activities of a trade union.
- 19.4. On 11 and 12 July 2022 the Special Central Committee convened at Birchwood Hotel in Boksburg and took certain key decisions regarding the national congress that was scheduled for 25 to 29 July 2022. A copy of the key decisions of the Special Central Committee is annexed marked "FA3".
- 19.5. The key decision that was taken during the Special Central Committee meeting that directly impacts upon me is:

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"The sec on the matter of comrade Ruth Ntlokotse, the NUMSA 2nd Deputy President who stood and contested the position of the Presidency of SAFTU against the NUMSA position to support the name of Mac Chavalala **decided that comrade Ruth Ntlokotse must be suspended with immediate effect and that the necessary disciplinary process must be followed by the organisation.** This included the organisation finalising what the SNEC of 5 and 6 April had discussed, and which called for an investigation into possible acts of misconduct. This included whether the 2nd OP comrade Ruth had not defined herself outside of the NOB collective concerning the matter of the affidavit. The other issue that the sec raised was that she was being presented in social media as being under attack from within the organisation, and that she was among the suspended NUMSA comrades when that had not been the case. The 2nd DP being silent on the matter was raised as a concern by the sec." **[my emphasis]**

20. I was then served a notice of suspension and disciplinary hearing, a copy of which is annexed marked "FA4".
21. The notice states among other things that my suspension would be in place pending a disciplinary hearing into my conduct regarding the SAFTU presidency and further investigations on other issues. During the period of my suspension, I was precluded from interacting with any NUMSA staff or engaging in any NUMSA structures/ meetings.
22. This I perceived and continue to perceive as an intentional effort to exclude me from participation in the National Congress.



MRW

My suspension was declared unlawful and invalid

23. On 18 July 2022 I approached the Labour Court for an urgent interdict under matter number J885/2022.
24. The order of Justice Moshwana, and was handed down on 23 July 2022. Justice Moshwana heard the matter on an urgent basis, and declared that mine – and other NUMSA members' purported suspensions were "unconstitutional, invalid and unenforceable in law". Further that the placing of the Mpumalanga Region under administration is unconstitutional, invalid and unenforceable in law.
25. In addition, Justice Moshwana ordered that NUMSA be "interdicted and restrained from proceeding with the 11th National Congress scheduled to take place on 25-29 July 2022, until it fully complies with the terms of its own constitution".
26. NUMSA brought an application for leave to appeal under matter number JA83/2022. The appeal is pending and is currently set down to be heard at the Labour Appeal Court on 15 August 2023.

Events following the decision of Moshwana J, and my purported expulsion

27. Despite the pending appeal before the Labour Appeal Court, and in breach of the order of Moshwana J, NUMSA proceeded with its 11th National Congress.
28. At that National Congress, the decision to suspend and subject me to a disciplinary process was purportedly taken by the National Executive Committee. Several members of the National Executive Committee also sit as member of the Central Committee, including Mr Jim.

 MRN

29. In late July 2022 I brought a contempt of court application before the Labour Court under case number J941/2022. It was heard on 19 August 2022 on an urgent basis, and dismissed on 23 August 2022.
30. On 22 December 2022 NUMSA informed me that it had scheduled a disciplinary hearing. A copy of this notice is annexed marked "FA5".
31. On 27 March 2023 I received a further notice that my disciplinary hearing had been set down for 24 to 26 April 2023. A copy of this notice is annexed marked "FA6".
32. At the same time my employer had embarked on a section 198A retrenchment process. I was the senior shop steward at the employer and had a responsibility to represent workers interest in the retrenchment consultations. This I was informed was to take place on 24 April 2023. A copy of this notice is annexed marked "FA7".
33. On 21 April 2023 I informed Mr Jim by email that I would not be available to attend. I asked to be accommodated to represent workers in the retrenchment consultations. A copy of this email is annexed marked "FA8".
34. Unbeknown to me at the time NUMSA had apparently engaged with my employer to release me for the scheduled disciplinary hearing. This only became known to me once I had later had sight of the transcript of the disciplinary hearing.
35. My reasonable request for a postponement was ignored and the disciplinary proceedings took place on 24 April 2023 in my absence.



MRN

36. On 6 May 2023 I was notified of the outcome of my disciplinary hearing and that I had purportedly been expelled from NUMSA. A copy of this notice is annexed marked "FA9".
37. On 11 May 2023 my attorneys served a notice of appeal against my purported expulsion. The notice set out grounds of appeal and requested a transcript of the disciplinary proceedings. A copy of this notice is annexed marked "FA10".
38. Until 26 June 2023 I and my attorneys received no response. On that date, I was notified of the date of my appeal, which was set down for 7 and 8 July 2023. Despite my request, and the impending appeal date, I was not furnished with the requested transcript. A copy of this notice is annexed marked "FA11".
39. I note that the NUMSA Constitution is silent on the effects of an appeal on suspending an expulsion. My ordinary understanding is that a decision such as an expulsion, which is final in nature, is suspended by the noting of an appeal.
40. There was no procedure laid out for my appeal.
41. On 4 July 2023 my attorneys contacted NUSMA's attorneys to request a postponement of the appeal because I had not been given a transcript of the disciplinary proceedings held in my absence, and, relatedly, because there was too little time for me to meaningfully prepare for the appeal given the lack of transcripts as requested. A copy of this letter is attached hereto and marked "FA12"



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42. Both NUMSA and its attorneys responded, in identical terms, on 5 July 2023. The responses stated that no postponement would be provided and asserted that I should have requested transcripts earlier. I was then also finally furnished with the transcripts. Copies of these letters are annexed marked "FA13.1" and "FA13.2" respectively.
43. A copy of the transcript of the disciplinary process held in my absence is annexed marked "FA14".

The fatally flawed appeal hearing

44. On Friday 7 July 2023 I attended the appeal hearing, together with my attorneys and counsel.
45. On arrival Mr Jim informed us that there was no seating available for my attorneys and counsel. We then proceeded to bring a table and chairs into the venue.
46. The meeting started with introductions and roll call. It was then pointed out that the legal team of NUMSA was apparently there as guests and not as representatives of the union.
47. I then informed the Committee that my counsel would represent me on my appeal. I was told that the Central Committee would have to discuss and decide on whether they would allow me to have legal representation.
48. I was sent out of the meeting with my legal representatives.
49. The legal representatives for NUMSA, being attorney and counsel, remained in the meeting. I can only assume they were consulted in this discussion.

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50. After about 15 minutes we were called back into the meeting, and advised that I could have my legal representatives sit in on the appeal and provide advice to me but that I was not permitted to be represented by them.
51. I was then told that this matter would not be a new disciplinary and that they were not interested in hearing the matter *de novo*.
52. I was then invited to present my appeal to the Central Committee.
53. I presented points *in limine* to the Central Committee as to why the appeal was flawed and irregular. These points were:
- 53.1. The process of the appeal is unfair and arbitrary in that the process of the disciplinary was done through an independent third party, but that the appeal was convened by the Central Committee. This was all done not in terms of the NUMSA constitution.
- 53.2. The appeal proceedings were inherently bias because members of the CC were also individuals who had made the allegations against me and made the recommendation to approve of my expulsion. Further, they stand to be removed if my section 158(1)(e) application is successful as new elections would need to be held.
- 53.3. Furthermore, there were members of the Central Committee to whom I had made allegations of misconduct.
- 53.4. The matter of my expulsion is *lis pendens* because of the two separate applications yet to be adjudicated and finalised. Specifically, if I am successful in the appeal the decision of the 11th National Congress, including the decision to sanction me, would be set aside.



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- 53.5. The forum is incorrect, as I was disciplined as an ordinary member of NUMSA I should not have been subjected to disciplinary procedures by the National Executive Committee but rather by the Regional Executive Committee. The NUMSA Constitution does not make provision for disciplining members in their erstwhile positions but rather the jurisdiction must follow the position they hold at the time the decision to sanction is taken.
54. During my submissions on the points *in limine*, I was interrupted by several members of the Central Committee asking whether I was presenting on the substance of the appeal or on points *in limine* and that I was making reference to case law that all the members were well aware of. This illustrates that the Central Committee was largely not paying attention to my submissions.
55. Further, during these submissions, various members were walking in and out of the venue, working on their laptops or talking with each other.
56. We then broke for lunch, after which the Central Committee would discuss my submissions.
57. After lunch the Central Committee invited me and my legal representatives back to the venue to deliver the outcome of the deliberations.
58. The Central Committee rejected all my points *in limine*.

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59. I was then invited to present my submissions on the substantive elements of my appeal. These submissions began with my stating "Since sanity has not prevailed...". This comment seemed to be a catalyst for the Central Committee to find reason to complain about my submissions prior to actually saying anything. A member stated that I was insulting the Central Committee by calling them insane. I asked that the Chair to protect me in making my submissions, but it was obvious to me at this point that there was no real hope of finding objectivity in the Central Committee.
60. Again, throughout my submissions various members wandered in and out of the venue, talked to each other, played games on their phones and other things that showed that they did not pay attention to my submissions. My attorneys took photographs of venue from the back, illustrating this conduct. Copies of these photographs are annexed marked "FA15".
61. At around 17:00 on 7 July 2023 I concluded my submissions and left.
62. On Sunday 9 July 2023 Mr Jim emailed me a letter and the key decisions of the Central Committee indicating that they had decided to uphold the decisions of the disciplinary and that my expulsion was upheld. Not surprising, the Central Committee did not apply their mind on the charges constituting the essence of the appeal. A copy of the letter and key decisions is attached hereto marked as annexures "FA16A" and "FA16B". The key decisions further buttresses my apprehension of bias.



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63. On Monday 10 July 2023 NUMSA wrote to SAFTU advising of my expulsion and that this in terms of SAFTU's constitution I must be stripped of my title as president of SAFTU because I was no longer a member of a union. A copy of this letter is annexed marked "FA16".
64. On Tuesday 11 July 2023 my attorneys wrote to Mr Jim and to NUMSA requesting that my expulsion be suspended pending the outcomes of the matters before the Labour Court and the Labour Appeals Court. A copy of this letter is annexed marked "FA17".
65. On Friday 14 July 2023 Mr Jim wrote back to my attorneys advising that NUMSA would not suspend my expulsion. A copy of this letter is annexed marked "FA18".

RELIEF SOUGHT IN THE PENDING LITIGATION AT THE LABOUR COURT AND THE LABOUR APPEAL COURT

66. As mentioned above, there are currently two pending matters relating to these issues.
67. The first is the appeal of my successful review of my suspension and interdict against the NUMSA Congress (which proceeded in any event).
68. In addition, since I maintain that NUMSA's 11th National Congress could not lawfully have proceeded, I have brought an application in the Labour Court under section 158(1)(e) of the Labour Relations Act. In that application, I seek the following relief:



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- 68.1. That it be declared that all that was done from 25 - 28 July 2022 under the guise of the 11th National Congress is null and void *ab initio*, thus invalid and nullified for want of compliance with the National Union of Metalworkers South Africa constitution.
- 68.2. That it be declared that all the resolutions passed at the 11th National Congress, including nominations and elections of the National Office Bearers are invalid and of no force and effect for want of compliance with the National Union of Metalworkers South Africa constitution.
- 68.3. That the convening of the Extended Central Committee held on 9 to 13 December 2022 be declared unconstitutional, invalid and unenforceable in law.
- 68.4. That all the decisions of the Extended Central Committee, including the decisions to place the Western Cape Region under administration and the decision take over the affairs of the Mpumalanga Region, be declared unconstitutional, invalid and unenforceable in law.
- 68.5. That the Rustenburg Elective Local Shop Stewards Council held on 27 February 2022, including the nominations and election of the Local Office Bearers, be declared invalid and unenforceable for non-compliance with the NUMSA constitution.
- 68.6. That the Hlanganani Regional Elective Congress held on 19 - 20 March 2022, including the nominations and election of the Regional Office Bearers, be declared invalid and unenforceable for non-compliance with the NUMSA constitution.



MRV

69. A full set of pleadings can be made available to the court but for the sake of brevity they have been excluded from this affidavit.
70. The consequences for both of these matters are, in part, that if the conduct and decisions of NUMSA are reversed, my expulsion would likewise be reversed. It is therefore less disruptive to all parties involved if my expulsion is pending until finalisation of both of these matters, including the review of the decision of the Special Central Committee.

INTERIM RELIEF - PART A

71. I am approaching this Honourable Court to suspend the operation of my purported suspension and expulsion pending the outcome of part B of this application and the finalisation of the two other matters still to be determined.
72. I am advised that in order for the above honourable court to grant an interim interdict, the following must be demonstrated:
- 72.1. A *prima facie* right worth of protection
- 72.2. An apprehension of irreparable harm
- 72.3. That the balance of convenience favours the relief I seek; and
- 72.4. That there is no alternative remedy available to me.

My *prima facie* rights

73. My unfair and unconstitutional expulsion from the NUMSA means that I have no longer the ability to continue to fulfil my position as president of SAFTU. This is a representative democratic position which I hold on behalf of the federation. To become disqualified from this position would be to invalidate the structures of SAFTU.


MRN

74. I am also stripped of my ability to be protected by being a member of a trade union at time when my employment is threatened through retrenchment. My rights to fair labour practice and my rights in terms the NUMSA constitution to a fair process have all been affected. More so in that as a member of a trade union one is protected until a decision on the fairness of the dismissal is taken.
75. The adherence by NUMSA to the prescripts of the law and its own Constitution is inherently linked to my rights to join and participate in a union, under section 23(2) of the Constitution, and my right to freely associate under section 18.
76. Manifestly, these are rights that are worthy of protection and implicated in the final relief that I seek, both in Part B of this application, and in the pending matters before the Labour Court and the Labour Appeal Court.
77. In addition, by its nature, the Constitution of a Union operates as a contract between the Union and its members, and I have a right to demand that I be treated fairly and in light of the provisions of NUMSA's Constitution.

Apprehension of harm

78. If my expulsion is not suspended, I will be unable to access the protections of the union in terms of any potential retrenchment or fair labour issues.
79. Pressingly, I will also be susceptible to losing my position as the president of SAFTU which I currently hold.
80. According to section 2(3)(c) of NUMSA's Constitution, a member who is expelled may not participate in the Union's affairs.


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81. Accordingly, each day that my expulsion is adhered to, I am prevented from being able to exercise my rights as a NUMSA member and elected leaders, and accordingly prevented from exercising the constitutional right to freedom of association which membership of and participation in a union serves to protect and promote.
82. That I would, in due course, succeed in reviewing and setting aside my purported expulsion will be of no recompense. I will be unable to claim back the harms suffered. Decisions of the Union in which I wish to and am entitled to participate will have been made, and the proverbial egg could not be unscrambled.
83. That is equally the case in respect of participation in and my leadership of SAFTU. SAFTU's National Executive Committee is to be held imminently, and my effective participation therein is under threat. If I am unable to perform my elected functions there, that harm to my political, civil and labour rights will be final. Even if I am vindicate in Part B of this application, and in the applications pending at the Labour Court and the Labour Appeal Court, there will be no way of turning back the clock and participating effectively in decisions that have been made.
84. In addition, new people may by then be elected in my place, both as shop steward for NUMSA and as the SAFTU President, and it will be wholly impracticable to undo that damage.


mRn

The balance of convenience favours the interdict

85. The prejudice to me is substantial, whereas the prejudice to NUMSA in suspending the operation of my suspension and expulsion is virtually non-existent.
86. I do not ask that NUMSA reinstate me into my national office bearer position (though the process of voting for a new person in my office was, I submit in the application before the Labour Court, unlawful). Instead, I merely ask to be reinstated as an ordinary member and thus a shop steward as elected by the workers whose interests are not reflected in the decisions of the Central Committee. There is no possible prejudice to NUMSA National Executive Committee and Central Committee, and certainly none comparable to what I will suffer in the absence of interim relief.
87. I have explained in the context of the irreparable harm that will ensue in the absence of this Court's intervention, that I will be unable to play my rightful role both within the Union and in SAFTU, and that the proverbial horse will bolt. The substance of the harm that is done, both to me and to other members, as well as to the unions themselves and the principles of democratic organising, will be impossible to undo.
88. It is important to contextualise this prejudice within the context of the pending litigation. If any of my litigation against NUMSA is ultimately successful, then my expulsion will be rendered unlawful, and the notion that I will have been prevented in the interim from exercising my constitutional right to freedom of association and to political participation would be unconscionable.

 man

89. In particular:

89.1. In the Labour Appeal Court, NUMSA appeals a decision that my suspension was unlawful. The contention is supposed to protect the very same decision of the Central Committee, which Central Committee determined my appeal. This demonstrate my apprehension of bias.

89.2. If it is unsuccessful, as I submit it ought to be, the natural consequence is that the decisions at the impugned congress, including the decision to discipline me, will be invalid.

89.3. In the Labour Court, I am challenging the validity of NUMSA's congress, and the decision taken there. That congress proceeded despite the extant order of the Labour Court, interdicting it from doing so. If I am successful, again, the natural consequence is that the decisions at the impugned congress, including the decision to discipline me, will be invalid.

89.4. In Part B of this application, I challenge the purported decisions to suspend and expel me, as well as the dismissal of the appeal against my expulsion. For reasons I deal with later in this affidavit, the prospects of success in that challenge are strong.



MRW

90. Indeed, I am advised that the stronger the prospect of an applicant in attaining their ultimate relief, the less the need to demonstrate that the balance of convenience favours the granting of interim relief. In this case, the balance of convenience heavily favours interim relief. However, I simply note that, given the two strong pending cases in the Labour Court and Labour Appeal Court, as well as the strength of the ultimate relief sought in Part B of this application, the prospects of ultimately setting aside my unlawful expulsion are particularly strong.

No alternative remedies available

91. I have tried to avoid resorting to have this matter settled in court.

92. I have exhausted the internal remedies available to me by attending the appeal process as contained in the NUMSA Constitution. As illustrated above, this was a farcical process wherein my submissions were not properly considered.

93. I wrote to NUMSA to request that my expulsion be suspended but this too was rejected.

94. I have no other remedies in law available to me to have my expulsion suspended or to have the grounds of my suspension properly considered.

URGENCY OF PART A

95. Part A of this application is brought in accordance with Rule 6(12), on a truncated timeframe.

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96. After the purported failure of my appeal, and as I have noted my attorneys wrote urgently to Mr Jim, on 12 July 2023, noting that irreparable harm would ensue if the decision to expel me was not held in abeyance. We pointed out that the import of the pending matters in the Labour Court and Labour Appeal Court would have a legal effect on the status of my purported expulsion. My attorneys requested a reply on this matter by 17 July 2023. A copy of the letter is already annexed marked "FA18".
97. Mr Jim responded on 17 July 2023, informing my attorneys that NUMSA would not suspend the operation of its unlawful decisions. A copy of his letter is already annexed marked "FA18".
98. Accordingly, I took legal advice on my options, and instructed counsel. My counsel in the labour court matters, who is familiar with these matters, was occupied and travelling for work, and we instructed a junior to him to assist with advice. Consultations between my attorney and counsel were arranged, and preparation of this application was undertaken over the weekend of 22 and 23 July, before a final review of the papers could be undertaken by the counsel that leads the matter.
99. I am advised that a matter is urgent where the applicant would be unable to attain substantial redress in the ordinary course. That is manifestly the case in respect of the interim interdict sought in Part A of this application.
100. I am, at present, the rightful incumbent president of SAFTU.
101. SAFTU's National Executive Committee is scheduled to proceed 2 August 2023.


MAN

102. If NUMSA is permitted to treat me as expelled, I will be unable to exercise my political and civil rights, in a manner that will be final and irreversible. In particular, I will be unable both to do my duties as a member of NUMSA and a shop steward, and to do my duties, including the participation in and taking decision at SAFTU's National Executive Conference.
103. If I am not granted the relief sought on an urgent basis I will be severely prejudiced, and I will be unable to obtain substantial relief in the ordinary course.
104. In particular, the loss of my position as president of SAFTU, would have dire and irreversible results for me.
105. That loss would also likely occasion the ability to dispute my *locus standi* in two pending matters, one in the above honourable court and one in the Labour Appeal Court.
106. Should this matter run on the ordinary course I would not be able to vindicate my rights, which include fundamental constitutional rights, and to have the various issues in this application ventilated properly.
107. Furthermore, I am currently being financially assisted in these proceedings and the rest pending. This thus makes it difficult to institute proceedings expeditiously.



MRN

RELIEF SOUGHT IN PART B

108. In the ordinary course, I will pursue part B of this application, wherein I ask that this Court review and set aside the decision of the National Congress to suspend me, the decision of the NEC to expel me, and the decision of the Central Committee to dismiss the appeal of my expulsion.
109. Each of these decisions is manifestly vitiated by bias, unlawful, procedurally unfair, and in violation of the NUMSA Constitution. Importantly, the decision of the Central Committee did not even consider the charges.
110. It is necessary to highlight certain provisions of NUMSA's Constitution, which I annex marked "FA19".
111. These provisions must be read in a manner that gives effect to, and does not stifle, the rights of its members. In particular, they must be understood to advance the democratic and fair functioning of the Union, and to protect, respect and promote the rights of members to join and participate in unions, and to freely associate.

Relevant provisions of NUMSA's Constitution.

112. In Chapter 1 of NUMSA's Constitution, which sets out the "Character of the Union", one of the aims and objectives of NUMSA, as expressed in section 5(b), is "to support the spirit and principle of democracy **in all the Union's activities**".

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113. In legal argument, my representatives will submit that this must include processes relating to discipline and the appeals of disciplinary decisions relating to members. They **must be democratic**. That is, they must at least be:

113.1. Procedurally fair;

113.2. Transparent;

113.3. Open;

113.4. Devoid of bias or the reasonable apprehension of bias;

113.5. Premised on a respect for constitutional rights.

114. Chapter 2(4) of the NUMSA Constitution deals with "Discipline of members". It provides in relevant part:

114.1. Section 4(a)(i) provides that a committee having jurisdiction may suspend, fine or expel a member who:

114.2. Fails to comply with any of the terms of this constitution;

114.3. Fails to comply with any lawful decision of any organ of the Union; or

114.4. Acts in a manner which in the opinion of the committee having jurisdiction is detrimental or prejudicial to the interests of the Union or its members.

114.5. Section 4(a)(v) provides that the "member should be present at the hearing, to make representations and to call witnesses".



115. Chapter 49(b) deals with appeals. I quote it in full (with my emphasis added).

“(i) A member can appeal to the Regional Executive Committee.

The appeal must be lodged in writing within 14 days of the decision which the member is appealing against.

(ii) At any appeal a member should state his or her case personally and call witnesses.

(iii) The Regional Executive Committee has the power to confirm, vary or reverse the decision of the council or committee. The decision of the Regional Executive Committee is final.”

116. Chapter 8(2)(a) of the NUMSA Constitution equally provides for a shop steward to be disciplined by the Regional Executive Committee, and in accordance with section 8(2)(d). It does not provide for the disciplinary process to take place via an independent third party.

117. Chapter 8(2)(d)(ii) provides that, at the hearing of a shop steward, the charges will be conveyed and the person concerned will have the opportunity to state her case personally and call witnesses in support of his/her case.

118. Chapter 8(2)(d)(iv) provide for **the REC** or **NEC**, as the case may be, to decide to proceed with a disciplinary procedure in the absence of a person charged. **There is nothing in the NUMSA Constitution that empowers an independent third party to make such a choice.**



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119. In terms of Chapter 8(3)(a), **a shop steward may appeal** against the decision of the REC **to the NEC**. Section 8(3)(d) provides that the appellant “may personally state their case at the appeal and may call witnesses in support of their case”.
120. Notably, this language is softer than the language of section 49(b)(ii) of the NUMSA Constitution, where it is said that a member appealing to the REC “should” personally state their case. This difference in language, we will submit, lend credence to the notion that I was entitled to be represented by my legal representatives at the hearing of my appeal. It is also clear that I was entitled to a full reconsideration of my case.
121. Chapter 8(3)(e) of the NUMSA Constitution makes it clear that when the NEC hears an appeal of a shop steward, the NEC has the power to confirm, vary or reverse the decision of the REC, and the NEC’s decision “**is the final decision of the union**”.

The unlawful decision to suspend me at the impugned 11th Congress

122. The decision to suspend me was, as I have explained, declared unconstitutional, invalid and unlawful by the Labour Court, in a matter which stands and is being taken on appeal by NUMSA.
123. In the same decision, the Labour Court interdicted NUMSA from proceeding with its scheduled 11th National Congress, for want of compliance with mandatory elements of its own Constitution.
124. Nonetheless, the Congress proceeded as initially scheduled, without regard to the rule of law and the order of the Labour Court.


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125. In addition, myself and the other members whose suspensions were declared unlawful and set aside by Moshwana J were not provided with any travel or accommodation arrangements in respect of the proceeding but impugned Congress. We were then effectively excluded from that Congress, and treated as though we remained suspended.
126. It was at that unlawful congress that I was then purportedly suspended once again, by the National Executive Committee, or Central Committee, on which a number of members of NUMSA's Central Executive Committee, including Mr Jim, sit.
127. Patently then, my suspension was unlawful. It was taken at a Congress which had no lawful basis to proceed, and which went ahead in the face of a court order.
128. I have launched proceedings in the Labour Court to impugn the validity of the decisions taken at that unlawful congress. If they are successful, my suspension, and the decisions to expel me that flowed from it, will consequently fall away. In any event, even if they are not successful, and for the reasons I turn, the process of purportedly expelling me was fatally flawed in a number of respects.

The unfair disciplinary process and expulsion decision

129. I have detailed the process that followed my purported suspension, including the unfair disciplinary proceedings that went ahead, unreasonably, in my absence.

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130. Earlier, I pointed out that that provisions of the NUMSA Constitution that deal with the discipline of members specifically say that a member “should be present at the hearing, to make representations and call witnesses”.
131. In my case, unjustifiably, that requirement was not complied with.
132. I have noted that the NUMSA Constitution provided for the REC, and not an independent third party, to oversee a disciplinary process and, in justified circumstances, proceed in the absence of the charged person.
133. However, in my case that did not happen.
134. Indeed, there was no NUMSA committee or council that decided the disciplinary hearing could proceed in my absence. The decision was taken to proceed in my absence instead by an unauthorised third party chair, for whom the NUMSA Constitution makes no provision. The Chair was not entitled to preside, and was certainly not entitled to decide that he could preside over a purported hearing in my absence.
135. Nonetheless, that is what he purported to do, and it was on that basis, and on the basis of his recommendations that followed, that I was purportedly expelled from my Union.
136. That alone renders the purported suspension unlawful and invalid. It is susceptible to be reviewed and set aside, as it should be. The decision to expel me was taken without procedural fairness and without any semblance of procedural or substantive rationality. In addition, it was manifestly taken without compliance with the procedures required by NUMSA’s Constitution.



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137. Equally, for the reasons that are apparent from the terms of the NUMSA Constitution to which I have referred, it was inappropriate and unlawful for the NEC to purport to expel me. That power lay with the REC, as I held no national office.

138. Full legal argument on this point, and on the appropriate construction of the NUMSA Constitution, will be advanced by my legal representatives at the hearing of Part B.

The appeal decision

139. As to the CC's decision to dismiss my appeal, it suffers from a number of fatal flaws.

140. **First**, the CC's appeal process was procedurally unfair.

141. I set out above the process that unfolded both in the lead up to and on the day of the appeal hearing before the CC. I do not repeat that entire factual matrix, but I emphasise the following in summary.

141.1. I was not afforded appropriate time to prepare for the appeal.

141.2. I was not informed of the process that would unfold at the appeal.

141.3. I was provided with the transcript of the disciplinary proceeding held in my absence only at the last minute, and after earlier requests by me were ignored.

141.4. I was unreasonably and only on the day of the hearing barred from being represented by my legal representatives. I was severely prejudiced then in my ability to make arguments regarding the unlawfulness of my expulsion and the process involved therein.

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141.5. There is, notable, nothing in the NUMSA Constitution that presents any notion that a member is not entitled to legal representation. On the contrary, the Constitution provides for members to be able to call witnesses at an appeal. Ordinarily, where a witness can be called, it is appropriate to be able to have legal representation.

141.6. Equally, where a witness can be called one is clearly entitled to lead and introduce evidence *de novo*. Despite this, I was informed by the Central Committee, only at the hearing, that my case would not be considered *de novo* as a wide appeal.

141.7. The Central Committee did not take the appeal hearing seriously, and approached it with an open mind. Members were patently distracted, and intent on distracting me. Even Mr Jim repeatedly left the hearing while it was ongoing.

142. Manifestly, I was not given a fair appeal which, my legal representatives will argue at the hearing of Part B, is a prerequisite contemplated in the NUMSA Constitution, and in any event a legal requirement when a union purports to discipline one of its members.

143. **Second**, the appeal was in breach of the NUMSA Constitution

144. I have set out the relevant provisions of the NUMSA Constitution relating to appeals. They were not complied with. In sum:


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- 144.1. It is the Regional Executive Committee, and not the Central Committee, that is constitutionally entitled to process appeals. When my disciplinary process was determined, and the appeal was heard, I held no national office, and the procedures fell to be implemented in accordance with the provisions of section 4 of NUMSA's Constitution.
- 144.2. In this case, the CC went ahead, despite my protests. The procedure was accordingly unlawful.
- 144.3. The appeal process is wide, as demonstrated by the entitlement to call witnesses. Nonetheless, and only on the day, the CC purported to limit the scope of the process and said it would not rehear my case. That is also patently unlawful.
- 144.4. The appeal process does not prohibit legal representation, but the CEC purported to do so. That is equally unlawful.
145. For any one of these reasons, the appeal violated the provisions of NUMSA's constitution and falls to be reviewed and set aside.
146. **Third**, the CC's decision was vitiated by bias.
147. The Central Committee was constituted by members who comprise the very body that purported to suspend me in the first place.
148. Those same members, after my suspension was declared unconstitutional, unlawful and invalid, were involved in the decision of the NEC, at the invalid and impugnable 11th NUMSA Congress, to again suspend me. That initiated the very disciplinary process which as the subject of the appeal that the NEC sought to decide.

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149. Manifestly, and especially taken together with the procedural irregularities to which I have already referred, the decisions of the Central Committee in my appeal are vitiated by bias or, at the very least, by the reasonable apprehension of bias.

150. **Fourth**, the Central Committee's decision was irrational and unreasonable.

151. In rejecting the point *in limine* which I raised in my appeal (and which I was not permitted to have my lawyers present), the Central Committee made the following findings, reflected in the Key Decisions document.

151.1. The CEC's finding contend that *"On her first point, convening the SCC cannot be unfair, as it is the only body that can hear the appeal (according to the constitution). The NEC did not outsource its role to Mr Higgs; it asked Mr Higgs to determine the factual issues at an evidentiary hearing, thereafter the NEC would approve or reject his recommendation. It would have been impractical for the NEC to hear an evidentiary hearing, but it is not impractical for the CC to hold an appeal hearing. Accordingly, the CC can act as an appeal body, and there would be no reason to appoint a panel from the CC to hear the appeal.*

151.2. The finding makes little sense. The Central Committee is not constitutionally entitled to hear the appeal, as I have shown. In any event, the Central Committee appears to misunderstand that, even if it had appeal powers under the NUMSA Constitution, it would in this matter be entertaining an appeal in its own case. It was members of the

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Central Committee that had recommended my suspension in the first place, and so they could never constitute an appropriate appeal body.

151.3. The Central Committee's findings assert that *"On her second point it is true that the CC initially decided to investigate the charges of misconduct against her, and to suspend her, but there is no other body that can hear her appeal. Even if the CC appointed an independent appeal panel, the CC would still have to approve or reject the recommendation."*

151.4. Again, this is incorrect. It is a finding wholly disconnected from the actual provisions of the NUMSA Constitution.

151.5. The Central Committee's findings provides that *"The argument that the CC may not hear her appeal because there is a court case that wants to set aside the 11th National Congress does not apply because, unless and until the 11th National Congress is set aside, the CC is entitled to carry out its duties."*

151.6. Again, the Central Committee misunderstands the import of the assertion. The claim is two-fold.

151.7. First, the Central Committee is the inappropriate forum because there is at least a reasonable aspersion of bias in its approach. It is the Central Committee that has pursued me from the outset, and is likely to be against me on the basis, among other things, of my impugning the National Congress in separate (and successful proceedings).


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151.8. Second, since the National Congress is impugned, the constitution of the Central Committee and its decisions are likely to be impugned. So, my point *in limine* was that it would be ineffective and impugnable for the CEC to purport to decide my disciplinary status.

151.9. The Central Committee's findings then concludes "*The argument that comrade Ruth should have been disciplined by the REC rather than the NEC also does not hold water. Her misconduct happened while she was an NOB, therefore the NEC was the correct body to discipline her.*"

151.10. This purported reasoning relies on an implied interpretation of the NUMSA Constitution, which is not permitted.

151.11. The Constitution says what it means. A person who is not a national office bearer does not fall to be disciplined by the Central Committee, but instead by the REC. The fact that the Central Committee insisted on entertaining the appeal, coupled with its failure to conduct a fair, serious and open process in that appeal, further entrenches the apprehension of bias, and the apprehension that my purported appeal was a foregone conclusions against me.

152. For all these reasons, the decisions to suspend me, expel me, and dismiss my appeal were vitiated by procedural unfairness, irrationality and the aspersion of bias. Clearly, they were also unlawful for want of compliance with the requirements of the NUMSA Constitution, understood to give effect to the notion that all Union activities must be democratic, and to the constitutional imperatives they must serve.



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Costs

153. If this application is successful, I ask for costs against any respondent that opposes it, jointly and severally, including the costs of two counsel.
154. If I am not successful, I am advised that each party should pay its own costs, since this is good faith litigation aimed at the realisation and protection of my constitutional rights.



RUTH NTLOKOTSE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at ROSEBANK on this the 31st day of July 2023, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.



COMMISSIONER OF OATHS

RIDHWAAN EBRAHIM LAHER
Commissioner of Oaths
Ex Officio
Practising Attorney R.S.A
6 Rooibekkie Street
Mackenzie Park, Benoni