

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

CASE NUMBER: 17978 / 2012

In the matter between:

JACOB GEDLEYIHEKISA ZUMA

First Applicant

AFRICAN NATIONAL CONGRESS

Second Applicant

and

GOODMAN GALLERY

First Respondent

CITY PRESS

Second Respondent

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FOUNDING AFFIDAVIT

I, the undersigned

JACOB GEDLEYIHEKISA ZUMA

*W's*

*JGZ*

hereby state under oath:

1. I am an adult male of full legal capacity and President of the African National Congress ("the ANC"). I am also the President of the Republic of South Africa since 2009. I depose to this affidavit in my personal capacity and in my capacity as President of both the ANC and the Republic of South Africa.
2. The facts contained in this affidavit are both true and correct and, unless the context indicates otherwise, within my personal knowledge. Where I make legal submissions, I do so on the advice of my legal advisors.

I        **PURPOSE AND OVERVIEW OF APPLICATION**

3. This is an urgent application for an order directing the First and Second Respondents to remove the continuing display of a portrait, depicting me in a manner that impugns my constitutionally enshrined right to dignity as contained in section 10 and the right to privacy as contained in section 14 of the Constitution. Accordingly, this urgent application seeks the following:

- 3.1     An order declaring that the portrait is an unlawful violation of section 10 of the Constitution;
- 3.2     An order directing the First and Second Respondents to remove all displays of the portrait from their gallery and/or electronic displays in the on-line publications, and all other forms of publication, of both the First and the Second Respondents.

KAD'S



4. The continued display of the portrait is a grave violation of my right to dignity as it depicts me with my private parts showing.

5. I respect, as I should, the right to freedom of expression and artistic creativity as constitutionally enshrined rights, but submit that the portrait has overstepped the mark and acceptable levels of section 16 of the Constitution.

6. I set out in some detail below, how I came to know about the display of the portrait in the Goodman Art Gallery as well as its publication in the City Press.

7. I submit that the initial and continued display of the portrait by the First and Second Respondents is in breach of the following:

7.1 The right to dignity as guaranteed by section 10 of the Constitution; and

7.2 The right to privacy as guaranteed by section 14 of the Constitution;

8. I accordingly bring this application on an urgent basis for the immediate removal from display of the portrait and the declaration that such a display is in breach of my right to dignity and privacy as contained in sections 10 and 14 respectively.

9. The structure of this affidavit is as follows:

9.1 First, I describe the parties to this application;

9.2 Second, I set out my contentions as to why this matter should be heard on an urgent basis;

TH. D. S.  
J. G. S.

9.3 Third, I then deal with my standing to bring this application and my attempts to resolve this matter without approaching the court;

9.4 Fourth and lastly, I provide some explanation as to how the portrait violates my constitutionally enshrined right to dignity and equality.

## II PARTIES

10. The first applicant is Jacob Gedleyihlekisa Zuma. I am an adult male and President of the ANC and State President of the republic of South Africa. My address is West Wing, Union Buildings, Government Avenue, Arcadia, Pretoria, but I together with the Second Applicant have appointed a firm of legal representatives to whom any process of court may be directed.

11. The Second Applicant is the African National Congress (the ANC), a political organization duly registered in terms of the laws of South Africa, with its address at Luthuli House, 54 Sauer Street, Johannesburg. Any legal process in respect of the ANC may be directed to its chosen legal representatives.

12. The first respondent is the Goodman Art Gallery situated at 163 Jan Smuts Avenue, Parkwood, Rosebank. According to its website it is owned by Liza Essers who is also its director. An extract of the website page is annexed hereto marked "GZ1".

13. The Second Respondent is the City Press whose further particulars are to the Applicants unknown.

M.D.S

14. I am advised that on 10 May 2012 and until now the First Respondent caused the portrait to be displayed in their public Gallery. I am also advised that the Second Respondent on 13 May 2012 published the same portrait in their pages, which are circulated nationally and on their on-line pages available around the world.

### III URGENCY

15. This application has been brought on an urgent basis. I contend that the continued display of the portrait constitutes a continued violation of my rights to dignity. As President of the ANC the continued display of the portrait constitutes a continued violation of the ANC's right to dignity.

16. The continued display of the portrait is manifestly serious and has the effect of impugning my dignity in the eyes of all who see it. In particular, the portrait depicts me in a manner that suggests that I am a philanderer, a womanizer and one with no respect. It is an undignified depiction of my personality and seeks to create doubt about my personality in the eyes of my fellow citizens, family and children.

17. I accordingly submit that the continued display of the portrait is a continuing violation of my rights. The more days it stays displayed, the more my right to dignity and that of the ANC are impugned.

18. As will be stated below, although the portrait was first published from or about 10 May 2012 by the First Respondent and published on 13 May 2012 by the Second Respondent, neither I nor the Second Applicant became immediately aware thereof until the cause of the complaint was brought to our attention in the middle of the week beginning 14 May 2012.

M.D.S

JGZ

19. After our legal representatives were instructed to seek and obtain undertakings from the First and Second Respondents to cease the exhibition and display of the portrait on 17 May 2012, which undertakings were refused, this application was prepared and brought on the next day 18 May 2012.

20. Although I consider such violation of my dignity as requiring an immediate cessation thereof, I have been advised by my legal representatives that in practice such an application may be brought on an urgent basis only after giving the respondents sufficient time to answer. I submit that it was fair and reasonable to give them until Monday to so answer so that this application may be heard on Tuesday 22 May 2012, which is the normal day on which applications of this nature may be heard.

21. I submit that this is a matter that warrants to be heard on an urgent basis in terms of the rules.

#### IV STANDING

22. I bring this application primarily in my personal capacity as it is clear from the portrait that it depicts me. It is clear in the eyes of those viewing the portrait that it seeks to depict me in a bad, undignified and degrading manner. Furthermore, in terms of the theme of the exhibition my portrait is meant to convey a message that I am an abuser of power, corrupt and suffer political ineptness.

23. I also bring this application in my capacity as the President of the ANC whose image as a liberation movement and governing party which is seriously tarnished by the portrait in question.

W.D.S

J. Oze

24. In addition, I also bring this application in my capacity as the President of the Republic of South Africa. This portrait is not only damaging to but is also making a mockery of the office of the Presidency.

#### V BACKGROUND TO THIS APPLICATION

25. During the course of the week, the ANC's spokesperson, Mr. Jackson Mthembu ("Mr. Mthembu"), was alerted to the fact that a portrait depicting me with my private parts fully exposed was being displayed at the First Respondent's premises.

26. Mr. Mthembu then investigated the allegations and found that the portrait was indeed in display and also in the website of the First Respondent.

27. Further investigations were made and it was also found that the Second Respondent had also published the portrait both in its 13 May 2012 edition and its website.

28. A copy of the portrait referred to in paragraphs 21 to 23 is annexed hereto marked "G122".

29. On Thursday, 17 May 2012, Mr. Mthembu informed my office about the investigations and the existence of this portrait. A copy of the portrait was also sent to my office. Upon receiving and viewing the portrait, I was shocked and felt personally offended and violated. I felt and still continue to feel that my constitutional rights have been and are being violated for as long as this portrait continues to be in display at First Respondent's gallery, the First and Second Respondents' websites and any other media. I will deal with the specific rights which are violated below.

M.M.D.S

J.G.Z

30. The portrait will continue to be in display until the end of the exhibition which runs until 16 June 2012. In this regard, I annex marked "GJZ3" a copy of the article by SAPA dated 18 May 2012 which states so.

31. Mr. Mthembu's confirmatory affidavit is annexed hereto marked "GJZ4".

32. The ANC takes exception to the symbolism that the portrait uses in order to portray the ANC through its President as responsible for 'abuses of power, corruption, and political dumbness' as the exhibition of the artist is described as its theme on the First Respondent's website. An extract from the website describing the artist's exhibition is annexed hereto marked "GJZ5".

33. To this end, I and the ANC sought an undertaking by the First and Second Respondents that they would stop the continuing exhibition or display of the portrait from all media. In this regard, I refer to the respective letters from our legal representatives to the First and Second Respondents, annexed hereto marked "GJZ6" and "GJZ7" respectively.

34. The First and Second Respondents' legal representatives responded to our legal representatives on behalf of their respective clients. In essence they informed our legal representatives that their respective clients were not willing to give such undertakings. In this regard, I annex copies of the First and Second Respondents' legal representatives' letters marked "GJZ8" and "GJZ9" respectively.

35. The director of the First Respondent is quoted in the Mail & Guardian online dated 17 May 2012 as saying that the First Respondent will not remove the portrait. A copy of the relevant extract is annexed hereto marked "GJZ10".



36. I am therefore forced to seek the intervention and protection of this Court against the infringement of my constitutional rights and those of the ANC.

#### **VI IMPACT OF THE PORTRAIT ON MY RIGHTS**

37. Section 10 (Human Dignity) provides that "everyone has inherent dignity and the right to have their *dignity respected and protected*."

38. As a citizen of this country, I have a constitutional right to dignity. This rights entails that my dignity must be respected and when necessary protected. Further argument in this regard will be led in Court during the hearing of this matter.

#### **VII REQUIREMENTS FOR AN INTERDICT**

39. We seek an interdict to secure a permanent cessation of an unlawful cause of conduct as set out above.

**CLEAR RIGHT**

40. I submit that I have a clear constitutional right to dignity. I need not elaborate more on this. Again, Further argument in this regard will be led in Court during the hearing of this matter.

*M.D.S*

*J.B.Z*

HARM OR INJURY

41. My dear right to dignity as aforesaid has undoubtedly been violated by the respondents and this violation is of a continuous nature. I say so because even if the portrait is removed from exhibition by the First Respondent on 16 June 2012, the image will continue to exist on the respondents' other media such as websites.

42. I must point to the Court that the portrait has been displayed or been accessible to millions within and outside the country. In addition, despite its removal, it will continue to exist in the minds of those people who have seen it or had access to it. However, the removal of the portrait will ensure that the harm caused by its continuous publication and accessibility is limited to only those that have seen it or had had access to it. In other words it will limit the harm already caused by the portrait.

NO OTHER REMEDY

43. I believe that in the circumstances, there is no other satisfactory remedy available to me and/or the Second Applicant.

44. This being the case of violation of my dignity, reputation and integrity, there can be no monetary value attached that I may vindicate and attain damages for their violations through the ordinary process of court.

45. In addition, as stated above, this violation or injury to my rights is of a continuing nature.

*M.D.S*

*JGR*

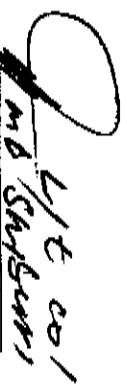
46. I therefore submit that there is not other sufficient remedy that will vindicate my rights other than what is prayed for.

47. Wherefore I pray for the order as prayed in the Notice of Motion to which this affidavit is annexed.



DEPONENT

SIGNED AND SWORN BEFORE ME AT IRVINE ON THIS THE 18<sup>TH</sup> DAY OF MAY 2012, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE OATH AND THAT HE CONSIDERS THE SAME AS BINDING ON HIS CONSCIENCE.



COMMISSIONER OF OATHS