REPUBLIC OF SOUTH AFRICA

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG PROVINCIAL DIVISION, PRETORIA

(1) Reportable: Yes
(2) Of Interest to other judges: Yes
(3) REVISED.

Case number: **24396/2017**

In the matter between:

**Democratic Alliance** **Applicant**

and

**President of the Republic of S A** **Respondent**

In re the application between:

**Democratic Alliance** **Applicant**

and

**President of the Republic of S A** **First Respondent**

**Pravin Jamnadas Gordhan** **Second Respondent**

**Mcebisi Hubert Jonas** **Third Respondent**

**Malusi Nkanyezi Gigaba** **Fourth Respondent**

**Sifiso Norbert Buthelezi** **Fifth Respondent**

---

**JUDGMENT**

---

Introduction

[1] On 4 May 2017 sitting in the Urgent Court I handed down an order and indicated that reasons would follow in due course. The order was in the following terms:

> "The following order is made:
>
> 1. The matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the forms and service provided for in the Rules are dispensed with.
>
> 2. The first respondent is to dispatch to the applicant's attorneys within five calendar days of the date of this order:
>
> 2.1 the record of all documents and electronic records (including correspondence, contracts, memoranda, advices, recommendations, evaluations and reports) that relate to the making of the decisions which are sought to be reviewed and set aside;
>
> 2.2 the reasons for the decisions which are sought to be reviewed and set aside.
>
> 3. The respondent is to pay the costs of this application which costs are to include those occasioned by the employment of two counsel".

[2] These are the reasons.

Backgrounds facts

[3] Soon after the stroke of midnight, while most residents of the country had retired for the night, the respondent (the President) announced to the populace what the applicant calls radical changes to the National Executive (the Cabinet). The announcement was in the following terms:

> "I have decided to make changes to the National Executive in order to improve efficiency and effectiveness.
>
> The changes bring some younger MPs and women into the National Executive in order to benefit from their energy, experience and expertise.
>
> I have directed the new Ministers and Deputy Ministers to work tirelessly with their colleagues to bring about radical socio-economic transformation and to ensure that the promise of a better life for the poor and the working class becomes a reality.
>
> The new members are the following:
>
> Ministers
> 1. Minister of Energy, Ms Mmamoloko "Nkensani" Kubayi
> 2. Minister of Transport, Mr Joe Maswanganyi
> 3. Minister of Finance, Mr Malusi Gigaba
> 4. Minister of Police, Mr Fikile Mbalula
> 5. Minister of Public Works, Mr Nathi Nhleko
> 6. Minister of Sports and Recreation, Mr Thembelani Nxesi
> 7. Minister of Tourism, Ms Tokozile Xasa
> 8. Minister of Public Service and Administration, Ms Faith Muthambi
> 9. Minister of Home Affairs, Prof Hlengiwe Mkhize
> 10. Minister of Communications, Ms Ayanda Dlodlo
>
> Deputy Ministers
> 1. Deputy Minister of Public Service and Administration, Ms Dipuo Letsatsi-Duba
> 2. Deputy Minister of Finance, Mr Sifiso Buthelezi
> 3. Deputy Minister of Public Enterprises, Mr Ben Martins
> 4. Deputy Minister of Arts and Culture, Ms Maggie Sotyu
> 5. Deputy Minister of Trade and Industry, Mr Gratitude Magwanishe
> 6. Deputy Minister of Communications, Ms Thandi Mahambehlala

7. Deputy Minister of Tourism, Ms Elizabeth Thabethe
8. Deputy Minister of Police, Mr Bongani Mkongi
9. Deputy Minister of Telecommunications and Postal Services, Ms Stella Ndabeni-Abrahams
10. Deputy Minister of Small Business Development, Ms Nomathemba November

I wish to extend my gratitude to the outgoing Ministers and Deputy Ministers for their service to the country. I also wish the new Ministers and Deputy Ministers the best in their new responsibilities."

[4] The announcement essentially revealed that the President had taken decisions to, with immediate effect, dismiss some Ministers and Deputy Ministers and replace them with others. Some of the replacing Ministers and Deputy Ministers were newly appointed whilst others were merely shifted from one portfolio to another. A key aspect of the announcement was the decisions to dismiss and replace the Minister of Finance, the second respondent, and the Deputy Minister of Finance, the third respondent. They were replaced respectively by the fourth respondent and the fifth respondent.

[5] The announcement caused a great deal of consternation for a significant proportion of the populace. It is no exaggeration to say that it was received with shock, alarm and dismay by many. One reason for this is that it came on the heels of an extensive public complaint that incessant malversation had embedded itself in our public life and that the country was mired in the quicksand of corruption. The Minister of Finance and the Deputy Minister of Finance perform important functions that, amongst others, involve the control of the public purse. It is these dismissal

decisions (the decisions) that have prompted the applicant, a registered political party, to approach this Court on an urgent basis to essentially review the decisions (the main application). The President is cited as the first respondent in that application. The main application was launched on 4 April 2017, within two (2) court days of the announcement. The relevant portions of the notice of motion reads:

> "1. The matter is heard as one of urgency in terms of Rule 6(12) of the Uniform Rules of Court, and the forms and service provided for in the Rules are dispensed with to the extent necessary.
> 2. The decision of the President on 31 March 2017 to dismiss Mr Pravin Gordhan as Minister of Finance and replace him with Mr Malusi Gigaba is reviewed and set aside, and is declared unconstitutional, unlawful and invalid.
> 3. The decision of the President on 31 March 2017 to dismiss Mr Mcebisi Jonas as Deputy Minister of Finance and replace him with Mr Sifiso Buthelezi is reviewed and set aside, and is declared unconstitutional, unlawful and invalid."

[6] It being a review application the applicant deemed it appropriate to bring it in terms of rule 53 of the Uniform Rules of Court (the Rules). However, as it claimed that the matter was urgent and brought it terms of rule 6(12) it chose to truncate the time periods laid down in rule 53. The provisions of rule 53 read:

> "(1) Save where any law otherwise provides, all proceedings to bring under review the decision or proceedings of any inferior court and of any tribunal, board or officer performing judicial, quasi-judicial or administrative functions shall be by way of notice of motion directed and delivered by the party seeking to review such decision or proceedings to the magistrate, presiding officer or chairperson of the court, tribunal or board or to the officer, as the case may be, and to all other parties affected —
> (a) calling upon such persons to show cause why such decision or proceedings should not be reviewed and corrected or set aside, and
> (b) calling upon the magistrate, presiding officer, chairperson or officer, as the case may be, to despatch, within fifteen days after receipt of the notice of motion, to the registrar the record of such proceedings sought to be

corrected or set aside, together with such reasons as he or she is by law required or desires to give or make, and to notify the applicant that he or she has done so.

(2) The notice of motion shall set out the decision or proceedings sought to be reviewed and shall be supported by affidavit setting out the grounds and the facts and circumstances upon which applicant relies to have the decision or proceedings set aside or corrected.

(3) The registrar shall make available to the applicant the record despatched to him or her as aforesaid upon such terms as the registrar thinks appropriate to ensure its safety, and the applicant shall thereupon cause copies of such portions of the record as may be necessary for the purposes of the review to be made and shall furnish the registrar with two copies and each of the other parties with one copy thereof, in each case certified by the applicant as true copies. The costs of transcription, if any, shall be borne by the applicant and shall be costs in the cause.

(4) The applicant may within ten days after the registrar has made the record available to him or her, by delivery of a notice and accompanying affidavit, amend, add to or vary the terms of his or her notice of motion and supplement the supporting affidavit.

(5) Should the presiding officer, chairperson or officer, as the case may be, or any party affected desire to oppose the granting of the order prayed in the notice of motion, he or she shall —

(a) within fifteen days after receipt by him or her of the notice of motion or any amendment thereof deliver notice to the applicant that he or she intends so to oppose and shall in such notice appoint an address within 15 kilometres of the office of the registrar at which he or she will accept notice and service of all process in such proceedings; and

(b) within thirty days after the expiry of the time referred to in subrule (4) hereof, deliver any affidavits he may desire in answer to the allegations made by the applicant.

(6) The applicant shall have the rights and obligations in regard to replying affidavits set out in rule 6.

(7) The provisions of rule 6 as to set down of applications shall *mutatis mutandis* apply to the set down of review proceedings."

[7] Should the time periods allocated to parties in terms of this rule be applied to the main application the urgency of the matter would be lost. For that reason the applicant gave the President five (5) (instead of the fifteen (15)) days to file a notice of intention to oppose, to furnish the reasons relating to the making of the decisions as well as the record of all

documents and reports that were considered when making the decisions (the record). Thereafter the applicant would only take three (3) (instead of the allowed ten (10)) days to amend its papers, the respondent was given ten (10) (instead of thirty (30)) days to file opposing papers and the applicant would only take three (3) days to file its replying papers. Save for filing a notice of opposition the President has yet to respond to the main application. The President has ignored the time periods laid down in the notice of motion. In the meantime a robust exchange of communication between the attorney for the applicant and the state attorney representing the President took place.

[8] On 6 April 2017, the state attorney wrote to the applicant stating, *inter alia*, that:

> "We have been instructed to request an indulgence until the **28th April 2017** for the delivery of the records.
> Kindly consider our request and revert." (Emphasis in original)

[9] The applicant's attorney read this statement to mean that the records would be furnished but only on 28 April. The statement is certainly open to that interpretation. On that interpretation the applicant's attorney responded to the state attorney on the same day stating:

> "Your client [the President] furnishes no reasons whatsoever for the extension he seeks.
> In the light of the fact that this is a very urgent matter, we hold instructions to hold your client to the strict time frames as stipulated in the Notice of Motion."

[10] On 11 April 2017 the state attorney filed a notice of intention to oppose on behalf of the President. Neither the record relating to the making of the decisions nor the reasons for decisions were filed or furnished. But on the same day the state attorney sent an letter to the applicant's attorney advising her:

> "Due to the President's schedule, we have not been able to secure a consultation with him. It is only after such consultation with the client that proper instructions can be obtained. You will understand how crucial such a consultation is in order to furnish you and the Court with a proper Rule 53 record that you have requested.
> Accordingly, we have been instructed to advise you that the Presidency will ensure that a consultation with the President is held as soon as possible.
> In light of the above, we will revert to you on or before the 21st April 2017."(Emphasis added).

[11] Once again, the impression given by this letter is that the record would eventually be furnished. However, the *dies* referred to in the notice of motion continued to run with no actual advancement of the case. Nevertheless, the applicant's attorney wrote to the state attorney on the same day, 11 April, informing him that the applicant was prepared to grant the President an extension until 18 April to comply with the demand in the notice of motion for the record as well as the reasons. In the same letter the applicant's attorney wrote:

> "Whilst we fully appreciate your client's busy schedule, we point out that the decision he made and this review challenging it is a matter of national importance and is extremely urgent. We draw your attention to the fact that, subsequent to the launch of the application, a further ratings agency - Fitch - has downgraded South Africa to junk status in respect of both foreign and local bonds and has specifically cited your clients' dismissal decision in doing so.
> In the circumstances, our client is reluctantly prepared to accord your client a limited extension, but only to Tuesday 18 April 2017. We call upon your client to file the record and reasons by close of business on that date, failing which our client's right to bring an urgent compelling

> application and to seek an appropriate costs order are strictly reserved."

[12] The President was clearly put on terms to comply with the demand as per the provisions of rule 53 albeit with truncated times, and that failing such compliance by 18 April the applicant would launch an interlocutory application compelling him to so comply. The state attorney did not reply to this letter until the due date, 18 April. On that date the state attorney furnished a reply consisting of two short paragraphs which read:

> "We refer to the above matter and hereby confirm that we have not been able to consult our client in connection with your demand for the record.
> In view of the above, we will revert as soon as we have consulted in relation to the record."

[13] There are two aspects of this response which for purposes of this judgment bear recording. Firstly, the reply only makes mention of the record. It is silent on the issue of the reasons that form the basis of the decisions. Secondly, the state attorney remains non-committal as to when exactly a firm and definitive response to the demand for the record and the reasons will be furnished or filed.

[14] The patience of the applicant had been exhausted by this time. Accordingly, on 19 April it filed and served the interlocutory application it had alerted the state attorney to on 11 April. It is that application that forms the subject matter of this judgment.

The present interlocutory application

[15] The notice of motion indicated that the matter was set down on the urgent roll of 25 April. The President filed his opposing papers on 21 April. In those papers it is averred that the promised consultation with the President only took place late on 20 April. The applicant filed its replying papers on 25 April. The matter was then postponed to 2 May.

[16] The answering affidavit filed on behalf of the President raises two points only: firstly, the interlocutory as well as the main application are not urgent and, secondly:

> "... the decisions that the applicant seeks to review and set aside constitute executive decisions taken in terms of section 91 of the Constitution. Accordingly, Rule 53 is not applicable."

The decisions

[17] The power to take the decisions is vested in the President by s 91(2) of the Constitution of the Republic of South Africa Act 108 of 1996 (the Constitution). This power, like all other power conferred upon the President whether by the Constitution or any statute must be read with s 83 of the Constitution, which reads:

> "The President-
> (a) is the Head of State and head of the national executive;
> (b) must uphold, defend and respect the Constitution as the supreme law of the Republic; and
> (c) promotes the unity of the nation and that which will advance the Republic."

[18] The executive power to appoint and dismiss Ministers and Deputy Ministers is wide-ranging. But it is not as unfettered as its predecessor, the

royal prerogative. The royal prerogative is a relic of an age past. The executive power conferred upon the office of the President by s 91(1) of the Constitution is circumscribed by the bounds of rationality and by sections 83(b) and (c) of the Constitution. The President accepts at the very least that the exercise of the power has to meet the test of rationality. In an affidavit deposed to by the President in a matter before the Constitutional Court which is still to be considered by that Court the following is averred:

> "30 It stands therefore to reason that the Constitutional power to appoint and dismiss Ministers is that of the President, which power he or she exercises as head of the Cabinet. I am advised in this regard there are no constitutional constraints on the President on how that power is to be exercised or the process by which the power is to be exercised, as long as the exercise of such power is rational." (Emphasis added)

[19] The President's concession that the present executive decisions have to be rational and therefore subject to judicial scrutiny is well made. It is now settled law that these decisions must comply with the "*doctrine of legality*."[1] The doctrine is fundamental to our constitutional order. Should an executive decision not comply with this doctrine it would be unlawful. Thus, if it is to be lawful it must not be irrational or arbitrary.[2]

[20] Given that the decisions can be reviewed and set aside should they transcend rationality, the question that follows is how should the applicant approach the court? Put differently, what procedural devices should be employed to test the rationality of the decisions? The applicant maintains that

---

[1] *Albutt v Centre for the Study of Violence and Reconciliation and Others* 2010 (3) SA 293 (CC) at [49]; *Minister of Military Veterans v Motau* 2014 (5) SA 69 (CC) at [69]
[2] *Democratic Alliance v Ethekwini Municipality* 2012 (2) SA 151 (SCA) at [21]

it is entitled to utilise rule 53. Rule 53, we know, is applied with rule 6.[3] The President disagrees. The President maintains that rule 6 should be utilised on its own. The President's objection to the applicability of rule 53 is based on a particular reading of rule 53(1), which reading the President says is the only sensible one. It is to this issue that attention will now be focussed.

Do the provisions of rule 53 apply to an application to review and set aside an executive decision?

[21] The Rules of which rule 53 is a part were promulgated on 12 January 1965. The genealogy of rule 53 is presented in a thoughtful judgment by Corbett JA (as he then was) in *Safcor Forwarding Johannesburg (Pty) Ltd v National Transport Commission.*[4] The learning derived from this judgment is: the rule was devised in order to regulate on a national basis the procedure to be followed in cases of all species of review whether statutory or common law based. It has since been successfully utilised in all those cases. The court has for the last five decades been able to perform its judicial functions because of the provisions of rule 53. However, most of the cases where rule 53 was applied involved a "*decision or proceedings of* (an) *inferior court*", a "*tribunal*", a "*board*" or an "*officer performing judicial, quasi-judicial or administrative functions*" and not an executive decision. The President relies on this to contend that the provisions of rule 53 do not apply to an application to review an executive decision. The President's case is that

[3] See sub-rules 53(6) and 53(7) quoted in [6] above
[4] 1982 (3) SA 660 (A) at 667F – 670A

since an "*executive decision*" is not listed in sub-rule 53(1) it is excluded from the ambit of rule 53. The President's approach relies on a literal interpretation of sub-rule 53(1) and therein lies its weakness. Rule 53 was promulgated at a time when executive decisions were not subject to review. Subsequently, with the enactment of the Constitution and the development of the common law since its enactment these decisions, as the President acknowledges, are subject to review. It is true that rule 53 has not been amended to cater for this, but to decide on its applicability to a review of executive decisions it is necessary to subject it to a purposive interpretation.

[22] The purpose of rule 53 is well captured in the following *dicta* of Kriegler AJA (as he then was):

> "Not infrequently the private citizen is faced with an administrative or quasi-judicial decision adversely affecting his rights, but has no access to the record of the relevant proceedings nor any knowledge of the reasons founding such decision. Were it not for Rule 53 he would be obliged to launch review proceedings in the dark and, depending on the answering affidavit(s) of the respondent(s), he could then apply to amend his notice of motion and to supplement his founding affidavit. Manifestly the procedure created by the Rule is to his advantage in that it obviates the delay and expense of an application to amend and provides him with access to the record."[5]

[23] Hence, the purpose of rule 53 is "*to facilitate applications for review*"[6] and since its promulgation it has served this purpose well. While Kreigler AJA draws attention to the manifest benefits of the rule to the

---

[5] *Jockey Club of South Africa v Forbes* 1993 (1) SA 649 (A) at 660D–F.
[6] *Cape Town City Council v South African National Roads Authority and Others* 2015 (3) SA 386 (SCA) at [36]

applicant who launches the review application, more recently two judgments from the Supreme Court of Appeal draw attention to the benefits of the rule for the court as well.

[24] In the *Democratic Alliance and Others v Acting National Director of Public Prosecutions and Others*[7] Navsa JA held:

> "Without the record a court cannot perform its constitutionally entrenched review function, with the result that a litigant's right in terms of s 34 of the Constitution to have a justiciable dispute decided in a fair public hearing before a court with all the issues being ventilated, would be infringed."

[25] In *Helen Suzman Foundation v Judicial Service Commission,* the Deputy-President of the SCA, Maya DP, (as she then was) held:

> "[13] The primary purpose of the rule is to facilitate and regulate applications for review by granting the aggrieved party seeking to review a decision of an inferior court, administrative functionary or state organ, access to the record of the proceedings in which the decision was made, to place the relevant evidential material before court. It is established in our law that the rule, which is intended to operate to the benefit of the applicant, is an important tool in determining objectively what considerations were probably operative in the mind of the decision-maker when he or she made the decision sought to be reviewed. The applicant must be given access to the available information sufficient for it to make its case and to place the parties on equal footing in the assessment of the lawfulness and rationality of such decision. By facilitating access to the record of the proceedings under review, the rule enables the courts to perform their inherent review function to scrutinise the exercise of public power for compliance with constitutional prescripts. This, in turn, gives effect to a litigant's right in terms of s 34 of the Constitution — to have a justiciable dispute decided in a fair public hearing before a court with all the issues being properly ventilated. Needless to say, it is unnecessary to furnish the whole record irrespective of whether or not it is relevant to the review. It is those portions of a record relevant to the decision in issue that should be made available. A key enquiry in determining whether the recording should be furnished is therefore its

[7] 2012 (3) SA 486 (SCA) at [37]

> relevance to the decision sought to be reviewed."[8] (Emphasis added).

[26] The point that it is of significant value to the court is reiterated in *Turnbull-Jackson v Hibiscus Coast Municipality* where the following is stated :

> "Undeniably, a rule 53 record is an invaluable tool in the review process. It may help: shed light on what happened and why; give the lie to unfounded ex post facto (after the fact) justification of the decision under review; in the substantiation of as yet not fully substantiated grounds of review; in giving support to the decision-maker's stance; and in the performance of the reviewing court's function."[9]

[27] *Turnbull-Jackson*, it bears reminding, carries the provenance of the Constitutional Court.

[28] The above brief survey of the courts' approach to Rule 53 demonstrates that it is there for "*the proper and convenient administration of justice.*"[10]

[29] Relying on the purposive interpretation there is no logical reason not to utilise it in an application to review and set aside an executive decision. The judicial exercise undertaken by the court in such a review is no different from the one undertaken in review applications of an "*inferior court, a tribunal, a board or an officer performing judicial, quasi-judicial or*

---

[8] 2017 (1) SA 367 (SCA) at [13], footnotes omitted
[9] 2014 (6) SA 592 (CC) at [37]
[10] *United Building Society v Barkhuizen* 1959 (4) SA 295 (O) at 299D

*administrative functions.*" The tests to be applied may be different but the process utilised can be the same. Its provisions, in my judgment, should be applied unless it can be shown that its application in a particular case would result in a failure of justice.

[30] On the basis of the above, I hold that the provisions of rule 53 apply *mutatis mutandis* to an application for the reviewing and setting aside of an executive order or decision.

[31] It should therefore be utilised in the main application. After all, there is no contention by the President that its utilisation in the main application would result in a failure of justice.

[32] Having come to the conclusion that rule 53 applies to the main application, it becomes superfluous for me to consider whether it is necessary to have recourse to the court's inherent power in terms of s 173 of the Constitution to fashion a different procedural remedy for the applicant's right to approach the court in the main application.

[33] The consequence of utilising rule 53 in the main application is that the applicant is entitled to call for the President to furnish the reasons for his decisions as well as the relevant part of record that formed the basis upon which the decisions were taken. This is catered for in sub-rule 53(1)(b). The President's stance on this is that the applicant is not entitled

to the record at all. The President's contention is that the decisions are subject to the doctrine of legality and therefore the applicant is entitled to the reasons for the decisions, but not to the record. The President's stance was conveyed in oral submissions, but not in the answering affidavit filed in opposition to the application. The difficulty with this submission is that it goes against the grain of all the authorities cited above, especially that of *Helen Suzman Foundation* and *Turnbull-Jackson.*[11] In my judgment there is no merit in this submission.

[34] As I have come to the conclusion that the relevant part of the record must be furnished as per the provisions of sub-rule 53(1)(b), the issue that immediately follows is what this record should consist of, and it is to that issue that I now turn.

[35] There is not a soupçon of evidence concerning the record from the President. The President has elected to remain completely quiescent on this aspect. The applicant demands that "*all documents and electronic records (including correspondence, contracts, memoranda, advices, recommendations, evaluations and reports) that relate to the making of the decisions*" be provided. The President has not raised any issue about their existence or non-existence. The applicant has raised the issue of the existence of a so-called "*Intelligence Report*" in its founding papers in the main application. It has repeated its claim on that issue in this application.

---

[11] See the quotations in [24] - [26] above

The President has not dealt with the existence or non-existence of this report. In the same vein, the President has not indicated what documents or electronic records exist and which of those he objects to disclosing on the ground that their disclosure would be unlawful for one reason or another. In these circumstances this Court has no choice but to issue an order that calls for a record as canvassed in paragraph 2.2 of the notice of motion in the main application.[12]

[36] The President has also not furnished the reasons for the decisions as required by sub-rule 53(1)(b). In terms of this sub-rule the President is to dispatch to the registrar the record together with the reasons for the decisions. The President has yet to do so. During oral submissions it was contended on the President's behalf that reasons have been furnished to the applicant in the letter of the state attorney to the applicant's attorney dated 21 April, which letter was written after this interlocutory application was filed and served. Also, the letter was filed on the same date as the answering affidavit. In the letter the attorney acting for the President states:

> "As will be evidenced in the answering affidavit of the President, in his response to your application to compel the delivery of the records, the decision to reshuffle the cabinet as he did was informed by his political judgment that the reshuffle will best deliver on the mandate the African National Congress received from the majority of the electorate in the last general elections."

[12] See para 2.2 of the Order quoted in [1] above

[37] According to the oral submissions these are the reasons. There are three fundamental problems with this submission. Firstly, it is contained in a letter which is annexed to the answering affidavit and there is no averment in the answering affidavit that it constitutes the reasons. Secondly, it is made by the attorney acting for the President and not by the President himself. In the present case, there is absolutely no affidavit from the President, not even a confirmatory one. Thirdly, it does not comply with the provisions of sub-rule 53(1)(b), which requires the President to file the reasons with the registrar and either furnish them to the applicant or inform the applicant that they have been filed with the registrar. Accordingly, the applicant is entitled to an order compelling the President to furnish the reasons for the decisions.[13]

Urgency

[38] The applicant relies on the consequences for the country as a whole for its claim that the matter warrants the urgent attention of this Court as well as the Court entertaining the main application. It is the applicant's contention that the impugned decisions are of an extraordinary nature and that they have far reaching harmful consequences for the country. For evidence it relies, amongst others, on decisions of two ratings agencies to reduce the country's rating to "*junk*". This downgrading of the country's rating was a direct consequence of the impugned decisions. Hence, the impugned decisions, according to the applicant, produce

[13] See para 2.1 of the Order quoted in [1] above

disastrous consequences for the country's economy. One other ratings agency is yet to make a decision in this regard. Its decision is expected in June. Should that ratings agency concur with the two that have already pronounced their decisions the harmful consequences will, according to the applicant, intensify. In any event, the harmful consequences that have already commenced taking effect have not ceased and will continue for some considerable time.

[39] The answering affidavit filed on behalf of the President acknowledges the importance of the ratings downgrade but contends that as the downgrade has already taken effect the applicant can no longer rely on it to persuade this Court to entertain it as an urgent application in terms of rule 6(12). This contention is misconceived. The reliance is not on the downgrade but on the consequences of the downgrade and those consequences according to the applicant are continuous. However, at the hearing the President's counsel recognised that the urgency of this application is intricately linked to the urgency of the main application. As the issue of urgency remains alive in that case they elected not to pursue the contention in the answering affidavit that the matter is not urgent and should therefore be struck from the roll.

[40] As the main application is pending and is brought on an urgent basis, it is necessary for the time-periods referred to in rule 53 for the filing of all papers to be truncated in order to make the matter hearing-ready.

This explains the tight time periods referred to in the order. The President's counsel agreed that granting the President five calendar days to file and furnish the record and the reasons is reasonable.

Costs

[41] As the applicant has succeeded in this application there is no reason to deny it its costs. This the President's counsel conceded. It was also conceded that it should be the costs of two counsel where two were employed.

[42] That concludes the judgment.

**VALLY J**

| | |
|---|---|
| Counsel for applicant: | Adv S Budlender assisted by Adv M Mbikwa. The heads of argument were drafted by Adv S Budlender assisted by Adv L Zikalala |
| Instructed by | Minde Shapiro Smith Inc |
| Counsel for respondent | kAdv I Semenya SC assisted by Adv M Sikhahane SC |
| Instructed by | State Attorney, Pretoria |
| Date of hearing | 4 May 2017 |
| Date of order | 4 May 2017 |
| Date of reasons | 9 May 2017 |